



**Economic Policy Programme**  
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**Trade and Cooperation**  
**between Palestine and the**  
**European Communities**

June 24-25, 1996

**Report and Follow-up**  
**July 1996**

**Report and Follow-up**

WORKSHOP

**Trade and Cooperation  
between Palestine  
and the  
European Communities**

July 1996

London School of Economics  
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United Kingdom

The Economic Policy Programme is funded by the European Community (EC) and coordinated by the Ministry of Economy and Trade in collaboration with the London School of Economics and Political Science. The two-year project is an initiative launched as part of the European Community's programme of assistance to the Palestinian population of the West Bank and Gaza Strip. The objective is to provide the Palestinian Authority (PA) with policy support that will both assist it in clarifying and shaping trade policy and strengthen its capacity to negotiate with current and potential trading partners on economic and trade policy issues. The programme, which was launched in May 1996, works with a team of leading international experts - economists, political scientists and trade lawyers - in support of the ministry's policy agenda, and has held in collaboration with the ministry a number of roundtables on trade-related issues.

**Economic Policy Programme**

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- Appendix 1** Informal Working Document:  
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## **Introduction**

This report, *Trade and Cooperation between Palestine and the European Communities*, was prepared by four European experts following a workshop held at Birzeit University on the West Bank on June 24-25, 1996. It is based on the proceedings of that workshop which Palestinian officials and private-sector representatives and the consultants attended. Both the workshop and the report form part of the two-year **Economic Policy Programme** which is funded by the European Community (EC) and coordinated by the Ministry of Economy and Trade in collaboration with the London School of Economics and Political Science.

### *Economic Policy Programme*

**The Economic Policy Programme** is an initiative launched as part of the European Community's programme of assistance to the Palestinian population of the West Bank and Gaza Strip. The objective is to provide the Palestinian Authority (PA) with policy support that will both assist it in clarifying and shaping trade policy and strengthen its capacity to negotiate with current and potential trading partners on economic policy issues.

The programme, launched in May this year, is designed to bring Palestinian officials and businessmen together with international experts in a series of consultative workshops. These workshops are to target specific trade-related issues, in line with Palestinian needs. They will thus provide a regular forum to which Palestinian representatives may turn for expert analysis.

### **Trade and cooperation with Europe**

Palestine's trade relations have been either distorted or stifled as a result of many years of Israeli occupation. However, regional trade patterns are set to change with the onset of the peace process. The Protocol on Economic Relations between Israel and the Palestine Liberation Organisation (PLO) of April 1994 (Appendix 2), the Jordanian-Palestinian economic agreement, the free trade agreement between the PA and the US and the proposed Interim Agreement on Trade and Cooperation between the European Communities and the PA all point to the lifting of past restrictions, the easing of access to markets and cheaper suppliers and the promotion of export and import flows. Trade liberalisation of this kind provides opportunities for the expansion of Palestine's trade links, within the region and beyond, which could in turn be expected to stimulate economic activity, thereby contributing to more stable growth.

With the prospect of an early start to negotiations on a trade agreement between the PA and the European Communities, the PA suggested last May that the first workshop should address the opportunities and problems that such an agreement might present for Palestine. The intention was to provide a means for the Palestinians to widen their knowledge on the mechanisms for exporting to the European Union (EU) and on the various options open to them.

## **The workshop**

Four visiting consultants, with negotiating experience and practical expertise in the fields of trade and customs, were subsequently identified with the help of the PA and the European Commission and invited to attend the workshop: Alberto de Pascale, a former European Commission official, Stefano Inama from the United Nations Conference on Trade and Development, Hanspeter Tschaeni, a senior trade expert with the Swiss Trade Initiative Middle East and North Africa and Allan Waight from the UK's Customs and Excise.

The workshop activities were divided into three parts:

- A small study group comprising officials from the PA's ministries of agriculture, economy and trade, finance and planning, three of the four consultant economists and the programme coordinator met informally on June 22-23 to prepare for the main workshop. The group's sessions focused on the four areas previously identified by the Ministry of Economy and Trade - agricultural exports to the Community, rules of origin and cumulation, non-tariff barriers to trade, and infant industry. On the basis of their discussions the group drafted a work agenda for the main workshop.
- The formal workshop on June 24-25 was well attended and the exchanges uninhibited and productive. The main result was the clarification of the options available to the Palestinians in terms of gaining access to Europe for their agricultural products and to Community-funded technical assistance. The Palestinian team raised their concerns with regard to a future EC-Palestinian agreement, focusing on the issues mentioned above. For their part the consultants addressed these concerns by identifying mechanisms for exporting to the Community and the kinds of technical support that would enable the Palestinians to trade within the frame of the proposed agreement.
- Following the workshop the consultants wrote this report on the workshop's deliberations and findings and on suggestions for follow-up. A collection of appendices containing the main text of the informal working document on a future Interim Agreement between the EC and PA (Appendix 1) and other relevant documents and EC regulations is attached to the report.

## **Report and follow-up**

The report's structure reflects that of the workshop, with chapters on agricultural exports to the EU, cumulation of origin, non-tariff barriers to trade and infant industries. Although each chapter covers a specific issue there are of course important linkages between the broad areas examined. This format has provided a way of ordering the main points discussed and presenting conclusions. In the report the experts identify the European Commission's position as presented in the informal working document on the issue under consideration, present Palestinian concerns, report on the work agendas set by the preparatory study group, consider the difficulties and opportunities facing Palestinian policymakers and private-sector representatives and propose, key follow-up activities. The following paragraphs

briefly summarise the main points.

### *Agriculture*

The workshop addressed Palestinian concerns regarding future agricultural exports to EU markets, in particular the PA's objective of obtaining substantial increases on the quantities presently set out as tariff quotas or reference quantities in the informal working document on a future European-Palestinian trade agreement and to extend the list to include other products. A range of policy approaches to the issue were discussed and the case for requesting an evolutionary clause in a future agreement examined.

### *Cumulation of origin*

During two sessions the workshop identified the Palestinian concerns with regard to the operation of the cumulation and allocation of origin rules as set out in the informal working document. Those rules make the acquisition of Palestinian origin difficult to achieve notwithstanding considerable working or processing of imported materials. Possible alternative rules were discussed and a case for a simpler rule which produced a more equitable result was identified.

### *Non-tariff barriers*

The workshop identified what measures constitute non-tariff barriers and safeguards and how these might impede access of Palestinian exporters to EU markets in the context of a future trade agreement. Participants examined the instruments likely to feature in a future agreement with a view to assessing how these might be utilised by the PA when designing market access strategies and discussed what forms of additional technical and legal assistance the private sector might require to prepare for the consequences of a future accord. The need for a training and information programme for private-sector operators that would cover Community rules and practices with which exporters must comply was identified.

### *Protection of industry*

The workshop found that the current state of trade relations with Israel will make it difficult for the PA to enact a trade policy to support the creation of, or protect, infant industries. It therefore examined a range of measures and mechanisms that could be implemented to achieve that objective, including the possibility of an EC-funded sector-oriented programme of technical assistance, as well as the case for inserting an evolutionary clause in any future agreement with the Community that would facilitate the formulation of an autonomous trade policy. The report proposes a number of activities in support of trade-policy formulation and domestic industry that the PA could suggest in its discussions with the European Commission with regard to future technical assistance.

The workshop format for bringing Palestinian officials and trade experts together over a four-day period proved to be very successful for discussing highly technical issues and encouraging serious exchanges. The mix of ministry officials and private-sector

representatives provided a balanced input and enabled the consultants to gain an understanding of the practical problems faced by the Palestinian side. The presence of representatives from a number of Palestinian ministries also meant that inter-ministerial contacts around issues of European-Palestinian trade and wider trade-policy issues were consolidated.

Thanks are extended to the EU representative, Tomas Dupla del Moral, and his staff for their support, to Geoffrey Haley and Bettina Muscheidt of the European Commission Technical Assistance Office for their participation in the workshop and to Gavin Evans at the European Commission in Brussels for preparing a paper on European-Palestinian trade (Appendix 3). Special thanks must go to the staff of the Ministry of Economy and Trade for their organisational role and support and to the officials from the ministries of agriculture, economy and trade, finance and planning and private-sector representatives who participated in the discussions. The programme would like to express its special gratitude to the visiting consultants for sharing their expertise and for the effort and time they put into the workshop and the writing of this report.

*Valerie Yorke*  
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# 1. Palestinian Agricultural Exports to the European Union

## 1. The European Community's working document

1.1 The European Community's likely positions on trade in agricultural and fishery products are set out in an informal working document on a future Interim Agreement between the European Communities and the Palestinian Authority (Appendix 1). The draft provisions for such trade are set out in Articles 11-14 of Chapter 2; while those for specific concessions applying to imports into the Community of agricultural products originating in the West Bank and Gaza Strip are set out in Article 1 of the draft protocol (Protocol No 1) and the attached Annex:-

### CHAPTER 2

#### AGRICULTURAL AND FISHERY PRODUCTS

##### Article 11

*The provisions of the present Chapter shall apply to products originating in the Community and the West Bank and the Gaza Strip and listed in Annex II to the Treaty establishing the European Community.*

##### Article 12

*The Community and the Palestinian Authority shall progressively establish a greater liberalization of their trade in agricultural and fishery products of interest to both Parties.*

##### Article 13

*1. Agricultural products originating in the West Bank and the Gaza Strip listed in Protocol No. 1 on importation into the Community shall be subject to the arrangements set out in that Protocol.*

*2. Agricultural products originating in the Community listed in Protocol No. 2 on importation into the West Bank and the Gaza Strip shall be subject to the arrangements set out in that Protocol.*

##### Article 14

*1. From 1 January 2001 the Community and the Palestinian Authority shall examine the situation in order to determine the measures to be applied by the Community and the Palestinian Authority from 1 January 2002 in accordance with the objective set out in Article 12.*

*2. Without prejudice to the provisions of paragraph 1 and taking account of the volume of trade in agricultural products between them and of their particular sensitivity, the Community and the Palestinian Authority shall examine in the Joint Committee, product by*

*product and on an orderly and reciprocal basis, the possibility of granting each other further concessions.*

## *PROTOCOL NO 1*

### *ARTICLE 1*

*1. The products listed in the Annex, originating in the West Bank and the Gaza Strip, shall be admitted for import into the Community in accordance with the conditions set out below and in the Annex.*

*2. Import duties shall be either eliminated or reduced by the percentage indicated in respect of each product in column (a).*

*Where the Common Customs Tariff provides for the application of ad valorem customs duties and a specific customs duty in respect of certain products, the rates of reduction shown in column (a) and in column (c), as referred to in paragraph 3, shall apply only to the ad valorem customs duty.*

*3. The customs duties shall be eliminated in respect of certain products within the limits of the tariff quotas shown against them in column (b).*

*The Common Customs Tariff duties in respect of the quantities imported in excess of the quotas shall be reduced by the percentage indicated in column (c).*

*4. The reference quantities fixed in respect of certain other products exempt from customs duties are shown in column (d).*

*Where imports of a product exceed the reference quantities, the Community may, having regard to an annual review of trade flows which it shall carry out, make the product concerned subject to a Community tariff quota the volume of which shall be equal to the reference quantity. In such a case, for quantities imported in excess of the quota, the common customs tariff duty shall, according to the product concerned, be applied in full or reduced, as indicated in column (c).*

*5. For some of the products other than those referred to in paragraphs 3 and 4 and indicated in column (e), the Community may fix a reference quantity as provided for in paragraph 4 if, in the light of the annual review of trade which it shall carry out, it establishes that the volume of imports may cause difficulties on the Community market. If, subsequently, the product is subject to a tariff quota under the conditions set out in paragraph 4, the common Customs Tariff duty shall be applied in full or reduced, depending on the product concerned, by the percentage shown in column (c) in respect of the quantities imported in excess of the quota.*

## **2. The concerns of the Palestinian Authority**

2.1 Prior to the workshop the Palestinian Authority (PA) expressed its concern about agricultural exports to the EU under a future agreement in the following terms:-

(i) This agreement gives us great prospects to export to Europe and to widen our market in the outside world. Regarding the agricultural products mentioned in the draft Palestinian-European agreement, unlimited duty-free exports are theoretically permitted, except for strawberries and flowers for which duty-free exports are restricted within established tariff quotas. However, the informal working document states that Palestinian exports are allowed to enter EU markets duty free and in any quantity provided these quantities do not significantly exceed Palestinian exports to the EU today - new limitations are consequently not excluded.

(ii) There are more than twenty agricultural products which are not listed in the document but which we have a great potential to export to the EU.

### **3. Preparatory study group identifies a work agenda**

3.1 A preparatory study group, meeting in advance of the formal workshop, identified an agenda for work for the PA in preparation for negotiations with the Europeans:-

3.2 Palestine would like to increase its annual tariff quota for cutflowers from 1,500 tonnes currently noted in the draft Annex to 3,000 tonnes. The potential for Palestinian exports to Europe is greater than the EU estimates. The 1,500 tonnes figure merely reflects the level provided for under Regulation 539/96 of March 25, 1996 (see Appendix 13).

In order to improve its negotiating position the PA intends to create a good technical argument for increasing its annual tariff quota for cutflowers by providing documented evidence of current levels of output, exports and Palestinian domestic consumption. Statistics should demonstrate that Palestine can export 2,500-2750 tonnes from Gaza alone. Production in Jericho is expected to push output above 3,000 tonnes next year.

The PA intends to prepare the same technical argument for increasing its annual tariff quota for strawberries from 1,200 tonnes to 2,500 tonnes.

3.3 The PA will compare the informal working document on an Interim Agreement with agreements that the European Communities have concluded with Israel, Tunisia and Morocco in order to assess:

(i) what Israel and other Arab parties have achieved in the area of tariff quotas, reference quantities and preferential entry price in negotiations with Europe; against

(ii) what the Palestinians want and could demand.

3.4 The PA will undertake further work in preparation for negotiations through assessing approaches and mechanisms for achieving its aims. These might include:

(i) the modification of quotas and the creation of lists (with attention to Combined Nomenclature Code) of further agricultural products for consideration. Note that products other than those mentioned in the draft Interim Agreement are included in the European Communities' Association Agreement with Israel and/or

(ii) consideration of the insertion of an evolutionary clause;

(iii) challenging the degree of discretionary power allowed to the Community to reduce Palestinian access to European markets as set out in the draft Interim Agreement (Protocol No 1, Article 1, paragraphs 4 and 5).

3.5 The PA will identify other possible market problems within the context of a future agreement (eg created by veterinary standard/quality rules).

3.6 The PA will identify potential problems over marketing, packaging, advertising and origin issues for which it might request technical assistance. Provision for such assistance should be included in a future Interim Agreement between the European Communities and the PA.

#### 4. The EU's common import regime explained

4.1 The Uruguay Round negotiations carried out within the General Agreement on Tariffs and Trade (GATT) has entailed changes in the EU's past import regime based on reference prices. However, the implicit rule remains: "the higher the value of the product, the smaller the import tax applied at the border", the objective being to ensure a minimum of support for the European producer. Many important products (eg citrus fruits) are covered by the system. The relevant EC regulations can be found in Appendices 9, 10, 11 and 13.

4.2 Where this system applies, the total import tax to be paid at the border is obtained by adding the custom duty *ad valorem* (calculated as a percentage of the custom value of the product) **and** a fixed amount indicated in Ecus per 100kg (see Regulation 2448/95, Annex 2 at Appendix 11. The first figure in column 4 is the *ad valorem* duty. The second, the fixed amount). Fruits and vegetables that are not included in the system are only protected by the traditional customs duty.

4.3 The higher the entry price of the product, the smaller the fixed amount. No fixed amount is provided for highly-priced products. Consider the following example:

*Tomatoes, fresh, from January to March (Code NC 0702 00 15)*

- if the entry price is 89.5ecus, or more, per 100kg, the duty to be paid at the border is 10.3% *ad valorem*. No fixed amount is applied.
- if the entry price is between 85.9ecus and 87.7ecus per 100kg, the duty is 10.3% *ad valorem* **plus** the fixed amount of 3.6ecus/100kg.
- if the entry price is less than 82.3ecus per 100kg, the duty is 10.3% **plus** 34.7ecus/100kg.

4.4 It is recalled that the rates of duty indicated above (copied from Regulation 2448/95, Annex 2) represent the first stage of the Uruguay Round reductions in this sector. Five successive stages of reduction will follow this one, over the next five years.

4.5 Imports of fruits and vegetables subject to the "entry price" regime (listed in Resolution 2448/95, Annex 2) require a **licence** and may be subject to the payment of a **security**. The licence is granted automatically on request. The security is refunded when the importer is able to demonstrate that the price of the product corresponds to the declared entry price (see Regulation 3223/94, Articles 4 and 5 and Regulation 3290/94, Annex XIII, Article 23 at Appendices 9 and 10 respectively).

4.6 In the event of market disruption, such as described in the Uruguay Round agreement on agriculture, Article 5, a "special safeguard clause" (the so-called SSG) might be applied, and supplementary import duties imposed as a consequence. However, the European Union has not yet acted on this issue. A decision of the Council is expected by end 1996 in connection with a "reform" in this sector.

*Preferential arrangements set out in the draft Interim Agreement*

4.7 The preferential arrangements for Palestine, as set out in the informal working document at Protocol No 1, indicate that "where the Common Customs Tariff (CCT) provides for the application of *ad valorem* customs duties and a specific custom duty in respect of certain products, the rates of reduction shown in column (a) and in column (c), as referred to in paragraph 3, shall apply only to the *ad valorem* custom duty" (see Article 1, paragraph 2). It appears, then, that **where they exist**, the entry prices and the corresponding "fixed amounts" would apply, without reductions, to preferential imports from Palestine. However, many fruits and vegetables included in the list annexed to the Protocol **are not** subject to the "entry price" system under the common import regime (eg. onions, aubergines, sweet peppers, melons). In these cases, only the duty *ad valorem* applies, as reduced following the applicable Protocol No 1 rules.

4.8 The situation for flowers is similar to that described for certain categories of fruits and vegetables. The relevant Regulations (Nos. 4088/87 and 539/96 at Appendices 5 and 13) state that the preferential rate is applicable only if the price of the imported product is equal to or higher than 85% of the internal production price. If the price of the imported product is lower than 85%, the entire non-preferential duty is applicable at the border.

4.9 All the different official prices indicated above are administered by the European Commission.

## **5. Follow-up activities**

*Lists of potential agricultural exports and custom nomenclature*

5.1 During the workshop the Palestinian team produced a list of the agricultural products that Palestine has the potential to export to EU markets but which do not appear in the Annex of Protocol No 1 of the informal working document. However, descriptions such as "chicken", "frozen vegetables and fruits" and "different dried fruit" are insufficient because they do not permit easy customs definition in terms of the EC's custom nomenclature. It is therefore suggested that the Ministry of Agriculture should provide more detail on the products concerned. More precision with regard to product specification, presentation and eventual degree of process is required.

5.2 Where possible the normal production or export period of the agricultural product should also be provided. This would facilitate customs definition - as in 5.1 above. It would also enable the identification of a possible concession in terms of a "season" that is less sensitive from the point of view of EU interests, but still appropriate for Palestinian export needs.

5.3 The PA should indicate where it might be able to guarantee the respect of a given minimum price at the EU border.

*Preparations for negotiations*

5.4 The document produced at the end of the preparatory workshop (see 3.2) notes that the PA intends to provide documented evidence of the current level of output, exports, and Palestinian domestic consumption for cutflowers and strawberries. According to Palestinian officials, this evidence will suggest that Palestine has the potential to export more than is presently provided for under existing EC regulations. Further, it will suggest that past Community statistical assessments are not accurate, and will support the general argument that in fact most previous Palestinian trade with the Community has not been visible, for obvious structural, geographic and political reasons.

5.5 It is suggested that the PA should provide similar sets of data for other products - in addition to cutflowers and strawberries - included in the draft list in Protocol No 1, Annex, where a reference quantity is indicated, as well as for all new requests.

#### *Negotiating objectives*

5.6 As far as preferential trade - and here the issue of preferential trade is treated quite separately from that of financial assistance - is concerned, the PA's negotiating objectives are:

- (i) to obtain a substantial increase on the quantities presently set out as "tariff quotas" or as "reference quantities" in the draft Interim Agreement at the Annex of Protocol No 1;
- (ii) to extend the list to include other products.

#### *Quantities*

5.7 The argument for increasing the quantities presently indicated in the draft agreement is based on the fact that Palestine has the potential to export more, as demonstrated by the data collected (see 5.1 and 5.4 above). A second supporting argument for an increase could be based on a comparison between the preferential concessions on offer to the Palestinians and the more extensive preferential concessions offered by the EU to other Mediterranean countries.

5.8 In terms of negotiating tactics, however, it might be preferable to yield, at a certain moment in the talks, from a position based on obtaining an immediate substantial increase in quantities to a more compromising attitude, namely: obtaining a modest increase straightaway in exchange for the insertion in a future Interim Agreement at the end of Protocol No II, of an "evolutionary clause" that would permit a foreseeable increase in quantities in the future.

#### *Products*

5.9 It is suggested that the PA might also want to negotiate an extension of the list of products on which it obtains preferential concessions by providing documented evidence of the present and/or potential pattern of Palestinian agricultural production. The PA could support its case by comparing its own request to the Community to extend preferential concessions to more products with the more numerous concessions obtained by other Mediterranean countries in their partnership agreements with the European Communities.

#### *Formulating an evolutionary clause*

5.10 There are a number of alternative ways in which evolutionary clauses of the type described above might be drafted:

"The tariff quotas and reference quantities indicated in column b and d of the Annex to Protocol 1 ...

(alternative one)... shall be increased annually by x% in the next five years";

(alternative two)... shall be increased annually by a percentage equal to the increase of the EU consumption of the product concerned". (Difficulty in obtaining rapidly the EU statistic on consumption poses a problem.)

(alternative three)... shall be increased annually by a percentage equal to the increase of intra-EU trade in the sector concerned. (Note: intra-EU trade for legumes: 1991: 5,135,000 tonnes; 1994: 5,451,000 tonnes. Fruits: 1991: 4,284,000 tonnes; 1994: 4,841,000 tonnes).

(alternative four)... shall be doubled at the end of a period of (five) (ten) years. The quantity increase will be divided in (five) (ten) equal annual steps. Without prejudging the level of the final quantity agreed at the end of the agreed period, any yearly step may be provisionally reduced or increased by 50%, for that given year, as follows:

(i) increased, if the production prices in the sector concerned in the EU, are increasing above the average prices in the three preceding years;

(ii) reduced, if the same prices are decreasing by more than 10%, compared to the average price in the three preceding years. Any provisional reduction or increase shall be accounted against the step to be taken in the following year, and cleared on that occasion".

5.11 The following wording for an evolutionary clause aimed at extending the Palestinian list of products to receive preferential treatment (see 5.9) is suggested. Such a clause would be inserted in the working document at Article 14 as point 3.

"In particular, in cases where exports of agricultural or fishery products from Palestine other than those presently contemplated in the Agreement would appear possible, on the basis of production and consumption statistics, the Community - taking due account of its obligations under Article XXIV of the GATT - shall give serious consideration to early inclusion of these new products in Protocol No 1."

#### *Challenging the degree of EU discretionary power to reduce Palestinian access*

5.12 In line with the preparatory study group's suggestion at 3.4 (iii) above, it is suggested that Article 1 of Protocol No 1 should be modified at paragraph 4 to read as follows:

"Where imports of a product exceed the reference quantities, the Community may, having regard to an annual review of trade flows which it shall carry out, make the product concerned subject to a Community tariff quota the volume of which shall be equal to *the reference quantities such as modified by the evolutionary clause, (plus x%)*."

Equally, the first sentence of paragraph 5 of Article 1 in the protocol should be amended to read as follows:

"For some of the products other than those referred to in paragraphs 3 and 4 and indicated in column (e), the Community may fix a reference quantity as provided for in paragraph 4 if, in the light of the annual review of trade which it shall carry out, it establishes that the volume of imports may cause *substantial* difficulties on the Community market. *Any such fixed reference quantity shall not be less than the average quantities imported from Palestine in the last two years, plus 20%. The evolutionary clause is applicable mutatis mutandis to the newly fixed reference quantity.*"

## 2. Cumulation of Origin

### 1. The European Community's working document

1.1 The European Community's likely proposals for cumulation are set out in an informal working document which includes a draft protocol on origin (Protocol No 3) (Appendix 1). The draft provisions relating to cumulation of origin are set out in Articles 3 and 4 of the draft protocol in the following terms:-

#### Article 3

##### *Bilateral cumulation of origin*

1. *Materials originating in the Community shall be considered as materials originating in "Country A" when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 7(1) of this Protocol.*
2. *Materials originating in "Country A" shall be considered as materials originating in the Community when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 7(1) of this Protocol.*

#### Article 4

##### *Diagonal cumulation of origin*

1. *Subject to the provisions of paragraphs 2 and 3, materials originating in "Country B", "Country C", "Country D", "Country E", "Country F", "Country G", or in "Country H" within the meaning of the Agreements between the Community and "Country A" and these countries shall be considered as originating in the Community or "Country A" when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing.*
2. *Products which have acquired originating status by virtue of paragraph 1 shall only continue to be considered as products originating in the Community or "Country A" when the value added there exceeds the value of the materials used originating in any of the other countries referred to in paragraph 1. If this is not so, the products concerned shall be*

*considered as originating in the country referred to in paragraph 1 which accounts for the highest value of originating materials used. In the allocation of origin, no account shall be taken of materials originating in the other countries referred to in paragraph 1 which have undergone sufficient working or processing in the Community or "Country A".*

3. *The cumulation provided for in this Article may only be applied where the materials used have acquired the status of originating products by an application of rules of origin identical to the rules in this Protocol. The Community and "Country A" shall provide each other, through the European Commission with details of agreements and their corresponding rules of origin which have been concluded with the other countries referred to in paragraph 1.*
4. *The European Commission shall publish in the Official Journal of the European Communities (C Series) the date on which the countries referred to in paragraph 1 have met the obligations laid down in paragraph 3.*

## **2. The concerns of the Palestinian Authority**

2.1 Prior to the workshop the PA expressed its concern about cumulation of origin under a future agreement in the following terms:-

- (i) Cumulation of origin is one of the specific economic benefits the EU is giving to the PNA, Israel, Jordan, Egypt, the present number of the "peace club". The right of cumulating rules of origin is a considerable incentive for cooperation as well as a comparative advantage when granted only to certain states.
- (ii) The effects of granting such right for regional trade and investment is to be questioned. The granting of such cumulation rights to Israel could have different effects from granting the right of cumulation to Jordan or Egypt.
- (iii) The workshop should provide a wider range of visions on the direct and indirect effects of cumulation on Palestine.

## **3. Preparatory study group identifies options**

3.1 A study group, meeting in advance of the formal workshop, identified two possible options open to the PA:-

- (i) maintaining the "status quo";
- (ii) implementing diagonal cumulation, with the following three qualifications:
  - the provision of assistance to create a competitive and efficient structure ensuring that the instrument is applied and functions in a fair and equal manner between all the Mediterranean parties concerned;
  - the creation of ways and means to prevent abuses by any party; and
  - agreement on and implementation of an efficient administrative system by the signatories in order to ensure the smooth operation of the protocol on rules of origin,

The PA recognises that it requires more factual information from business enterprises in order better to assess the merits of the two options (i) and (ii) above.

#### 4. Workshop findings

##### *Background*

4.1 The years of occupation by Israel have left the West Bank and Gaza Strip economically dependent on Israel. Up to 90% of trade (imports and exports) is with Israel. Most direct imports/exports must use Israeli port/airport facilities where extra controls by Israel cause delays leading to additional costs (eg for additional warehousing and unloading/reloading operations). Fresh produce is sometimes delayed because of border closures, causing deterioration. Due to factors such as these, Palestinian exports are considerably less competitive that they would otherwise be.

4.2 A de facto customs union exists between Israel and Palestine which does not sit easily with the Community's proposals for agreements with each country as independent entities (see 4.23 below).

4.3 There is currently much sub-contracting taking place in Palestine on behalf of Israeli companies. It seems likely that Israel has been cumulating such working and processing, perhaps in the belief that working or processing in territories occupied by Israel amounts to working or processing in Israel or perhaps by an application of the 10% 'out of area' tolerance currently available to Israel (exploiting the low cost of such sub-contracting in Palestine). The Community has not included an 'out of area' tolerance in the agreements now being proposed. Israel will therefore lose that benefit and is known to be opposed to that change.

##### *Draft origin protocol*

4.4 The following primary features of the draft origin protocol were first outlined to help the members of the workshop understand the context in which cumulation operates:-

- The origin criteria:
  - Wholly obtained
  - Sufficiently processed
    - change of tariff heading
    - process rule
    - percentage rule
    - alternative rules
  - Insufficient processing
- No drawback:
- Documentation: EUR 1
  - invoice declarations
- Administrative cooperation:
  - Exchange of stamps
  - verification

4.5 Specific attention was drawn to features (improvements) which are being introduced into the

origin rules in trade with Palestine for the first time - alternative percentage rules, 10% general tolerance (other than textiles) and invoice declarations (for approved exporters and low value consignments).

4.6 The importance of accurate declarations of origin by exporters and adequate controls by Customs were also highlighted. (Note: The Palestinian Customs Administration has yet to be established. In the early stages of the implementation of a future Interim Agreement it is anticipated that the Chambers of Commerce will continue to issue EUR1s).

4.7 The PA indicated that it would have no difficulty accepting a 'No drawback' rule. No customs duties are imposed on imports of industrial products (ie products falling within Tariff Chapters 25-97).

4.8 The workshop discussion highlighted the potential for confusion in relation to the terms "Made in..." and "Originating in...". It was stressed that whilst a product could claim to have been "Made in Palestine" (eg a shirt manufactured there from US fabric) and carry a label to that effect, the concept of "Originating in Palestine" for the purpose of gaining preferential tariff access to the Community required other considerations. The shirt "Made in Palestine" from US fabric would **not** have preferential origin. To acquire preferential origin the shirt would have to be made from fabric woven in Palestine or from fabric originating in the Community or in one of the Mediterranean countries within the regional cumulation group (see below).

#### *Cumulation and allocation of origin*

4.9 The draft origin protocol does not indicate specifically the countries to be included in the preference area for cumulation purposes to which Palestine would belong (see *Article 4.1* - "Country A" refers to Palestine). Two possibilities exist. Palestine would join either a group comprising Egypt, Israel, Jordan, Lebanon, and Syria or a larger group which includes, in addition, Algeria, Morocco and Tunisia. It is understood that the Community currently favours the separate grouping of Algeria, Morocco and Tunisia.

4.10 The concepts of bilateral and diagonal cumulation were explained. In the discussion that followed it soon became clear that the principal concerns of the PA centred on the proposed rules for allocating origin where two or more countries are involved in the manufacture of a finished product (*Article 4.2*). It was explained to the workshop that the rules proposed by the Community are based on rules which are used in trade between the Community and the Eastern European countries. They were devised to avoid countries with restricted access to the Community markets (ie restricted by tariff quota or quantitative limitation) having their goods made up (finished) in other countries within the regional group whose unrestricted access to the Community would allow for the effective circumvention of the Community's trade policy towards countries against whom the Community imposes special measures.

#### *Alternative allocation and origin rules*

4.11 Whilst recognising the historical basis on which the rule had been drafted and the Community's desire to harmonise the rules of origin amongst all its preferential trading partners, the workshop nevertheless identified a number of options which were considered viable alternatives in the context of the Euro-Mediterranean agreements:-

(i) In place of origin being allocated to the country adding the highest value to the finished product, a simple concept of origin attaching to the country of final processing provided that processing is more than minimal;

(ii) The option at (i) with the addition of a (modest) minimum added value by the country of final processing;

(iii) To reflect WB/GS developing status and to encourage infant industries (see Chapter 4) the PA considered that it should be made possible for goods to acquire Palestinian origin under more favourable terms than those applying to the other countries within the regional group, in particular Israel.

#### *The case for an alternative rule*

4.12 In revising its preferential trading agreements the Community recognises the need to simplify the rules to reduce the administrative burdens on both commercial operators and customs administrations. The introduction of alternative percentage rules and invoice declarations is a prime example of the movement in this direction. The proposed rules for allocating origin require, for their proper application, evidence of value which may be administratively difficult or commercially impossible to obtain. For example the value of the materials originating in country A which are acquired in country B for final processing in country C will be commercially sensitive information which is unlikely to be available to the commercial operator in country C. And yet it is necessary for the commercial operator in country C to know of their value if he is to make a correct declaration of the origin of the finished product.

4.13 The administrative difficulty in applying the rule proposed by the European Community is therefore an argument the PA can use in seeking an alternative. That it has not caused the Community to revise the rule before now is probably due to the fact that relatively little use has been made to date of the diagonal cumulation provisions in the Community's agreements with the Eastern European countries. It is also possible that where use has been made of the provisions and difficulty has been encountered in obtaining evidence of value of materials originating in another country within the regional group, the commercial operator carrying out the final process has either not claimed preferential status for the finished product or alternatively has made a declaration of origin without supporting evidence and that incorrect declaration has not been identified by customs controls.

#### *Examination of the options*

4.14 Option (iii) (see 4.11 above) is unlikely to find favour with the Community. First, the harmonisation of rules of origin has considerable support within the Community and beyond and the Community will not look favourably on any proposal which deviates from that prime objective. Second, it would introduce unwelcome administrative complexity for both commercial operators and customs administrations alike. For these reasons the PA are advised not to pursue this option in their negotiations with the Community.

4.15 Option (ii) would require a fallback rule to determine origin in the event that the value added in the country of final processing did not reach the (modest) level set. Such a fallback rule would either attach origin to the country supplying the originating materials for processing or, where more than one is involved, the country accounting for the highest value of originating materials used.

Both would be unacceptable, one for the reasons already outlined in relation to the rule currently proposed by the Community (see paragraphs 4.12 and 4.13 above), the other because it would again bring into focus the differences between the potential for value added in Israel and value added in Palestine. For these reasons it is not recommended that the PA should pursue Option (ii) as a primary objective.

4.16 Given the original purpose of the allocation of origin rule (to prevent circumvention of the European Community's external trade policy), it is necessary to examine whether Option (i), as outlined by the workshop, would be acceptable to the Community.

4.17 There are no tariff quotas (ie limitations on duty-free access to the Community) applying to industrial products (ie products falling within Tariff Chapters 25 - 97) originating in any of the Mediterranean countries which are to be included in the proposed agreements.

Tariff quotas exist for some produce (fresh or chilled) and certain processed agricultural products originating in several Mediterranean countries. The structure of the origin rules in the agricultural section of the Tariff make it extremely unlikely that circumventing these tariff quotas by 'misuse' of the cumulation rules would be a viable proposition.

Protective measures to prevent circumvention of the Community's tariff quotas applying in the Mediterranean area appear therefore to be unnecessary.

4.18 There are no quantitative limitations on the importation into the Community of goods originating in any of the countries concerned. (Quantitative restrictions are quotas which limit the quantity of a given product which may be imported into the Community from a particular country whatever rate of duty is paid.)

4.19 Certain textile products originating in Egypt and the Tangiers Free Zone of Morocco are subject to the lesser form of control, 'Community Surveillance'. These goods require surveillance import licences to be issued by a competent authority in the Community.

This procedure allows the Community to monitor closely the quantity of goods to be imported. Should those quantities be regarded by the member states to have reached excessive levels, quotas (quantitative limits) could be imposed. This move to greater restriction is taken by the Community only in very exceptional cases and there are no indications that products from the Mediterranean area, which are subject to surveillance, are at risk.

4.20 The rules which determine origin for the purpose of Community surveillance licensing are less strict than the rules which determine origin for preferential tariff purposes (ie the rules proposed by the Community in Protocol No 3 of the informal working document). For example the preferential rule for shirts requires manufacture from yarn whereas for surveillance purposes the rule allows manufacture from fabric. Shirts are subject to surveillance licensing when originating in Egypt.

Shirts manufactured in Palestine from Egyptian fabric would have Palestinian origin under the rules applicable to surveillance licensing.

Other products subject to surveillance licensing when exported from Egypt to the EC include cotton yarn, fabric, bed linen, handkerchiefs and scarves. The (non-preferential) rules of origin for such products broadly require a single but substantial process to confer origin. Thus, for example, fabric

must be manufactured from yarn and the embroidering of an unembroidered fabric to make a scarf would confer origin if the value of the unembroidered fabric were less than 40% of the ex-works price of the finished product.

The processes that might be carried out other than in the source country are unlikely to be commercially viable unless they are processes which are sufficient to confer origin under the non-preferential rules.

4.21 The Community might be reluctant to introduce rules for allocating origin in the Euro-Mediterranean agreements which differ from the rules applying in the agreements with the Eastern European countries, given the desire to maintain a harmonised regime. However, the circumstances which gave rise to the strict rules for Eastern Europe have now largely disappeared and the need for provisions to prevent circumvention of Community trade policy towards the Eastern Europeans is greatly reduced. It is possible that the Community could also be in a position to revise its agreements with the Eastern Europeans.

#### *The preferred option*

4.22 It would appear from the analysis at paragraphs 4.17-4.21 that the strict rule currently proposed by the Community for the allocation of origin is an unnecessary adjunct to the cumulation provisions. The PA are therefore advised to pursue Option (i) in their negotiations with the Community. The PA may be aware that Jordan is understood to have similar concerns (ie low value added in Jordan when Israeli material is processed into a finished product). Support for a change to the draft rules for allocating origin could therefore be expected from other quarters.

#### *The de facto customs union with Israel*

4.23 For its part the PA expressed its intention to separate its customs territory from Israel as far as rules of origin were concerned. The successful implementation of the Community's agreements with Israel and Palestine, and indeed, given the proposals on diagonal cumulation, with all the Community's Mediterranean partners, will rely heavily on the acceptance of all parties of the independence of Israel and Palestine in terms of the rules of origin. To this end an additional exchange of letters might be attached to the agreements between the European Community and each of its Mediterranean partners to be associated with the diagonal cumulation provisions by which all parties undertake, for the purpose of the protocol on rules of origin, to recognise the territories of Israel and Palestine as separate entities.

#### *Derogation*

4.24 A member of the private sector attending the workshop (a manufacturer of textile garments) asked whether it would not be possible to seek from the Community a temporary derogation from the current rules of origin to allow making up from (currently) non-originating fabric. His company has won contracts to supply a major Community retail outlet. He uses some Community fabric which under the present rules applying in trade between the West Bank and the Community gives the finished product originating status. However, the high cost of Community fabric, when coupled with the added costs referred to in paragraph 4.1 above, makes the finished garment uncompetitive. His request was to be allowed to anticipate the formal introduction of diagonal cumulation and use fabric of Egyptian origin.

4.25 The difficulty of obtaining from the Community permission to derogate from the existing rules of origin for textile products - the textile sector being a very sensitive sector for several member states - was understood. It should also be noted that without an agreed adjustment to the allocation of origin rules (see above) the request to anticipate the new cumulation provisions would be even more difficult for the Community to concede given that such concession could involve the denial of Egyptian origin (rightfully) acquired (according to the present draft proposals) where the fabric represents a higher value than the value added in Palestine. It is strongly recommended that the Palestinian purpose would be better served by refraining from making any requests at this stage for concessions in the highly sensitive textile sector and instead concentrate its efforts on securing improvements to the allocation of origin rules.

4.26 Once the new agreements are in force (it is the Community's hope that they will be operative from January 1, 1997) consideration might then be given to seeking, if it proves necessary, permission to use Egyptian fabric in advance of the agreement between Egypt and Palestine as called for under Article 4.3 of Protocol No 3. It must be stressed, however, that there can be no guarantee that such request would find favour with or even be accepted for consideration by the Community. First, as already indicated, the textile sector is one of the most sensitive in the Community and second, no specific provision will be included in the agreement for the possibility of derogations from the agreed rules of origin.

## **5. Follow-up workshops**

5.1 At paragraph 4.6 the importance of accurate declarations of origin by exporters was stressed. To provide such declarations exporters will require a clear understanding of the origin rules and the documentary requirements associated with claiming preferential tariff treatment. Follow-up workshops/seminars aimed specifically at exporters are therefore recommended. Given the complexity of the rules of origin and the associated administrative measures, such workshops/seminars might best be separated from any other seminars which might be arranged to provide exporters with other essential information regarding trade with the Community.

## **3. Non-Tariff Barriers to Trade**

### **1. The concerns of the Palestinian Authority**

1.1 Before the workshop the PA identified 'non-tariff barriers to trade' as a key area for discussion. They expressed their concerns in the following terms:-

(i) Although the informal working document on an Interim Agreement between the European Communities and the PA (Appendix 1) does not mention clearly how many non-tariff barriers it includes, Palestinian exporters to the Community are confronted with many non-tariff barriers.

(ii) Quotas were enforced on a very large number of products in what may appear as limited quantities of the product or as a percentage of the ex-works price of the product when reflected to the work or processing carried out on non-originating material that confers originating status.

(iii) In addition, the document mentions certain exports that can enter the Community market with any quantities except that the Palestinian products at a certain level grow to an extent where they will cause "market disturbance". This is not clear. The quantities are not mentioned. We can say that American products at certain quantities can cause market disturbance to the

Community but not the Palestinian products. This needs some reconsideration.

(iv) With regard to agricultural products, unlimited duty-free exports are allowed to enter the Community provided they do not "frantically" expand. This would appear to suggest that Palestinian exports of agricultural products can enter the Community duty-free in any quantity provided they do not significantly exceed what is exported to the Community today. The issue needs to be discussed and questioned.

## **2. Observations based on preparatory workshop discussions**

2.1 In trade policy terms, the circumstances described in paragraph (iii) above are not normally treated as 'non-tariff barriers'. They fall under the heading of 'safeguards'. Another, more specific safeguard relating to infant industries (see Chapter 4) is contained in Article 10 of the draft Interim Agreement.

2.2 The following remarks might be useful in clarifying the notion of "market disturbances":

(i) The issue of market disturbance is treated under the general safeguard clause in Article 21 of the working document. Measures taken under this clause have to be limited in duration, proportional to the injury claimed, and subject to a certain procedure which is spelt out in the agreement at Article 23.

(ii) The safeguard clause at Article 21 is an extended version of Article XIX of the GATT and has been used by the European Union in all its Association Agreements with Central and East European countries as well as with Mediterranean countries. The same wording is used in the agreements of EFTA countries with their third country partners.

(iii) Safeguard clauses provide a safety net to counter unwanted and unexpected effects of a serious nature which are caused by the market access in a trade agreement providing for preferential treatment of imports. They can be invoked by both sides. It is very possible that in the case of the proposed agreement market disturbances might be more likely to occur in the Palestinian market than in the EU's.

(iv) It is seldom possible to name in advance the exact quantities which might cause market disturbances because these quantities would differ from product to product and from sector to sector. In addition, the capacity for absorbing imports in different sectors will vary over time. In order to prevent misuse of the clause a detailed procedure is normally laid out in the agreement which allows the other contracting party to alleviate the injury claimed by the first party or to raise objections against counter measures.

2.3 The rules relating to agricultural imports into the EU are discussed in detail in Chapter 1 of this report and in a background briefing prepared by the European Commission (see Appendix 3). Some general remarks concerning the problem raised in paragraph 1.1 (iv) above will therefore suffice. Normally, the agreement will in one way or another determine the agricultural products covered. For these products, specified preferences (duty-free import or a percentage reduction) will be granted, either up to a certain quantity or without limit. The details regarding the products, the degree of preference and the quantities will need to be negotiated between the two sides. It needs to be recalled, however, that even where no quantitative limits are set for imports of agricultural products into the EU, the safeguard clause referred to above might be invoked if market

disturbances in some product sectors were to occur. The same holds, of course, for EU exports to the West Bank and Gaza.

2.4 The issues raised in paragraphs (i) and (ii) of the PA's list of concerns are dealt with below.

### **3. Preliminary conclusions**

As a result of the discussions at the preparatory study group the following conclusions were formulated. These were used to introduce the formal session on non-tariff barriers at the workshop.

3.1 The term 'non-tariff barriers to trade' as such does not appear in the draft Interim Agreement. It is therefore important to decide what measures fall under this term and how they relate to the text of the agreement.

3.2 The draft provisions relating to quotas and other quantitative restrictions are listed in the agricultural sections of the informal working document and are therefore dealt with in Chapter 1 of this report. In the case where quantitative restrictions other than those explicitly provided for in a future agreement should be imposed by the EU or its member states, a violation of Article 6 in the draft text can be claimed before the Joint Committee.

3.3 In addition, Article 24 of the draft Interim Agreement provides that "prohibitions or restrictions on imports, exports or goods in transit justified on grounds of safety, health, intellectual property protection, etc., shall not...constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties". Should one party have well-founded reasons for arguing that a law of the other party violates this proviso, it can bring the case before the Joint Committee and, if no solution is found there, start a procedure against the violation of the proposed Agreement as currently drafted.

3.4 Remaining prohibitions or restrictions which are not an arbitrary discrimination or a disguised restriction on trade must be dealt through other instruments provided for in the informal working document, which include:

- Article 39 dealing with co-operation in standardisation and conformity assessment, notably with the goal of establishing "in due time, ..mutual recognition agreements in the area of conformity assessment";
- Article 40 on approximation of laws; and
- Article 42 (c) relating to "the promotion of cooperation in veterinary and phytosanitary matters".

In order to achieve the objectives laid down in these articles, the PA intends to utilise all opportunities for technical assistance - provided for in the draft Agreement and elsewhere.

3.5 The PA will seek further active involvement in the EU's information programmes and in international standardisation bodies, in order to make available to the private sector information which is indispensable for designing market access strategies for the EU and elsewhere. The PA will furthermore participate in regional cooperation in standardisation and related matters, inter alia, as a means to facilitate cumulation.

#### **4. Summary of workshop discussion**

4.1 Certain economic realities, such as the question of whether the higher salary level in the West Bank and Gaza Strip - relative to direct competitors, makes the processing of textiles there unattractive for foreign producers - fall outside the issues related to non-tariff barriers to trade and outside the draft Interim Agreement as a whole.

4.2 The Palestinian private sector requires additional support and assistance to prepare itself for the consequences of a future agreement with the EU in order that it might stand on its own feet and disengage from long-standing dependence on the Israeli economy. The design and implementation of projects in support of private sector operators, with the assistance of the EU, is therefore a must. These projects should in the first instance address the issues covered by the proposed agreement but they should also be part of a longer-term programme aimed at assisting the rebuilding and restructuring of the Palestinian economy.

4.3 Possible interference by Israel in the Palestinian economy, which jeopardises the chances for Palestinian private-sector operators to reap the benefits of market opening measures offered under a future agreement, should be communicated to the EU through the usual channels or at meetings of the Joint Committee. It is suggested that such a communication should be accompanied by a request to the EU to use its influence with the Israeli authorities to stop the interference. Whether an explicit obligation of both contracting parties to do their utmost to prevent/end interferences by third parties that affect the smooth functioning of a future European Agreement can be included in the text of the agreement is a matter for negotiation and wording.

4.4 No new problems caused by Community quantitative import restrictions, other than those listed in the draft agreement, were raised. The PA might find it useful, however, to examine the Community's partnership agreements with other Mediterranean countries in order to see how textile products have been treated elsewhere.

4.5 The informal working document only lays down general rules for trade between the two contracting parties, the tariff level and possible quantitative restrictions. It does **not** indicate the detailed conditions for the importation of specific products into the Community market. Specific rules do exist, however, because governments have the obligation, among others, to ensure the safety and health of animals and human beings, to protect the environment, etc. Many of these import rules are harmonised Community-wide and can be found in Community directives. This is also the case for phytosanitary and veterinary requirements. In other fields, member states retain their capacity to legislate. In addition, technical standards and conformity assessment requirements exist in the private sector and it is often difficult to enter into a market if such standards and requirements are not followed. Of particular importance are certificates or labels which denote that a given product conforms with certain quality or environmental standards.

4.6 This situation has two major consequences for the Palestinians:

- (i) It is indispensable for exporters to inform themselves on the compulsory import rules and the private standards and conformity assessment requirements in use in the individual member states (as well as those used on an Community-wide basis) to which they want to export.
- (ii) The PA might consider whether it may be in its interest, and in the interest of Palestinian

economic operators, to align technical rules, standards, certification requirements and phytosanitary and veterinary rules to those of the Community. To the degree that the PA is now in the process of defining its own rules there is an opportunity to do so in a manner that serves its economic interests.

Both economic operators and the administration stand to benefit in the task of developing trade opportunities from the EU-funded technical assistance and information programmes that are in place. Some of the available opportunities are outlined in the working document on a future Interim Agreement, but there are also some projects underway (eg the establishment of a business centre) which could provide benefits before an agreement is implemented.

## **5. Follow-up proposal: training for Palestinian exporters**

5.1 For historical and political reasons the Palestinian private sector is at a distinct disadvantage compared to its counterparts in the surrounding countries and in the EU. If Palestinian operators are to benefit from the new circumstances that would follow the signing of a future agreement they will require assistance on a wide range of legal and technical issues. It is suggested that a specific information and training programme should be arranged to meet this need. The following is a suggested proposal for that programme.

### *Goal*

5.2 This programme is designed to inform and, to the degree wished for by the Palestinians, to train private-sector representatives (essentially exporters and manufacturers producing for export) about legal and quasi-legal requirements for importing into the EU, enabling them to benefit from the preferential opportunities created through a future trade and cooperation agreement between the Palestinian Authority (PA) and the European Communities.

5.3 If exporters are to benefit from the preferential treatment under the proposed agreement, precise knowledge of the rules and practices with which they must comply will be indispensable. The programme will therefore provide information and training in a number of key areas:

- (i) It will provide a guide to the EU's preferential rules, including cumulation, drawback and transit rules and customs documentation required under the draft Interim Agreement;
- (ii) It will clarify the EU's general approach to technical harmonisation, standardisation and conformity assessment and product-specific legislation in the sectors which are of special interest to Palestinian exporters.
- (iii) It will provide information on EU environmental and consumer protection legislation that has an impact on the products which are of specific interest to Palestinian exporters. The programme will also look at the labels and rules which are optional in use but which would greatly facilitate entry of Palestinian products into the EU market.
- (iv) It will survey EU veterinary and phytosanitary rules and controls, which are compulsory for agricultural imports into the EU market.
- (v) It will explain other complex rules and regulations governing trade with the EU including:

- EU product liability rules. Palestinian products are subject to these rules upon importation into the EU. Manufacturers from third countries are required to designate an importer who carries legal responsibility in case of a dispute.
- Electronic data interchange measures as a means to facilitate trade. World-wide efforts are underway, in which the EU participates prominently, to prepare the technical basis for computerised trade documentation. A harmonised language and agreed messages facilitate international trade both in the private sector and with the governmental authorities.
- Relevant EU competition rules and EU measures against so-called illicit trade practices (eg dumping). Exporters should be familiar with the key principles of these rules in order to avoid practices which could lead to counter-measures by the EU.
- EU price compensation practices in trade with processed agricultural products. Exporters of such products should be familiar with the EU system of price compensation which is an instrument to compensate EU manufacturers for differences between EU and world-market prices for some basic agricultural products used as inputs - in foodstuffs, for example.

### *Instruments*

5.4 The main instrument for informing and training exporters will be workshops and seminars. Information provided during the seminars and workshops will be supplemented by granting access for Palestinian exporters to EU information centres and programmes (concerning EU legislation) and to relevant documentation (for instance in the case of standards and certification requirements of the private sector).

### *General and specific topics*

5.5 Some of the issues mentioned under paragraph 5.3 above are of general interest to all exporters while others relate to sector-specific rules and regulations and are thus of primary concern to those active in that sector.

Three categories of issues can be distinguished:

- (i) Those which are (or should be) of general interest to anyone exporting to the EU. They should be known to the specialist in the firm but even the head of an enterprise ought to be familiar with them. These comprise origin rules and customs-related matters and other issues relevant for trade with the EU (paragraph 5.3 (v) above) with the exception of price compensation.
- (ii) Those relevant to exporters of agricultural and processed agricultural products. These comprise product-specific legislation relating to foodstuffs, relevant provisions of the environmental and consumer protection legislation, veterinary and phytosanitary controls and price compensation.
- (iii) Those relevant to other interest sectors, comprising product-specific requirements and relevant provisions of the environmental and consumer protection legislation. A workshop in this sector should first address some common aspects of EU legislation (essentially the new and global approach to technical harmonisation, standardisation and conformity assessment, and its various components; the mutual recognition of national testing and certification requirements - the Cassis de Dijon principle) and then divide into different groups to deal with sector-specific problems. In this context the following sectors should be addressed: textiles and garments; leather and shoes, agricultural products, processed agricultural products, especially foodstuffs; stone and marble (to the best of our knowledge, there are no product-specific requirements for these two products, so

exporters and manufacturers would probably only need information on general import conditions in the EU); pharmaceuticals and chemicals. In addition, standardisation and conformity assessment requirements, including quality certificates, which are issued by the private sector should be addressed.

*Proposed programme*

5.6 It is suggested that a workshop programme might comprise both introductory and sector-specific seminars.

(i) The introductory seminar(s) in the West Bank and Gaza would address points of general interest as described above. These would be open to representatives from all sectors and would comprise:

- a general presentation of the (likely) content of a future Interim Agreement (using the texts of agreements already concluded with other Mediterranean countries), giving special emphasis to issues which are of practical concern for exporters without, however, entering into details;
  - an overview of the issues mentioned under paragraph 5.3 (v) above, ie product liability rules, electronic data interchange, competition rules, measures against illicit trade practices, with the exception of price compensation.
  - an introduction to, and a more detailed presentation of, origin rules and customs documentation.
- Alternatively, there might be an entire seminar dealing with general issues and a second one dedicated to origin rules and custom-related questions.

(ii) At a later date and building on the introductory seminar, separate seminars would be organised for exporters dealing with agricultural and processed agricultural products, and secondly for those wishing to export other products mentioned under other sectors mentioned under paragraph 5.5 (iii) above.

*Timing*

6.1 Assuming that an Interim Agreement between the European Communities and the PA enters into force on January 1, 1997, the workshops should be planned immediately, in order to give the private sector a chance to prepare itself for the new situation.

A second round of workshops, which draws on the initial experiences of exporters as they plan for, and live with, the post-agreement circumstances might be held towards mid-1997. This would provide a vehicle for exporters to widen their knowledge in the various fields.

## 4. Infant Industries

### 1. The European Community's working document

1.1 The European Community's likely position concerning the trade provision on industrial products is mainly contained in the following articles of Chapter 1 'Industrial Products' of the draft Interim Agreement:

#### Article 4

*The provisions of this Chapter shall apply to products originating in the Community and in the West Bank and the Gaza Strip other than those listed in Annex II to the Treaty establishing the European Community.*

#### Article 5

*No new customs duty on imports, or any other charge having equivalent effect, shall be introduced on trade between the Community and the Palestinian Authority.*

#### Article 6

*Imports into the Community of products originating in the West Bank and the Gaza Strip shall be allowed free of customs duties and of any other charge having equivalent effect and free of quantitative restrictions and of any other measure having equivalent effect.*

#### Article 7

1. *The provisions of the present Chapter shall not preclude the retention by the Community of an agricultural component in respect of goods originating in the West Bank and the Gaza Strip and listed in Annex 1.*

*The provisions of Chapter 2 applicable to agricultural products shall apply mutatis mutandis to the agricultural component.*

2. *For the products listed in Annex 2 originating in the Community, the Palestinian Authority may retain for the duration of the agreement customs duties on import and charges having equivalent effect not higher than those in force on 1 July 1996.*

#### Article 8

1. *Customs duties and charges having equivalent effect applicable on import into the West Bank and the Gaza Strip of products originating in the Community, other than those listed in Annexes 2 and 3, shall be abolished when the agreement enters into force.*

2. *Customs duties and charges having equivalent effect applicable on import into the West Bank and the Gaza Strip of the products originating in the Community listed in Annex 3 shall be gradually abolished in accordance with the following schedule:*

... (*schedule for tariff dismantling*)...

3. *For each product concerned, the basic duty to be gradually reduced as provided in paragraph 2 shall be the duty actually applied to imports from the Community on 1 July 1996.*
4. *If, after 1 July 1996, a tariff reduction is applied erga omnes, the reduced duty shall replace the basic duty described in paragraph 3 from the date on which the reduction is applied.*
5. *The Palestinian Authority shall notify the Community of its basic duties.*

#### Article 10

1. *By way of derogation from the provisions of Articles 5 and 8, the Palestinian Authority may take exceptional measures of limited duration to introduce, increase or re-introduce customs duties.*
2. *Such measures may only apply to new industries and to sectors undergoing restructuring or experiencing serious difficulties, particularly where those difficulties entail severe social problems.*
3. *Customs duties on import into the West Bank and the Gaza Strip of products originating in the Community that are introduced by such exceptional measures may not exceed 25% by value, and must retain a preferential margin for products originating in the Community. The total value of imports of the products subjected to such measures may not exceed 15% of total imports of industrial products originating in the Community during the last year for which statistics are available.*
4. *Such measures shall be applied for no longer than five years, except where a longer duration is authorized by the Joint Committee.*
5. *The Palestinian Authority shall inform the Joint Committee of any exceptional measures it intends to adopt and, at the Community's request, consultations shall be held on the measures and sectors concerned before they are implemented. When adopting such measures, the Palestinian Authority shall provide the Committee with a schedule for the abolition of the customs duties introduced pursuant to this Article. Such schedules shall provide for the phasing out of the duties concerned by equal annual instalments, starting no later than the end of the second year following their introduction. The Joint Committee may decide on a different schedule.*

## **2. The concerns of the Palestinian Authority**

2.1 Prior to the workshop the PA expressed its concern about infant industries in the following terms:

- (i) In conjunction with World Trade Organisation and the GATT regulations, the PA does not intend to put protectionist measures on infant industries permanently.

(ii) However, in view of the disastrous toll that years of Israeli occupation have taken on Palestinian industry, the PA does not want to leave Palestinian industries, especially those in their infant stage, unprotected. Rather it wants to take emergency steps and find remedies to enable them to compete on an international basis.

(iii) Certain Palestinian industries do need some kind of temporary protection. Perhaps they should be given a period of time to restructure and re-organise in order to prepare to compete internationally and on an equal basis.

(iv) Consideration should also be given to creating a special fund to finance technical assistance and other forms of support for Palestinian industries during a period of adjustment.

### **3. Preparatory study group identifies options**

3.1 The study group found that, given the current "status quo" in terms of trade relations with Israel, it would be extremely difficult for the PA to enact an appropriate trade policy to support the creation of, or grant temporary protection to, infant industries. It proposed that the workshop should consider the following as possible ways forward for the PA to consider:

(i) the establishment of an autonomous trade policy as a possible option for resolving the current situation;

(ii) alternatively, and on a temporary basis, the implementation of measures and mechanisms indirectly to support the creation and protection of infant industries. The group considered a number of devices, including export incentives, export insurance and the strengthening of the regulatory framework, to achieve this end.

It was further considered that many of these activities could be conducted through an efficient and specific sector-oriented programme of technical assistance, suitable to PA needs and industrial development objectives.

Further studies and advisory mission will be reviewed in order better to identify appropriate ways and means to provide such assistance. Programme proposals would need to display transparency of application, time limitation, and be industry specific and be aimed at achieving self-sustainability.

### **4. Workshop findings**

4.1 A first observation was that the clauses on industrial products in the working document provide for the phasing-out of Palestinian customs duties applicable to EU products in five years (Appendix 4) instead of the 12-year period provided for in other Euro-Mediterranean agreements. This is based on the assumption by the EU that, given the scarce industrial activities at present, there is no particular need for protection. The draft Interim Agreement provides for the eventual introduction of "exceptional measures" when protection is needed for "infant industries". It has to be noted, however, that the formulation of the safeguard clause in the draft agreement is similar to that contained in other Euro-Mediterranean agreements, ie there is no special provision for Palestine. Therefore, a more flexible safeguard clause might be elaborated.

4.2 In addition, the draft agreement assumes that the PA is presently able to formulate and implement an autonomous trade policy to determine duties and customs legislation. Given the present status of trade relations between Israel, the West Bank and Gaza, as determined by the Protocol on Economic Relations of 1994 (Appendix 2), the PA may only deploy in a limited fashion the classic tools of trade policy and border protection measures to support domestic industries. In particular, the Protocol on Economic Relations imposes limits on the import of the range of goods as well as the quantities of goods originating in certain countries (see Article III, 2a, 4, 5a, 5b and 10). Notwithstanding these limitations the PA has developed some autonomous trade policy links with Jordan and other Arab countries.

4.3 Certain provisions of the draft Interim Agreement will have to be reconciled with and adapted to those contained in the Palestinian-Israeli Protocol on Economic Relations by the insertion of an evolutionary clause in the agreement text, if the PA wishes to determine and develop its own trade policy. Moreover, until the PA is able to implement an autonomous trade policy and exercise control over its customs territory, it will be extremely difficult to enforce a domestic trade policy since goods coming from Israel may freely circulate into the West Bank and Gaza, thereby circumventing PA commercial policy measures.

4.4 In evaluating the current situation, it has to be borne in mind that, as a corollary of the de facto atypical customs union arrangement with Israel, past and present, Palestinian industries have been and continue to be subject to Israeli trade policy decisions. In fact goods which enter Israel duty-free or at a reduced rate of duty under the free trade agreement with the United States and under the recently signed EC-Israel Euro-Mediterranean Association Agreement may freely circulate to Palestinian territory.

4.5 It is apparent that the concern of the PA is to strengthen existing industries in the West Bank and Gaza Strip and secure EU support for the creation and development of these industries. While ways and means to import and export directly from West Bank and Gaza should be sought in the future, the most practical way to assist local industries in the short term is through indirect assistance in the form of technical cooperation, export financing and other ad hoc measures and mechanisms. These should be developed to take account of Palestine's unique situation without resorting to protectionist measures or subsidies to support domestic industries.

4.6 It also emerged that the greatest problem for local industries is their structural dependence on Israeli distributors, shipping and other related services which form part of the normal business environment. Efforts should therefore concentrate on creating a similar services network in the Palestinian territories so as to reduce this dependence.

## **5. Follow-up activities**

5.1 In the light of the above findings, the following courses of action are recommended with a view to supporting the PA in its negotiations with the EU:

### *Trade policy*

5.2 On the basis of an accurate evaluation of the current situation in Palestine, studies and activities should be undertaken:

- to examine, on the basis of the Protocol on Economic Relations between the PLO and Israel, ways

and means to strengthen the PA's autonomous capacity to determine the import and export regime vis-à-vis Israel and third countries and to insert an evolutionary clause into the draft agreement;

- to develop alternative sources of inputs and marketing channels, taking into account the opportunities provided by the cumulation provisions of a future agreement;
- to examine the feasibility and likely impact of inserting provision for an arbitration mechanism on foreign direct investment in the draft Interim Agreement and the possibility of developing/strengthening legislation for an investment insurance fund and a one-stop investment procedure.
- to elaborate and propose a more flexible safeguard clause for the draft Interim Agreement;
- to consider the possibility of requesting vocational training courses organised by the European Union for the Palestinian labour force;
- to evaluate the impact of, and devise a strategy for, liberalisation in the services sector in the framework of the agreement and assess to what extent this liberalisation will be conducive to the establishment of a suitable infrastructure.

#### *Domestic industry and manufacturing*

5.3 Evaluation missions and sectoral studies should be undertaken:

- to evaluate the competitiveness of existing industries and examine ways and means to develop alternative export/import routes through a case-by-case and product-by-product study based on industrial accountancy costs at ex-factory price level/fob price/cif;
- to explore the possibility of establishing clusters of small- and medium-sized enterprises by providing them with a services centre supplying assistance on quality control, testing, technology and know-how. This activity could be linked to UNCTAD's trade point initiative by an expansion of the services to be provided;
- to identify areas of intervention for possible technical assistance or infrastructure support projects to be financed through Mediterranean Assistance (MEDA) funds and the international community;
- to examine the support activities carried out by the EU for European small- and medium-sized enterprises and devise a similar programme tailored to Palestinian needs. Where applicable and relevant, to request access for Palestinian small- and medium-sized enterprises to EU special programmes.

5.4 The above-mentioned activities should ideally form a base for discussing and elaborating with the European Commission the country indicative programme which sets out the areas and objectives of the financial and technical assistance provided by the EU through MEDA funds.

## **Workshop**

### **Trade and Cooperation between Palestine and the European Communities, June 24-25, 1996**

Birzeit University

#### **Programme**

Monday, June 24, 1996

- |               |                                                                                                                           |
|---------------|---------------------------------------------------------------------------------------------------------------------------|
| 9.00 - 9.30   | <b>Workshop Registration</b>                                                                                              |
| 9.30 - 10.00  | <b>Opening Session</b><br>Maher Masri<br>Minister of Economy & Trade<br>Palestinian National Authority                    |
|               | <b>Presentation of framework</b><br>Geoffrey Haley<br>Aid Coordinator<br>European Commission Technical Assistance Office  |
|               | Samir Huleileh<br>Assistant Under Secretary<br>Ministry of Economy & Trade                                                |
| 10.00 - 11.15 | <b>Agricultural Exports to Europe</b><br>Moderator: Geoffrey Haley<br>European Commission Technical Assistance Office     |
| 11.15 - 11.30 | Coffee                                                                                                                    |
| 11.30 - 13.00 | <b>Agricultural Exports to Europe</b>                                                                                     |
| 13.00 - 14.30 | Lunch (Tabash-Jifna)                                                                                                      |
| 14.30 - 15.45 | <b>Protection of Infant Industries</b><br>Moderator: Stefano Inama,<br>United Nations Conference on Trade and Development |
| 15.45 - 16.00 | Coffee                                                                                                                    |
| 16.00 - 17.30 | <b>Protection of Infant Industries</b>                                                                                    |
| 20.00         | Dinner for consultants and ministry representatives<br>R.R. Cheers Restaurant - Ramallah                                  |

Tuesday, June 25, 1996

9.00 - 10.30            **Cumulation of Origin**  
Moderator: Samir Huleileh  
Assistant Under Secretary  
Ministry of Economy & Trade

10.30 - 10.45            Coffee

10.45 - 12.45            **Cumulation of Origin**

13.00 - 14.30            Lunch

14.30 - 15.45            **Non-tariff Barriers**  
Moderator: Valerie Yorke  
Project Coordinator  
London School of Economics

15.45 - 16.00            Coffee

16.00 - 17.30            **Workshop Conclusions**  
Moderator: Samir Huleileh  
Assistant Under Secretary  
Ministry of Economy & Trade

Transport from the Hotel to Birzeit University and back -  
Petra Rent A Car

## **List of Participants**

June 24-25, 1996

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Assistant Director General

EPPI A1  
July 1996

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Ministry of Planning and International Cooperation

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June 22-23, 1996

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## **Curriculum Vitae**

### **Mr Alberto de Pascale**

Mr Alberto de Pascale (63), Italian national, graduated in Jurisprudence from the University of Rome. Mr de Pascale joined the European Commission in 1961, working for most of his career with commercial questions including agricultural trade issues. He has extensive experience as a trade negotiator.

From 1960 to 1965 he was a member of the GATT Affairs Division and participated in the GATT negotiations 'XXIV/6' of 1960 and the 'Dillon-round' in Geneva (1960/61). In 1965, he was appointed to the Division of GATT Affairs/Relations with the United States at DGI with responsibility for negotiating commercial issues. Between 1973 and 1977, Mr de Pascale dealt with bilateral and multilateral questions concerning agriculture. In 1977 he was appointed Chief of Service at DGI, and promoted to Chief of Division in 1981 where he specialised in commercial questions relating to agriculture and fisheries.

During the 1980s, Mr de Pascale participated in bilateral negotiations involving the United States, Canada, Australia, Argentina and Brazil as well as in the GATT negotiations - the Uruguay-Round. In September 1988, he was appointed Chief of the GATT Affairs and OECD Division in DGI with responsibility for preparing the European Community's negotiating positions. As a member of the Commission's Steering Group Uruguay Round, he represented the Community in negotiations in Geneva on several occasions.

Since May 1995, Mr de Pascale has been working with a number of universities on political and commercial issues, in particular with the universities of Padova and SEU of Perugia.

### **Mr Stefano Inama**

Mr Stefano Inama (35), Italian National, graduated in Jurisprudence from the University of Bologna and is a master of High European Studies from the College of Europe, Bruges.

Mr Inama joined the United Nations Conference (UNCTAD) in 1988 where he is now coordinator "ad interim" of the Technical Cooperation Programme on GSP and other trade laws and Coordinator of UNCTAD's Project for the Mediterranean Region. In this latter capacity he carries out studies on market access conditions and other trade laws in major developed countries with regard to their import regimes, autonomous and preferential contractual arrangements, tariff cuts, customs laws and textile regimes. Mr Inama has also prepared studies for the Intergovernmental Working Group on Rules of Origin, the Ad Hoc Group of Experts on GSP and the Special Committee on Preferences, including implementing legislation of WTO members with the Agreement on Rules of Origin.

Mr Inama coordinates these activities with other UNCTAD technical cooperation programmes in the Mediterranean region. His responsibilities include evaluating developments in trade and customs legislation and commercial measures in the major developed countries and analysing the legal obstacles to trade in developed markets. He also provides advice to government officials and exporters on regulations and administrative procedures relating to sectors of export interest to

developing countries.

### **Mr Hanspeter Tschaeni**

Mr Hanspeter Tschaeni (48), Swiss national, is holder of a degree of Master of Arts in Political Science (USA) and a Doctorate of Law (Switzerland).

Mr Tschaeni joined the services of the Swiss federal government in 1981, working primarily with political and economic questions related to European integration. In 1982, he was appointed legal advisor to the Swiss Integration Office, dealing also with non-tariff barriers to trade. From 1986 to the end of 1994, he occupied the post of Director of Trade Policy Affairs in the Secretariat of the European Free Trade Association EFTA in Geneva. He was closely associated with negotiations between the EFTA countries and the European Union on the Agreement on the European Economic Area (EEA), being both a member of the High-Level Steering Group and co-ordinating the substantive work in the field of trade in goods. From 1991-1994, Mr Tschaeni was in charge of the Secretariat work during the negotiations and implementation of free trade agreements between the EFTA States and several Central and East European countries, Israel and Turkey. During 1994, he was also consultant to the Liechtenstein government for the EEA negotiations.

In autumn 1994, Mr Tschaeni resumed his work in the European integration field with the Swiss federal administration in Berne. As Head of Unit in charge of economic integration, he was associated with the bilateral negotiations between the Switzerland and the EU.

In August 1995, he joined the Swiss Trade Initiative for the Middle East and North Africa (STIMENA) team.

### **Mr Allan Waight**

Mr Allan Waight (54) joined HM Customs and Excise in 1959. He has served in headquarters directorates covering Personnel, Value Added Tax and Customs matters. From 1974-1980, Mr Waight served in the Tariff Preference branch of the Customs Directorate dealing mainly with imports into the UK.

In 1989, he was promoted to Senior Executive Officer, Customs Policy Directorate Duty Liability Group and is now responsible for implementing EC legislation in the UK in relation to customs aspects of all the European Community's preferential trading arrangements with other countries. This includes issuing guidance to customs officials at local offices and to commercial operators on matters relating to the preferential origin of goods and carrying out post importation verification of claims to originating status.

Mr Waight also has extensive experience in handling appeals which challenge the Departmental interpretation of the law governing the granting of preferential status.

Since 1990, Mr Waight has attended, as the UK Customs delegate, meetings in Brussels of the EC's Customs Code Committee - Origin Sector, the legislative committee responsible for drafting European Community legislation covering origin aspects of preferential trade.

**Economic Policy Programme**

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