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Palestine and EFTA:
Trade and Cooperation

Raimo Luoma

September 20-25, 1997

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Report and Follow-up

**MISSION TO THE
WEST BANK**

Raimo Luoma

**Palestine and EFTA:
Trade and Cooperation**

October, 1997

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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.

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Introduction

This report was prepared by Raimo Luoma, a former adviser to the prime minister of Finland, following his mission to the West Bank on September 20-25, 1997. The purpose of the mission, undertaken at the request of the Ministry of Economy and Trade, was to assist ministry staff in preparing for forthcoming negotiations with EFTA - in 1996 the EFTA member states and the Palestinian Authority (PA) signed a joint declaration of intent to start negotiations on a free trade agreement as soon as possible. The mission forms part of the two-year **Economic Policy Programme (EPP)**, which is funded by the European Community (EC) and coordinated by the London School of Economics and Political Science in collaboration with the Ministry of Economy and Trade.

The main results of the three-day mission, as outlined in the report, are as follows:

- 1) A summary of the proposed negotiation positions was prepared (Annex I). The summary reflects a number of key issues discussed with ministry officials:- a Palestinian approach towards the principle of parallelism, according to which EFTA seeks to obtain from its negotiating partners at least as good conditions as the partner has granted to the EC; the likely EFTA approach to trade in agricultural products; ways in which the EFTA States might facilitate direct exports of agricultural products from Palestine; the likely scope of technical assistance that EFTA will be willing to offer the PA; Palestinian needs with regard to industrial development; ways in which EFTA might support export promotion and an export guarantee system (para 2.3).
- 2) A paper on technical assistance options available to the PLO/PA from the EFTA States (Annex II);
- 3) A paper on the various alternatives for EFTA support to the industrial development of Palestine (Annex III).

Recommended action

The summary of the negotiation positions incorporates a number of recommendations made by Raimo Luoma during the discussions. He recommended that i) the PA might consider asking the EFTA states for separate **tariff quotas** for exports of agricultural products (para 2.1(i)); ii) the PA might explore the possibility of the EFTA States providing financial assistance for a **guarantee facility** to cover any losses incurred by Palestinian exporters as a result of Israeli-imposed closure (para 2.1(ii)); iii) at the start of negotiations, the PA suggest setting up an **ad hoc group** to consider rules of origin and diagonal cumulation issues (para 2.1(iii)); and iv) the Ministry of Economy and

Trade send a team to the EFTA Secretariat in Geneva to discuss, *inter alia*, possibilities for technical assistance (para 2.3(v)).

Following Raimo Luoma's mission to the West Bank and in response to an invitation from the EFTA Secretariat, a three-member team of trade experts from the Ministry of Economy and Trade were preparing in early October to travel to Geneva to meet EFTA Secretariat officials.

The **Economic Policy Programme**, in collaboration with the Ministry of Economy and Trade, has embarked on a second year of policy support activities. In the coming months the **EPP** plans to invite a number of senior trade economists to the West Bank and Gaza Strip and to informal meetings in the region to share their expertise on issues relating to the development of Palestine's trade relations with third parties.

Valerie Yorke
Programme Coordinator
London School of Economics,
October, 1997

**PALESTINE AND EFTA
TRADE AND COOPERATION
Mission of Raimo Luoma to the West Bank
September 20-25, 1997**

Report and Findings

1. Terms of Reference and other introductory remarks

1.1 On December 16, 1996 the PLO/Palestinian Authority and EFTA signed a declaration on their willingness to establish an interim free trade agreement as soon as possible (Annex IV). The negotiations are likely to start before the end of 1997. Preparations for these talks by the Palestinian side will need to take into account the nature of Palestine's economic and trade relations with Israel, embodied in the 1994 Paris Protocol (PP). The mission's objective was to work with the Palestinian Authority (PA) for the purpose of engaging in discussions with and assisting the staff of the Ministry of Economy and Trade in preparing for negotiations with EFTA. According to the Terms of Reference I was to:

- Engage in three days of informal discussions with officials of the Palestinian Ministry of Economy and Trade (and with other Ministry officials as arranged by the Ministry of Economy and Trade) to develop the Palestinian negotiating position and demands vis-à-vis EFTA. As likely issues to be addressed during the talks, the Terms of Reference mention trade in agricultural products, rules of origin and cumulation issues, protection of infant industries, political and economic cooperation and technical assistance.
- Explain the EFTA's position on the topics set out above and on any other area/issues which Palestinian officials should take into consideration.
- Assist the Palestinian team, as required, with the writing of briefs and action plans based on the discussions held.

1.2 During the mission, I met and exchanged views with senior officials at the Ministry of Economy and Trade and met briefly with the Minister of Economy and Trade, Mr Maher Masri. I also met Mr Thierry Béchet, EC Representative to the West Bank and Gaza Strip, and his deputy, Mr Gavin Evans (Annex VI).

1.3 The discussions with officials at the Ministry of Economy and Trade lasted for three days and covered in detail most of the issues that are likely to be raised either by the Palestinians or by the EFTA side in the course of negotiations.

1.4 At the introductory meeting with ministry officials Mr Saeb Bamiyeh stressed that while the PA is happy to enter into a contractual arrangement with the EFTA States, it does not want to sign yet another agreement which it cannot implement. The PA believes that agreements with third parties should include elements which are designed to ensure that such agreements work in practice. The PA wants to achieve in its negotiations with EFTA at least as much as it achieved with the European Union (EU), and to win concessions that are not less favourable than those that EFTA has granted to Morocco.

1.5 I described briefly my understanding of EFTA as an organisation and negotiating partner, and the individual EFTA States, stressing especially the differences between the EU and EFTA as organisations. EFTA is a free trade organisation only, which means that the scope of agreement with EFTA has to be narrower than the scope of the agreement with the EU. Another major difference is that EFTA does not have an institution like the EC Commission. All decisions are taken by unanimity by the Member States. However, in the negotiations EFTA will speak with one voice (usually the Member State holding Presidency). EFTA does not conclude agreements that cover trade in agricultural products. Instead, the Member States, in their separate capacities, negotiate bilateral protocols. It is likely that the EFTA side will wish to table a draft agreement early in the negotiation process.

1.6 In my view there is much good will in EFTA towards the PA, which should make negotiations easier. However, EFTA is traditionally cautious in all issues that have a foreign policy connotation. Therefore, the PA should not be surprised if, for example, EFTA in spite of its individual Member States' political support towards PLO/PA, is unwilling to agree on a large technical assistance or industrial development programme.

2. The Results

2.1 Attached as **Annex I** is a summary of the proposed negotiation positions developed during the Mission ("Forthcoming negotiations with EFTA: Preparatory Notes") which was prepared by a team consisting of officials at the Ministry, Valerie Yorke and myself. The Preparatory Notes incorporate a number of recommendations I made during the discussions with regard to approach and content. The main recommendations were as follows:

- (i) The PA should ask for separate **tariff quotas** for exports of agricultural products. Such quotas would make it easier to identify Palestinian exports to the EFTA States and would also enhance the possibility of ensuring, jointly with the EFTA side, that the products exported to the EFTA States as Palestinian products truly are of Palestinian origin;

- (ii) To facilitate exports to the EFTA States the PA should ask whether it would be possible to open, with financial assistance from the EFTA side, a **guarantee facility** which could be used to cover the possible losses incurred by Palestinian exporters as a result of the impediments imposed on foreign trade by the Israeli authorities (closure, delays in shipping, denial of use of airports and harbours and other hindrances that can be characterised as *force majeure*);
- (iii) **Rules of origin**, and especially the question of **diagonal cumulation** with Israel, are of crucial importance in the negotiations and in establishing the identity of Palestinian exports. I suggested, therefore, that the Palestinian side could suggest that a sub-committee or an ad hoc group be set up at the start of negotiations to analyse the situation as it is. This would also provide an opportunity for the Palestinian side to draw EFTA's attention to the problems that Palestinian industry constantly suffers from when exporting through Israeli territory.

2.2 In addition to the Preparatory Notes, I drafted, following my return to Finland, proposals for two Annexes to the Preparatory Notes, namely an **Annex** describing technical assistance options perhaps available to the PLO/PA from the EFTA States, and an **Annex** regarding various alternatives for EFTA support to the industrial development of Palestine. These documents are attached as **Annexes II and III** to this Report.

Key issues in the negotiations

2.3 During our discussions the following issues were preliminarily identified as central in the forthcoming negotiations:

- (i) **Parallelism:** When negotiating agreements with third countries, EFTA seeks to follow the so-called principle of parallelism, according to which EFTA should obtain from its negotiating partners at least as good conditions as the partner has granted to the European Community. The EU-PLO/PA Interim Association Agreement on Trade contains certain very strict provisions, for example, transitional periods (until year 2001) for the protection of infant industries. Also provisions on trade in agricultural products are very strict.

In spite of this, I recommended to the Ministry that the PLO/PA should adopt the principle of parallelism as its own starting point and to deviate from it only in cases where it can expect to gain specific and tangible benefits from EFTA. Such questions could be trade in agricultural products, direct trade, rules of origin (especially diagonal cumulation) and technical assistance while issues like the transitional period for opening up the market to EFTA imports, the protection of infant industries and balance of payments clauses could well be formulated on the basis of the interim agreement between the PA/PLO and the EC.

- (ii) **Rules of origin:** The free trade agreement is likely to contain rules of origin identical with those annexed to the Interim Agreement concluded with the EC. The Ministry identified diagonal cumulation with Israel as a key question to be analysed further before the negotiations. While it would seem that from the economic point of view diagonal cumulation would be beneficial for Palestine, the PA also needs to analyse the question from a purely political point of view.
- (iii) **Trade in agricultural products:** Although EFTA is likely not to want to include agricultural products within the product coverage of the agreement, the Member States of EFTA usually conclude simultaneously separate bilateral Protocols on trade in agricultural products with their free trade partners. The PA is likely to ask for tariff quotas covering several agricultural products. The work done in preparation for negotiations with the EC serves as a good basis for defining products and quantities. The Palestinian side (the Ministry of Agriculture) should adjust its requests so that they are reasonable in relation to the markets of individual EFTA States.
- (iv) **Direct trade possibilities:** The Palestinian industry suffers continuously from the difficult conditions of export trade. The closure imposed by the Israeli government is a major impediment on trade. In addition, the Israeli government often acts on the external borders and at ports and airports in a way which adversely affects the Palestinian industry's trading opportunities even further. As a result of these circumstances, much of Palestine's exports are in the hands of Israeli trading houses, which means that much of the profit goes to these middlemen rather than to Palestinian exporters.

The PA is actively looking for ways and means to open new trading routes and mechanisms. I recommended that the PA could propose to the EFTA side that in connection with granting tariff quotas for certain agricultural products, EFTA should also facilitate the direct export of these products from Palestine. The support could take, e.g., the form of a guarantee to Palestinian exporters for losses, resulting from *force majeure* situations emanating from the action of the Israeli government.

- (v) **Technical assistance:** EFTA is likely to be willing to include in the agreement a clause on technical assistance which covers the scope of agreement, i.e. customs matters, public procurement, competition law, state aid, intellectual property, etc. The time reserved for the Mission did not allow deeper analysis of the Palestinian needs in this respect. Instead, I have obtained from the EFTA Secretariat a provisional agreement to finance a visit of two Palestinian trade experts to visit EFTA headquarters in order to discuss, *inTer alia*, the possibilities for technical assistance. The costs of the visit, which should take place before the opening of negotiations, would be carried by EFTA.

- (vi) **Industrial development of Palestine:** The issue was raised during discussions at a very general level. While the EFTA States are not likely to be willing to include in the free trade agreement wide-ranging provisions regarding economic assistance to Palestine, I propose that the issue be taken up in the opening session of the negotiations anyway. Annex III contains certain ideas in this regard.

3. Annexes

Raimo Luoma
Helsinki
October, 1997

Raimo Luoma

Raimo Luoma was European Affairs adviser to the Prime Minister of Finland in 1995-96. He has held a number of posts with Finland's Ministry of Trade and Industry since 1986, in particular Government Counsellor in 1991-94, and Chief Counsellor to the Minister in 1996-97. In 1989-91 he was legal adviser at the European Free Trade Association in Geneva.

Mr Luoma opened his own law offices, Raimo Luoma Law Oy, in Helsinki in September 1997. A Finnish national, he holds masters degrees in Law and in International and Comparative Law.

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ANNEXES

Annex I	Forthcoming Negotiations with EFTA: Preparatory Notes
Annex II	PLO/PA Negotiations with EFTA: Possibilities for Technical Assistance
Annex III	PLO/PA Negotiations with EFTA: Industrial Development of Palestine
Annex IV	Declaration by the EFTA State and the PLO/PA, 16 December 1996
Annex V	Joint EFTA-Israel Conclusions on Exports from the Territories, 17 September 1992
Annex VI	Record of meetings

Annex I

Detailed Position Paper for the EFTA-PLO/PA Agreement prepared following Raimo Luoma's mission

October 1, 1997

After thorough study of:

1. The declaration by the EFTA States and the Palestinian Liberation Organisation (PLO) for the benefit of the Palestinian Interim Self-Government Authority of the West Bank and Gaza Strip (1996); 2. the Free Trade Agreement between the EFTA States and Israel (1992);
3. Decisions of the EFTA-Israel Joint Committee (1993-1996); 4. the Joint EFTA-Israel Conclusions On Exports From The Territories (1992); 5. the Free Trade Agreement between the EFTA States and the Republic of Estonia (1995); 6. the Free Trade Agreement between the EFTA States and the Kingdom of Morocco (1997),

The Ministry of Economy and Trade (technical committee), after consultations with Mr Raimo Luoma, wishes to take the following points into consideration when negotiating the foreseen EFTA-PLO/PA agreement.

Background

Based on competence recognised in the Paris Protocol, the PLO/PA concluded a Joint Declaration in December 1996 with the EFTA States. In this Declaration the Parties agreed to start negotiations on a free trade agreement. According to our information, the EFTA States are willing to conclude negotiations swiftly and preferably before the negotiations with Lebanon and Jordan are concluded.

Currently the EFTA States grant Palestinian products similar treatment to that granted to Israeli products. The Palestinian Authority (PA) expects at least as good treatment as that granted to Israel.

EFTA will expect parallelism, meaning it expects to be granted the same treatment as the European Union (EU) has been granted by the PA. The Ministry believes that EFTA will take this as a starting point for negotiations and recommends that the Palestinian side agrees to this.

Negotiation Procedures And Tactics

It is customary in EFTA States' negotiations that a meeting between the EFTA States delegation (comprising representatives from each EFTA State) and the Palestinian delegation be held to launch the negotiations and determine the main subjects to be

discussed. Following this meeting a committee for negotiating the foreseen free trade agreement will be established to meet periodically and finalise the deal. It is also customary in such negotiations that, when necessary, an *Ad Hoc* Committee - to work in parallel with the negotiating team - be formed. The importance of this *Ad Hoc* Committee is that it provides a framework for experts from both sides to come together to discuss key technical issues and then make their recommendations to the negotiating team.

Second, since the international audience always focuses on the political rather than the economic difficulties that Palestine faces, the Ministry considers it necessary for the Palestinian delegation to open the negotiations emphasising the difficult economic situation. Furthermore, Israeli obstacles and impediments imposed on both our exports and imports should be highlighted and clarified to the EFTA counterpart since these will provide the background for a significant proportion of our demands in negotiations. An understanding of Palestine's economic difficulties could also inform the EFTA States' position when they meet in Joint Committee with Israel.

Third, the Palestinian negotiating team has the choice of starting negotiations with the most important subjects, leaving routine matters and clauses to be negotiated later. Therefore, we note that the most important issues are the following:

- * Rules of Origin (see para 5 below)
- * Trade in Agriculture (para 7)
- * Structural Adjustment (para 8)
- * EFTA Technical Assistance to the PA (para 14)
- * Industrial Development of Palestine (para 15)
- * EFTA Possible Response To Israeli Obstacles To Palestinian Trade (para 20)

Elements For Negotiations

1. Agreement's Title

We suggest that the Agreement be titled "Agreement Between the EFTA States and the Palestinian Liberation Organization (PLO) for the Benefit of the Palestinian Authority of the West Bank and the Gaza Strip".

2. Preamble

After studying the standard preamble used by the EFTA States in their different agreements, the Ministry finds the preamble to the Agreement between the EFTA States and Morocco most suitable and recommends its adoption. However, mindful that Palestine's special situation needs to be taken into consideration, we suggest that the following provisions also be included:-

(i) Reference to the Declaration agreed between the EFTA States and PLO/PA is necessary and should be included in the following manner: "Considering the importance of the links existing between the EFTA States and the PA, in particular, the Declaration signed in Geneva on December 16, 1996, and recognising the common wish to strengthen these links, thus establishing close and lasting relations."

(ii) We suggest that reference to the economic and social development of the West Bank and Gaza Strip be included in the following manner: "Considering the difference in economic and social development existing between the Parties and the need to intensify existing efforts to promote economic and social development in the West Bank and the Gaza Strip."

(iii) In order to make use of the EFTA development programme and assistance, we suggest including the following: "Desirous of establishing cooperation, supported by a regular dialogue, on economic, cultural, scientific and educational matters with a view to improving development of the West Bank and Gaza Strip."

(iv) We suggest that reference to WTO and GATT law be made in the following manner: "Resolved to contribute to the strengthening of the multilateral trading system and to develop its relations in the field of trade in accordance with the principles of the agreement establishing the World Trade Organisation (WTO), the PA having the objective to become a member of the WTO."

(v) Reference to the political situation and to UN Security Council Resolutions 242 and 338 are necessary. "Aware of the major political significance of the holding of Palestinian elections on 20 January 1996 for the process leading to a permanent settlement based on UN Security Council Resolutions 242 and 338."

(vi) To ensure that the outcome of final status negotiations with Israel be taken into consideration, the PA will want to retain the right to renegotiate any agreement once these final status negotiations are concluded by including the following provision: "Recognising that the present agreement should be replaced by a final free trade agreement as soon as conditions permit."

3. Objectives

The objectives of our agreement with the EFTA States are similar to those included in other EFTA agreements, for example the EFTA/Morocco Agreement. But there are Palestinian objectives which are unique and these should be respected by both parties as described

below:

* To support the integration of the West Bank and Gaza Strip into the international trade community and to establish new forms of support for the general economic development of the West Bank and Gaza Strip.

* To establish new reliable direct trade relations for both imports and exports.

4. Customs Duties On Exports And Any Charges Having Equivalent Effect

Although the EFTA States and Israel agreed in their free trade agreement to remove customs duties on exports and any charges having equivalent effect, exceptions to the rule were permitted. Such exceptions were later removed by the EFTA States. However, it is necessary to investigate whether or not Israel still retains exceptional customs duties on

exports or other charges having equivalent effect as agreed to in Annex III of the EFTA/Israel Agreement (1992).

5. Rules of Origin

The EFTA States follow rules of origin that are identical to those of the EU. These rules set out the origin criteria for a product to acquire originating status, for example, as a Palestinian product. The origin criteria are the same as those followed by the EC. EFTA rules of origin provide for bilateral cumulation between the EFTA States and the West Bank and Gaza Strip. They do not provide for diagonal cumulation with the EFTA States, nor do they allow for diagonal cumulation with a third country. This has been the past practice of EFTA States, but some exceptions have been granted in the past, such as those given to Morocco. In the unique case of the semi-customs union between the PA and Israel, and in view of the Palestinians' close business relations with Israel in certain sectors, a derogation from the general rule can be envisaged, if requested. In order to clarify the PA's position regarding diagonal cumulation with Israel, when exporting to Europe or EFTA States, we attach an analytical paper.

As for the administration of rules of origin and proof of origin, the practice of EFTA States is similar to that of EU Countries. EUR1 proofs of origin have to be issued (stamped) and administered by the customs officials of the PA. The customs authorities need competence and expertise in issuing (stamping) and post exporting verification of EUR1 proofs of origin.

6. Trade In Fish

The EFTA States maintain a protective trade policy in fish. They do not eliminate tariffs immediately but often implement concessions gradually (see the EFTA/Israel and EFTA/Morocco Agreements). Palestinian fish products do not in any way threaten EFTA States' markets and production. EFTA States do not therefore need to protect their industry from Palestine. But should the PA consider whether it needs to protect the Palestinian fish industry from EFTA by placing custom tariffs on their exports? If the answer is yes, then Israel has already set a precedent and the PA should adopt the same custom tariffs as Israel. If the answer is no, then the PA has a bargaining chip vis-a-vis EFTA States. If the PA were to decide against putting custom tariffs on EFTA exports of fish and fish products, it must examine whether the Paris Protocol permits Palestine to set different custom tariffs to those of Israel. The answer is most likely to be negative.

7. Trade in Agricultural Products

Since EFTA has no common policy on trade in agricultural goods, the PLO/PA will be required to negotiate, simultaneously with the agreement, protocols covering trade in agricultural goods. These will be bilateral agreements between the PLO/PA on the one hand and each EFTA State on the other. In this regard the PLO/PA has two main considerations. These have been forwarded to the Ministry of Agriculture with a request for its recommendations:

- (i) The PA should consider asking for tariff quotas for exports of agricultural products to each EFTA State. These quotas will allow Palestinian agricultural

exporters to enjoy free tariff treatment for their goods all through the year under a separate Palestinian quota. It is worth mentioning that the EFTA States did not grant, depending on the season, tariff quotas to Israel. However, it did grant seasonal tariff concessions which permit for lower tariff treatment for Israel's exports of agricultural goods. Tariff quotas for Palestinian agricultural goods will benefit Palestinian producers and will not exclude the possibility of obtaining seasonal concessions when quotas are fulfilled.

In support of a request for tariff quotas, the Ministry of Agriculture should prepare a list based on Palestinian market production which clarifies the quotas in terms of products and quantities to be negotiated. This type of list has already been prepared by Mr Alberto de Pascale in cooperation with the Ministry of Agriculture through the EU-funded Economic Policy Programme. A study of the Palestinian agricultural products and lists for quotas to be presented in negotiations with the European Commission were presented in a mission report titled "Trade and Cooperation between Palestine and the European Communities" - October 1996. The contents of this study should be used again in the PA's negotiations with EFTA States.

(ii) It is also worth mentioning that the phytosanitary and health standards required by EFTA States are identical to those required by the EU. Such standards and requirements might be difficult for the Palestinian producer to comply with, however. It is the Ministry's understanding that the EFTA States will respond positively to a request that they grant technical and financial assistance to Palestine in this regard.

8. Structural Adjustment

As the PA is still in the early stages of economic development, and as its industries are still in their infant stage, major planned structuring and restructuring for the benefit of the private sector is required. To ensure the success of such structuring and restructuring, the Ministry recommends a derogation from the general rule of abolishing customs duties and fiscal charges. Following the principle of parallelism, the EFTA States will follow EC steps with regard to structural adjustment (see the EC-PLO Interim Association Agreement Article 8, Article 10).

* Article 8 allows the Palestinian Authority to put customs duties and charges having equivalent effect on imported products (listed in agreement) which would threaten Palestinian infant industry. The provision necessitates that these duties be abolished transitionally within a period of five years in accordance with the Article. The negative aspect of this provision lies in the short transitional period leading to abolition, especially in view of the fact that the charges have not yet been put. The EFTA States will wish to adopt the substance of this EU provision in their agreement with the PLO/PA. The PA will have to convince the EFTA States to permit a derogation from the principle of parallelism to grant a longer transitional period or/and to extend the lists of products to qualify for protection. This matter should be explored in negotiations.

* Article 10 allows the PA to take exceptional measures of limited duration (five years unless extended by the Joint Committee) to introduce, increase or reintroduce customs duties to protect infant industries and sectors undergoing restructuring or experiencing serious difficulties. Again the EFTA States, following the principle of parallelism, will want to adopt the same provision as in the EC-PLO Interim Association Agreement. In view of the short period allowed and given that at present the Paris Protocol does not allow implementation of such a provision, the PA will have to convince the EFTA States to derogate from parallelism and allow for a longer transitional period.

In both the above cases, if agreement in favour of the Palestinian position cannot be reached, an alternative might be to adopt an evolutionary clause giving either the Joint Committee or the Parties power to review the EC model clauses if adopted.

9. Public Procurement

In line with its own policy, the PA suggests that the provision found in the EC-PLO/PA Interim Association Agreement (Article 34) regarding public procurement be adopted in the following manner. "1. The Parties agree on the objective of reciprocal and gradual liberalisation of public procurement contracts. 2. The Joint Committee shall take the necessary measure to implement paragraph 1."

10. State Aid

In line with PA policy, the Ministry suggests that the provision found in the EC-PLO/PA Interim Association Agreement (Article 30) regarding state aid be adopted here as well. It is also the PA position that the time limit included in the EC-PLO Interim Association Agreement is short, but, acknowledging the EFTA's commitment to the principle of parallelism, the PA's chances of changing the time limit here are slim.

11. State Monopolies Of A Commercial Character

Public Enterprises With Special Or Exclusive Rights

In harmony with PA policy, the Ministry suggests that the provision found in the EC-PLO Interim Association Agreement (Articles 31 & 32) regarding state monopolies of a commercial character and public enterprises with special or exclusive rights be adopted here as well. Again, it is the PA's position that the time limit included in the EC-PLO Interim Association Agreement is short but, acknowledging EFTA's commitment to the principle of parallelism, the PA's chances of changing the time limit here are slim.

12. Protection Of Intellectual Property

Although individual EFTA States (namely Switzerland) adhere to a very strict position regarding the protection of intellectual property - for example see the Agreement between the EFTA States and the Kingdom of Morocco, the PA is not in a position at present to commit itself to such a demand. It would therefore be unrealistic to agree to such commitment on paper. Therefore, in line with PA policy, the Ministry suggests that the provision found in the EC-PLO/PA Interim Association Agreement (Article 33) also be adopted here in the following manner:-

"1. The Parties shall grant and ensure adequate and protective protection of intellectual, industrial and commercial property rights in accordance with the highest international standards, including effective means of enforcing such rights.

2. The implementation of this Article shall be gradually reviewed by the Parties. If problems in the area of intellectual, industrial and commercial property affecting trading conditions were to occur, urgent consultations shall be undertaken within the framework of the Joint Committee at the request of either Party, with a view to reaching mutually satisfactory solutions."

In order to address the concerns of EFTA States, namely Switzerland, on the issue of protection of intellectual property, the PA could agree, on the basis of technical assistance to be provided by the EFTA States, to prepare to implement intellectual property protection laws and regulations over an agreed period of time.

13. Balance Of Payments

The EC-PLO Interim Association Agreement (Article 29) offered little advantage to the Palestinians, but, in line with the principle of parallelism, the EFTA States are likely to adopt the same provision. This does not exclude the possibility of the PLO/PA seeking to negotiate different terms with the EFTA States, if necessary. The Ministry of Finance would have to prepare a strong proposal, however.

14. EFTA Technical Assistance to the PA

EFTA maintains a so-called Account 52, which is a budget item with funds to be used for the purpose of technical assistance to third countries. It is very likely that the PA could benefit from this account, a matter which should be raised in negotiations with EFTA.

The scope of technical assistance is broad and could include different areas. It should at least cover customs matters, intellectual property and technical regulations. In addition, the issue of direct trade should be addressed. In the context of agricultural exports, the Palestinian side could propose the creation of a financial facility covering the possible losses sustained by the Palestinian exporters due to Israeli-imposed impediments. The EFTA States would allocate resources to such a facility - up to the estimated value of annual exports of agricultural products to EFTA States (i.e. the full value of tariff quotas). Such a system would considerably limit financial risks currently carried by Palestinian exporters when exporting directly to EFTA States. (A description of technical assistance options is attached.)

15. Industrial Development of Palestine

The Ministry recommends that the issue of general support to the Palestinian economy be taken up. Such support could include aid to develop a general export guarantee, and/or export credit systems, the setting up of an industrial development investment company, or contribution to the Palestinian Development Fund. We note that the PA must conduct further studies of possible options before these can be taken up by the EFTA side. (An Annex regarding various alternatives for EFTA support to industrial development is

attached.)

16. Territorial Application

It is the standard form that the Agreement apply to the territories of the Parties. In the Palestinian case, however, territorial jurisdiction is linked to the peace process and it might therefore be wiser to name the territories of application as the West Bank and Gaza Strip.

17. Arbitration

We recommend that disagreements between the Parties of the foreseen Agreement be resolved through arbitration and we therefore suggest the following: "Disputes between Parties to this Agreement, relating to the interpretation of rights and obligations of the Parties to this Agreement, which have not been settled through consultation or in the Joint Committee within six months, may be referred to arbitration by any Party to the dispute by means of a written notification addressed to the other Party to the dispute. A copy of this notification shall be communicated to all Parties to this Agreement." Furthermore, the constitution and functioning of the arbitration tribunal can be agreed to in an Annex to this agreement.

18. Entry Into Force

It is customary that the Agreement should enter into force when ratification procedures are completed in the following matter. "This Agreement shall enter into force in the first of the second month following the date on which the Parties have notified each other through diplomatic channels that their internal legal requirements for the entry into force of this Agreement have been fulfilled." This procedure is likely to take time since ratification of five countries are needed. Therefore, we propose that the Parties agree to provisional application of the Agreement. A matter that enables the Parties to apply the Agreement without waiting for the completion of the ratification process. This provision needs to be discussed with the EFTA secretariat. A description of the ratification procedure followed in Palestine and its likely speed and implementation need to be provided (as is the case in the Israel/EFTA Free Trade Agreement in Article 33 :3).

19. Interim Nature Of The Foreseen Agreement

In accordance with the changing political situation, the Ministry suggests that the Agreement be an interim one. This would enable the Palestinian side to renegotiate the Agreement once final status issues have been settled with Israel. We, therefore, suggest adopting the following article: "Negotiations shall commence no later than 4 May 1999 with a view to concluding a final free trade agreement between the Parties. Until such an agreement is concluded the present agreement shall remain in force, subject to any amendments agreed between the Parties."

Another option would be to adopt a review clause in the foreseen Agreement where the Parties agree to a review a year or two from the date of conclusion or upon agreement by Parties in the Joint Committee. Whether or not such a review and amendments would require ratification by the Parties is a matter to be discussed in negotiations.

20. EFTA Possible Response To Israeli Obstacles To Palestinian Trade

Referring to Israel's commitment in 1992 (Joint EFTA/Israel Conclusions On Exports From The Territories), to permit the export of industrial and agricultural products from the Palestinian territories through Israel to the EFTA States, it should be noted that Israel also committed itself to establishing practical arrangements enabling Palestinian exports to take place without administrative obstacles.

Similarly, in the Israel/EFTA Free Trade Agreement, explicit and implicit commitments are made by both Parties to facilitate trade and refrain from imposing technical barriers and obstacles to trade.

Importantly the Parties also commit themselves to respecting transit rights and to refrain from imposing impediments to such trade.

At present Israel imposes obstacles and impediments on Palestinian trade in contradiction with the commitments it has made, as indicated above. Therefore, it is very important that the Palestinian side explore in its negotiations with EFTA possible ways for EFTA to press Israel, in line with obligations undertaken by Israel in the context of both the Joint EFTA/Israel Conclusions on Exports from the Territories and the EFTA/Israel Free Trade Agreement, to remove such obstacles and barriers. A suitable forum for such a step should be investigated.

Ministry of Economy and Trade
October 1997

Annex II

PLO/PA Negotiations with EFTA Possibilities for Technical Assistance

1. EFTA will probably be very willing to include in the Free Trade Agreement an article on technical assistance from EFTA to the PA. However, the EFTA States would probably wish to limit the scope of the Article to the free trade issues only (technical barriers to trade, rules of origin, customs matters, etc.). The PA should take this into account when planning its negotiating tactics. One possibility would be to divide, from the very beginning, the assistance questions into two parts, one dealing with "proper" technical assistance (i.e. technical barriers to trade, etc.), and the other the more ambitious programmes, such as industrial development. This note deals only with the issues of the former type.
2. The technical assistance article is easy to draft. The provisions of the EFTA-Morocco Agreement could well serve as a basis. Since the Palestinians' problems differ dramatically from those encountered by Moroccan economic operators, the provision will need to be complemented. Article 29 of the EFTA-Morocco Agreement reads as follows:

"In order to facilitate the implementation of this Agreement the States Parties shall agree upon appropriate modalities for technical assistance and co-operation of their respective authorities in particular in the fields of intellectual property, customs matters and technical regulations. To this end, they shall co-ordinate efforts with relevant international organizations."

3. The items that could be separately mentioned in the provision on technical assistance as examples of assistance needed should, in my view, be at least the following ones:
 - * Co-operation in customs formalities;
 - * Assistance in export promotion;
 - * Intellectual property;
 - * Rules of origin.
4. It will probably not be necessary to include specific projects in the Agreement, but I would strongly recommend that the Palestinian side makes as specific proposals as possible during the negotiations. Such projects could include, for example, EFTA support towards the development of foreign trade administration (including customs formalities, know-how and material support), a systematic study of the issues that need to be arranged in order to offer as normal as possible trading conditions to the Palestinian exporters and visits by Palestinian trade delegations to the EFTA States.
5. During my visit to Palestine, much time was devoted to the question of direct trade in

agricultural products. I would think that this issue could well be taken up also in the context of technical assistance. Although trade in agricultural products will fall outside the product coverage of the Agreement, the EFTA States will probably be willing to conclude bilateral agreements covering these products. I recommend that the idea of a guarantee facility be taken up in the negotiations as a specific idea for technical assistance:

- * Each EFTA State would allocate funds to a guarantee facility, which would cover the possible losses incurred by Palestinian exporters as a result of the impediments placed on foreign trade by the Israeli government (*force majeure*);

- * The guarantees would cover, at maximum, the value of tariff quotas opened in individual EFTA States;

- * The facility would be administered by a party determined and approved by the EFTA States. This could be, for example, a reliable bank operating in Palestine;

- * To avoid mishandling, the guarantee facility would be made available to traders only if the export contract has been concluded by an exporter approved by the PA to export. Also other ways to control exports could be devised.

6. Technical assistance and especially the question of assistance in connection with direct trade is connected with the more general question of assistance from the EFTA States towards the industrial development of Palestine. This question is addressed in a separate note (Annex III to the Mission Report).

Raimo Luoma
October 1997

Annex III

PLO/PA Negotiations with EFTA Industrial Development of Palestine

1. The issue of stages of industrial development in Palestine was not included in the Terms of Reference for my visit to the Palestinian Ministry of Trade and Economy. The subject was, however, raised by the Palestinian Authority (PA) in the context of discussion relating to the development of Palestine's foreign trade. This note summarises my preliminary thoughts concerning possibilities for using the forthcoming negotiations with the EFTA States in order to win support from the EFTA States for the promotion of the industrial development of the West Bank and Gaza Strip (WBGs).
2. It is worth recalling that the "Declaration by the EFTA States and the Palestine Liberation Organization (PLO), for the Benefit of the Palestinian Interim Self-Government Authority of the West Bank and Gaza Strip" (16 December 1996) contains paragraph 9, according to which:

"The EFTA States and the Palestinian Authority declare their willingness to improve conditions for the implementation of private sector economic, commercial and industrial co-operation projects, *inter alia* by creating favourable conditions conducive to capital flows and investment in all economic sectors of mutual concern, as well as securing the interests of the partners involved."
3. Paragraph 9 of the Declaration gives, in my view, a good basis for detailed talks on the industrial development of Palestine in the EFTA-PLO Joint Committee should the PA wish to pursue this path.
4. I do not have sufficient information about the present bilateral relations between Palestine and the EFTA States to evaluate whether there is room for increased direct aid and whether the bilateral links between the States and the PA are already so tight that separate talks in connection with free trade negotiations are unnecessary.
5. In case the PA wishes to pursue the matter in the free trade talks, I suggest that the matter be dealt with in two stages:
 - * Discussions on the specific needs of the Palestinian side and the presentation of ideas for projects;
 - * Drafting the necessary articles to the free trade agreement.
6. As far as the presentation of specific ideas is concerned, I suggest that the PA should limit its proposals strictly to the development of the business environment of Palestine and foreign trade. This approach, which would be different from the one adopted in negotiations with the European Union, would probably be easier for the EFTA side to accept than an overall commitment to the development of the Palestinian society as a

whole. If this approach is adopted, perhaps the following ideas could be examined further by the PA:

(i) **Export promotion** The PA could ask for co-operation and assistance for the purpose of arranging for an adequate presence of Palestinian export interests in the EFTA States. This could take the form of, for example, the financing of costs for the presence of representatives of Palestinian Chambers of Commerce or for other export-oriented organisations in the capitals of the EFTA States during a fixed period of time.

(ii) **Establishment of a Palestinian Investment/Development Corporation** I understood during my visit that while a Palestinian Development Fund is active in arranging loans and guarantees to Palestinian industry, it does not, at least yet, make investments of its own in Palestinian companies. One possibility could be to discuss with the EFTA States whether it might be possible to set up, for example, a development company, fully owned by the PA, which would have as its mission to participate through equity investments in the development of Palestinian industry. The role of the EFTA States could be two-fold. Firstly, the EFTA States might be able to offer assistance at the feasibility stage (market research, identifying priorities, legal issues, etc.). Secondly, they could perhaps contribute to the establishment of the Company by arranging funding for its initial capital.

(iii) **Development of export guarantee systems** One of the most difficult problems that Palestinian industry currently faces is the impediments caused by the activities of the Israeli Government to the export operations of Palestinian companies. The adverse effects could be alleviated significantly if the companies could cover their export risks through, e.g. a national export guarantee system. I have understood that such a facility does not yet exist in Palestine. If the development of guarantee facilities is deemed to be necessary, the PA could take the matter up with the EFTA States and require whether they could assist in this matter.

7. It would seem important that the future agreement between the PA and the EFTA States contains provisions on industrial development. I suggest that paragraph 9 of the Joint EFTA-PLO Declaration be used as a basis for the Treaty text. Should the EFTA side prove willing to contribute to one of the projects outlined above, this could be mentioned, for example, in a separate declaration, which could in turn be annexed to the Agreement.

Raimo Luoma
October 1997

Annex IV

**Declaration by the EFTA State and the
PLO/PA, 16 December 1996**

Inserted manually, available in the hard copy version of this paper

Annex V

**Joint EFTA-Israel Conclusions on Exports
from the Territories, 17 September 1992**

Inserted manually, available in the hard copy version of this paper

Annex VI

Mission to the West Bank on EFTA issues, September 20-25, 1997

Record of meetings

Saturday, September 20, 1997

Arrival Jerusalem

Sunday, September 21, 1997

22.00 Dinner

Present: Clare Woodcraft, Palestine Economic Pulse
Valerie Yorke, Programme Coordinator

Discussion on Palestinian Economy

Monday, September 22, 1997

9.30 Ministry of Economy and Trade, Ramallah

Saeb Bamiyeh, Director General, Trade and International Cooperation, Ministry
of Economy and Trade
Nisreen Haj Ahmed, Ministry of Economy and Trade
Hazem Kawasmi, Ministry of Economy and Trade

Preliminary briefing on mission programme, discussion of likely EFTA approach
to negotiations and preliminary comments on PA's draft position paper.

11.00 Thierry Bechet, EC Representative for the West Bank and Gaza Strip
Gavin Evans, EC Representation
Valerie Yorke, Programme Coordinator

12.00 Continuation of 9.30 meeting

Further discussions on negotiating positions with respect to trade in agriculture,
structural adjustment, provisional application, rules of origin.

16.00 Lunch in Ramallah

17.30 Return to American Colony Hotel. Debriefing.

20.00 Dinner at Al-Kasanah in Ramallah

Present: Gavin Evans

Nisreen Haj Ahmed
Valerie Yorke

Tuesday, September 23, 1997

09.30 Ministry of Economy and Trade, Ramallah

Saeb Bamiyeh (for one hour)
Nisreen Haj Ahmad
Hazem Kawasmi
Valerie Yorke

Continuation of discussions of PA's draft position paper

14.00 Lunch at American Colony Hotel

16.00 Maher Masri, Minister of Economy and Trade

Briefing on the discussions held on Monday and Tuesday.
Discussion on Technical Assistance

Present: Saeb Bamiyeh, Nisreen Haj Ahmed, Hazem Kawasmi, Gavin Evans,
Valerie Yorke

17.30 Return to American Colony Hotel. Debriefing.

Wednesday, September 24, 1997

09.30 Ministry of Economy and Trade

Elaboration of draft Palestinian position paper (with Nisreen Haj Ahmed and
Hazem Kawasmi)
Discussion on follow-up of mission and proposed Palestinian visit to the EFTA
Secretariat, Geneva.

15.30 Return to American Colony Hotel. Debriefing.

Thursday, September 25, 1997

10.00 Leave for Ben Gurion Airport