

MEMORANDUM

CONCERNING THE PARTICIPATION OF MALTA  
IN G.A.T.T.

PROCEDURAL CONSIDERATIONS

GATT rules

1. GATT is a multilateral agreement i.e. an agreement which comprises more than one country (in fact in the case of GATT about 60) bound under a set of rules to which the member countries acceding (called in the case of GATT "contracting parties") subscribe. The advantage of such an agreement lies in the fact that these rules apply automatically, uniformly and indiscriminately.

2. GATT, being a modern multilateral agreement, provides for a flexible application of its rules. New obligations can be created and existing obligations may be waived. All decisions concerning the application of the rules, and in particular concerning their enforcement, are taken by the contracting parties acting in common.

Voting

3. Each contracting party has one vote regardless of number of population or size. This would also apply to Malta, if accepted as a contracting party.

Normal accession procedure

4. Countries (other than those mentioned in paragraph 5) aspiring to join GATT are expected to carry out negotiations and to grant tariff concessions. They are accepted as contracting parties only after the successful conclusion of these negotiations. It should be noted that GATT is still applied by the contracting parties under the terms of a Protocol of Provisional Application. This fact (resulting from a constitutional difficulty in the United States) is, however, without practical importance.

Special accession procedure for countries acquiring independence

5. There are special accession provisions for countries acquiring independence which save such countries going through the long and cumbersome normal procedure (see paragraph 4). Countries to which GATT rules were applied indirectly - having been dependent territories of a member country - can join GATT in their own right at the moment of becoming independent.

6.. The relevant provision (Article XXVI, paragraph 5 (c)) reads:

"If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party".

7. It should be remarked in this connection, however, that GATT in the past did not insist in all instances that this declaration be made by the previous 'mother' country, but accepted declarations from the country which became independent. But also in such instances the 'mother' country supported the request for accession. Malta - if a decision is taken in favour of a participation in GATT - would have to approach the United Kingdom Government for obtaining the same support.

#### Preparation of an application for accession

8. Practically any request for accession to GATT is preceded by an informal contact with the Secretariat so as to avoid that unexpected complications turn up after the presentation of the request. This procedure should also be followed in the case of Malta. It would in particular give a possibility to explain certain laws and regulations in force in Malta relevant to her participation in GATT.

### ADVANTAGES AND DISADVANTAGES OF THE GATT RULES FOR MALTA

#### Most-favoured-nation obligation

9. The most important GATT obligation is to grant unconditionally to each member country most-favoured-nation treatment. This m.f.n. obligation is generally acknowledged as the greatest progress introduced by GATT, since it replaced advantageously the previous pure bilateralism which had complicated international relations.

10. The multilateral most-favoured-nation clause of GATT has the further advantage not only of providing for a uniform interpretation of this rule but also of making it flexible by permitting certain exceptions which make it "inter alia" possible to maintain preferential margins and to create customs unions.

11. There is no doubt that the inclusion of Malta in this net of m.f.n. relations, and consequently into the net of world trading countries, has to be considered as the most important advantage resulting from an accession to GATT.

#### Preferential rights

12. Insofar as preferential rights are concerned, GATT allows the continuation of preferential margins as they existed on the base date.

13. For Malta this means that the preferential margins which existed on 10 April 1947 (Art. I, paragraph 4) are to be maintained. Certainly reductions of preferential margins are not only permissible but encouraged.

14. It should be noted that this situation has carefully been respected in preparing the draft of a revised Malta Customs Tariff. The few suggested increases of preferential margins are accidental and infinitesimal and occur only where the attempted streamlining of the tariff makes it inevitable. This will certainly be accepted by GATT since it is in accordance with decisions taken in GATT in previous similar circumstances, that the increases of preferential margins are permissible if they are the result of a tariff reform (aiming at a harmonised tariff) and that their effect does not exceed the decreases of preferential margins put into effect simultaneously.

15. Malta, being in agreement with the obligations relating to preferential margins need not expect any difficulty from their enforcement but it is recommendable that the tariff reform be concluded before the accession of Malta to GATT.

#### Tariff concessions

16. It has already been mentioned (paragraph 5) that the obligation to pay an entrance fee to GATT in the form of tariff concessions does not apply to countries becoming independent. Such countries have only to continue with the concessions which were granted on their behalf by the 'mother' country. Consequently - since the United Kingdom gave no concessions in the name of Malta - Malta is entirely free to change her rates (up and down) as she feels appropriate (certainly respecting the obligation not to increase at this occasion margins of preference).

17. It should be noted that even after adherence to GATT the right to change tariff rates is not limited. It is a far

spread error that with membership in GATT countries generally have to give up their freedom of action concerning tariff rates. The obligation of contracting parties not to increase duties is strictly limited to the concessions which a country is prepared to grant. Therefore, Malta's freedom of action concerning tariff rates will only be limited by her own intention to give tariff concessions.

#### Kennedy Round

18. The freedom of action described above concerning the level of tariff rates might change as a result of the Kennedy Round which could lead to an obligation to reduce duty rates according to an agreed plan. It is, however, already visible that countries in development will be freed, fully or partially, from the obligations which may result from the Kennedy Round. If this is the case countries in development would benefit from the tariff reductions made by the industrialised countries and it is likely that this will be without an obligation to reciprocate.

19. In the case of Malta, however, any such general tariff reduction would mean also a reduction of the preferential margin granted by the United Kingdom to Malta. This is due to the fact that most Maltese products can be imported duty free into the United Kingdom while duty is levied on imports from non-preferential countries. In other words: if the United Kingdom were to reduce as a result of a general obligation a most-favoured-nation rate from 10% to 4% this would automatically mean for Malta, a reduction of her preferential advantages from 10% to 4%. Such a development would considerably disturb the economic balance of Malta in particular if Malta would have to continue to grant full preferential margins on imports from the United Kingdom.

20. The above remarks justify the statement that although the Kennedy Round seems to lead to a world wide reduction of duties from which Malta should benefit, it may also have - as shown above - disadvantages for Malta. Therefore also from this angle a participation of Malta in GATT seems to be recommendable so as to be in a position to draw attention to the Maltese situation with a view to finding a special solution.

#### Countries in development

21. GATT contains special provisions for countries in development. They are freed under certain circumstances from otherwise strict obligations. Recently, however, GATT is contemplating further assistance. There are in particular

considerations to permit industrialised countries to grant developing countries preferential treatment. It is difficult to imagine, however, that this could result into a right of each industrialised country to grant bilateral preferential advantages, since this would mean abandoning one of the basic principles of GATT. It is more likely that such preferential rights will be established on a sort of multilateral basis e.g. in a way that all developing countries will benefit from preferential concessions given by an industrialised country.

22. It is felt that neither solution will be of direct benefit to Malta. If the solution is found in a general way it is most likely to affect the typical products of developing countries only (coffee, tea, etc) a solution which would not be beneficial to Malta. If, on the other hand, against any expectation, the solution should be found in bilateral concessions it would not be easy for Malta to obtain such preferential concessions due to her very small market and the fact that industrialised countries protect themselves against many of her potential export products. (This can be seen from the list of products on which not even the United Kingdom grants Malta full preferential treatment which comprises tomato paste, ladies' stockings etc.). This situation makes it that Malta should participate in the work of GATT so as to ensure best results for her needs.

23. It should be remarked on this occasion that the fact that the Maltese economy does not fit into the pattern of a developing country (since it does not depend on one or two raw materials as most such countries, but has an economy mainly based on services) is one of the difficulties which Malta has to expect in connection with any international action - not only that of GATT- dealing with developing countries.

#### Participation in Customs Unions and Free Trade Areas

24. An important exception from the m.f.n. obligation, as already mentioned in paragraph 10, is the right of contracting parties to join a customs union (like E.E.C.) or a free trade area (like E.P.T.A.). This means that participation in GATT will not limit the freedom of the Government of Malta to take any decision in this field they consider necessary.

25. Without entering into the question of the advisability to join a regional organisation, it should be remarked that none of the organisations has special provisions (similar to that of GATT) which would make it advantageous for Malta to

join at the moment of independence. The relevant important questions can, consequently, be considered by the Government of Malta without any haste.

#### Quantitative restrictions

26. Another basic provision of GATT is the obligation of countries with a healthy balance of payments, not to have recourse to quantitative restrictions. GATT however provides for far reaching exceptions to this obligation for developing countries. GATT has also granted individual exceptions.

27. Under this situation it seems that Malta will not have any difficulty with contracting parties to GATT on this point, since it has only in exceptional instances recourse to quantitative restrictions and only where such a measure is necessary in the interest of a developing industry. Malta, furthermore, fully conforms in the application of these restrictions with the GATT obligations, in particular with the obligation not to apply such restrictions in a discriminatory manner.

28. In connection with the rules for quantitative restrictions GATT provides that contracting parties must either be a member of the International Monetary Fund or conclude a special arrangement with GATT.

#### Provisions to reduce trade barriers

29. GATT contains a number of provisions which aim at creating a favourably climate for international trade. They deal in particular with the application of

- a) duties
- b) internal indirect taxes (e.g. turnover taxes some of which at present are called 'excise duties')
- c) administrative provisions relating to imports and exports
- d) marks of origin
- e) subsidies
- f) state trading rules etc.

30. These provisions will certainly be also of value for Malta not only for the reason that the Maltese economy will benefit from its application by other countries but also for the reason that they will be helpful for the introduction of modern provisions in Malta.

31. The fact that in various instances the present Maltese provisions do not conform with some of the relevant rules will not cause any difficulty since these rules are contained in

Part II of the Agreement which, roughly speaking, permits the continuation of the existing situation. Only in the case of change of provisions the rules ought to be respected. Since all these rules aim at a progressive legislation this will be to the advantage of Malta.

### Conclusion

32. In trying to sum up the value of GATT the following may be considered a fair appraisal:

- a) The great advantage offered by GATT to all countries is to maintain order in international trade relations in particular in preventing bilateral discrimination.
- b) Almost equally important is the fact that GATT offers a convenient forum of discussion and a permanent contact between the contracting parties, which at the same time comprise the principal trading nations and a great number of developing countries.
- c) GATT was criticised insofar as its relations with developing countries are concerned mainly for being too formalistic since its rules only provide for waivers from its obligations. GATT is, however, on its way to improve the situation and various studies are being made to find ways and means to do so.

33. Taking the advantages offered by GATT into account and the interest of Malta to be in a position to influence the work carried out to assist developing countries it is strongly felt that Malta should become a contracting party to GATT.

### GATT AND BILATERAL TRADE AGREEMENTS

34. Finally it should be mentioned that the participation in GATT raises the question whether this participation does not make it unnecessary to have bilateral Trade Agreements. In this connection it should be stressed that although GATT contains practically all general provisions which normally enter into such Trade Agreements it does in no way make such Agreements superfluous for the following reasons:

- a) Arrangements can be made in bilateral agreements to take proper care of the particular situation existing between the countries involved. The most important such provision is the assurance of import quotas in the case of a country still maintaining quantitative restrictions. (In the interest of trade continuity, the transformation of such agreements concluded by the U.K. on behalf of Malta into Maltese agreements is the most urgent action)
- b) Generally bilateral Trade Agreements lead to a more intimate relationship with the partner country.
- c) The possibility of a country in GATT to get a suggestion accepted or to be properly defended in the case of criticism depends exclusively on the number of supporting countries. Countries with which special trade policy relations exist are much more easily approached in such a case.

- d) Bilateral trade agreements give a possibility to encourage countries which export more to Malta than they buy from it to assist Malta's export drive.
- e) They open the access to special development help.
- f) GATT is applied as already mentioned (see paragraph 4) on a provisional basis. Although there is no danger that this could lead to a sudden dissolution of GATT it is very important to have special trade agreements with the most important trading partners. This principle is followed by most contracting parties including the United Kingdom although this country more often relies on traditional relations than on formal agreements.

35. Taking the above considerations into account it seems right to say that Malta should continue with her efforts to achieve bilateral Trade Agreements regardless of the difficulties to be expected from the fact that Malta can offer only a small market. In particular the following countries with which special trade relations already exist or most probably will develop should be approached:

1. United Kingdom (which unofficially declared itself ready to enter into a Trade Agreement with Malta once she is independent).
2. The E.E.C. countries (individually, and if possible, as a group).
3. Countries bordering the Mediterranean (e.g. Cyprus, Greece, Israel, Lebanon, Libya, Turkey, Yugoslavia and the United Arab Republic).
4. United States of America.
5. The E.F.T.A. countries (individually, and if possible, as a group).
6. Certain Commonwealth countries (Australia and Canada)
7. Certain countries of particular trading interest (Aden, Hong Kong and Japan).

#### THE FINANCIAL IMPLICATIONS OF A PARTICIPATION IN GATT

36. It should be remarked that the financial contributions to GATT are very modest. It can be expected that the yearly contribution for Malta will not exceed the general minimum rate fixed by GATT which remains under £2,000. Although it is unlikely that a specific lower rate will be accepted for Malta, an attempt to that effect could be made.

37. There is also the contribution to a Working Capital Fund (due only once on joining GATT) which consists in the

payment of a very small sum which in the case of Malta should not exceed the sum of £300.

38. GATT would be costly only due to the great number of meetings involved. Delegations would, consequently, have to be kept as small as possible and active participation should be limited to essential meetings. It should be remarked that the solution taken by some countries to have a permanent representative seems not to have helped to economise expenses since many such representatives have shown a tendency to rely on national experts thus often increasing the number of delegates instead of reducing it.

#### RECOMMENDED DECISION

39. It is suggested:

- 1) to accept ~~the~~<sup>the</sup> principle that Malta becomes a member of GATT (see paragraph 33) under the special procedures for countries acquiring independence (see paragraph 5)
- 2) to send an informal mission to GATT to prepare in consultation with the Secretariat the relevant application (see paragraph 8)
- 3) to continue with the efforts to achieve bilateral Trade Agreements (see paragraph 35).

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11th September, 1964.