

Comments: EES Standards Agriculture Services

MINUTES

Economics Negotiating Group
 Palestinian-Israeli Permanent Status Negotiations
 Dan Pearl Hotel, Jerusalem
 August 22, 2000, 3:45pm

Attendees:	<u>Palestinian:</u>	<u>Israeli:</u>
	✓ M. Masri (MM)	✓ A. Ben-Bassat (AB)
	✓ S. Bamieh (SB)	T. Gal-Yam (TG)
	✓ A. Nowfal (AN)	B. Bar-Zion (BB)
	✓ Nasser Tahboub (NT)	T. Noiman (TN)
	✓ Nisreen Haj Ahmad (NHA)	✓ Moti Allon (MA)
	Saad Khatib (SK)	Bari Zohar (BZ)

ABB: We will discuss today the characteristics of the Free Trade Area (FTA). In Emmitsburg it was clear that there is some differences in approach between us. We thought it is enough to mention our intention to move towards a Free Trade Area and list the topics that need to be discussed in the CAPS. Your approach is not limited to mentioning the intention to move towards a Free Trade Area but also to identify the main characteristics of the Free trade Area on the principle level. We agreed and that is why we worked on some details and prepared a paper. Still a short version since it is to be part of the FAPS. We don't have to formalize or phrase principles at this stage yet. So let us discuss the characteristics- shall we start presenting our ideas?

MM: Yes please.

BZ: Setting the principles of an FTA is not a difficult job. There are many examples of FT Agreement in the world so we looked at them and drew a list of issues to include in our agreement, which I will present to you. But first I want to mention an issue, which is not normally part of an FTA. We want to include in our agreement a provision on the abolishment of all boycotts between us.

MM: I suggest that you present all your points. Once you are finished, we will then comment.

BZ: 1. Definition of FTA: We suggest using the definition used in the WTO.

2. Trade Policy: Every side is free and can determine its trade policy regarding imports and exports. We assume that each party will base trade policy on WTO principles. We also seek to harmonize some areas of the import policy on some goods to avoid smuggling including customs rates, purchase tax, and technical requirement such as standards.

3. **Effective Economic Borders:** To establish an FTA, we need an effective economic border between us where custom stations, clearinghouses, or customs houses -however you choose to name them- will be established. The borders between us will be international borders so customs operation will be similar to that found on international borders. To make it more efficient we will agree that some crossings are for goods and passengers while others are for passengers but not goods.
4. **Elimination of Duties:** Prohibition of customs duties on bilateral trade is the main element of an FTA. We would like to discuss the issue of agriculture separately because it is different.
5. **Rules of origin:** We have to agree on rules of origin. We suggest looking at the rules of origin used by European union and yourself, the Pan-European rules of origin. We would also like to see bilateral cumulation between us.
6. **Prohibition of Non-Tariff Barriers:** In general, NTBs should be prohibited. An exception to that would be necessary for security considerations. Also drawing on Article 20 of the GATT, exceptions to protect the health of people, animals, among other issues, are allowed. For example we think that you're agents law is a non-tariff barrier to trade, which we need to discuss.
7. **Non- Discrimination:** Discrimination between national goods and the other side's goods should not allowed; i.e. national treatment. Discrimination between the other sides' goods and third country's goods should not be allowed also, i.e. most favored nation treatment.
8. **Customs Procedures:** Customs procedures such as classification and evaluation should be performed according to international rules. The agreement should also include cooperation between customs apparatuses according to Article 7 of the GATT.
9. **Standardization:** We would refer to the WTO and agree that no party can use standards as a non-tariff barrier. We also would include that the parties strive to harmonize standards. We are currently harmonizing our standards with international standards and I understand that you are doing the same. I need not mention that the parties should apply national treatment and most favored nation principles in the field of standards. We also strive to have bilateral recognition of standards certification. Furthermore, we need to cover actions that have an environmental impact on the other side. But I guess that this issue will be discussed in another forum.
10. **Intellectual Property Rights:** We are now taking action in this field. The United States is pressing us. The first thing is to have a WTO standard law and

then have effective enforcement of the law. We also aim to establish cooperation between us in this field.

11. Liberalization of Trade in Services. We discussed this in Emmitsburg. We agreed that liberalization would be gradual. But I think this principle is not enough. We propose to discuss specific sectors in more detail, such as the insurance sector and the transportation sector.

12. Competition: We also would like to respect WTO principles in the field of competition. Cooperation in enforcement is crucial. Also as in Article 17 of the GATT, government enterprises should behave like private companies and should subject to competition rules equally.

13. Institutional Cooperation: Here we propose a joint economic committee on current issues because there might be problems in the implementation and interpretation of the agreement. So, maybe, two committees one for customs and one for services; I don't know.

SB: What about dispute settlement?

ABB: We have to discuss this further. One of the committees under the JEC can deal with dispute settlement.

[Discussions in Arabic and Hebrew]

ABB: We are not phrasing the agreement now. However, we think that the Free Trade Area expression must appear explicitly in the agreement, so that we use it as an anchor when we refer to the WTO.

MM: I will now share my comments on all the above points.

1. Yes, we agree that relations between us should be based on international law and international agreements, namely the WTO agreements. I also understand from previous discussions with the professor, that Israel will support our entry to the WTO.

2. Yes, each side would have its own trade policy and would be independent customs territory. We agree on harmonization only where possible, necessary and applicable.

3. We are now working on the definition of the effective economic border and we are waiting for feed back from our security experts. I believe that we will discuss this topic in our next meetings. We agree that some crossing points should be for goods and passages while others for passengers only.

4. We agree on the elimination of duties to establish an FTA. Agriculture we don't mind holding another discussion with your and our agricultural experts.
5. Yes, we agree in principle that we should set rules of origin for bilateral free trade. But we can't determine now which model of rules we should adopt. We should hold a discussion on the rules with the aim to identify the rules that would be the most conducive to trade.
6. We agree regarding the prohibition of non tariff barrier in line with the WTO principles.
7. National Treatment and Most Favored Nation Treatment are two principles we would like to parties adhere to.
8. Customs procedures would be carried out according to international practices, especially those of the GATT including evaluation and classification.
9. As for standardization, we want to apply high quality standards. We need mutual recognition of certification. However, we need to get the experts together in our presence. We also agree about including environmental standards.
10. As for IPR, we will cooperate not only by having the laws in place but also by enforcing them.
11. We agree on services. We should get experts to discuss specific sectors.
12. We see eye to eye regarding competition. We want to have competition rules that are compatible with the WTO.
13. As for the JEC and as I said before, the JEC was not an effective institution to draw on. I want an institution for dispute settlement and another fast track for solving for daily problems.
14. We would like to see a transit agreement according to TIR Agreement.
15. In Emmitsburg, we mentioned security exceptions. We need to discuss those further.

So basically, we want to add transit and security exceptions into the list of principles; and we have reservations on the dispute settlement mechanism.

Now I want to come back to what you mentioned regarding abolishing boycotts. I don't understand what you have in mind since we have no boycotts between us at present.

- ABB: We are not referring to present boycotts that need to be abolished. We are talking about the future. We fear that either party will boycott trade with the other side either directly or indirectly.
- MM: But that is not allowed under the WTO anyway?
- BA: Actually, it is allowed in the WTO. Iraq and Israel are boycotting each other. Actually Israel had registered in the WTO that it would maintain boycotting some members of the WTO.
- MM: We will check this point and return to you.
- NHA: Why do you suggest separating agricultural discussions from this forum?
- BZ: Today, we have free trade agreements with the EU and other countries that exclude agriculture from the free trade arrangement.
- MM: But we have free movement of goods that includes agricultural products at present. So why should we worsen the present situation by excluding agricultural products from the free movement?
- ITG: The problem is not those agricultural products grown by Palestinians. These will not stop and therefore there will be no worsening of the present situation. But our problem is with those agricultural goods that would be non-Palestinian and would entered Palestine and then claim to be Palestinian in order to get duty free entry to Israel. Now we have a customs union and this problem does not arise. But under a free trade agreement with you having your own trade policy, such a problem might arise. Rules of origin cannot control such matter completely. It is different from textiles.
- MM: Yes, but we don't want a non-tariff barrier to trade.
- ABB: We like to leave this issue to be discussed with the agricultural experts.
- MM: In our presence?
- ABB: Fine.
- MM: I would like to get your reaction on dispute settlement. We discussed this in the United States. The JEC, with all respect to those who think otherwise, was not successful. We would like to introduce 3rd party involvement in dispute settlement. We are not rigid about the identity of the 3rd party. We can discuss any party you have in mind.

[Discussion in Hebrew]

- BZ: What is your opinion regarding our point on the agency law?
- MM: I don't think that the agency law is a non-tariff barrier to trade. It is a law that regulates the market on MFN basis with no discrimination. It is internationally practiced even in the United States.
- BZ: The agreement or the government should not intervene in contracts between companies. Here is an example of something the authority is dictating.
- MM: That is not correct. We don't impose anything on the private sector; we don't even meddle when the companies are looking for agents. I refused to recommend names of possible agents to companies. I will not do that not even for my brother. The only thing we ask is that the agency contract be registered in the Ministry so that we can protect the contract. This is done evenly.
- BZ: It seems that we don't understand your law, can you please explain?
- MM: [Explains, discussion not transcribed]
- MA: What is the purpose of registration? Because the companies in Israel are regulating these relationships by themselves,
- MM: Our market is in the first phase of development. It is not known abroad and it is economically underdeveloped. We need to prepare the market to operate and be able to regulate itself freely. But until then we need to introduce measures such as the agency law where the business community will get used to it and it will become part of their working ethics.
- MA: So it is temporary?
- MM: I need to organize the market. At some point our market was like a garbage bin. It was dumped with life and health threatening products. In order to change that, I couldn't go after each supermarket. I had to register the distributor and check at that level where the distributor becomes the responsible party.
- MA: In the future the Palestinian customs will carry out such check at the borders like all other issues. So we need to agree that Israeli companies and distributors will not be registered because they are checked at the borders.
- NT: What is exactly your concern?

TG: Some Israeli companies complaining that they could not sell in the Palestinian market due to this agency law have approached us. We tried to discuss this with your ministry and there were no discussions held.

MM: That is incorrect. I personally discussed this matter with Sharansky, Cohen and [someone else]? Which companies are those and what exactly was there problem? Very few Israeli companies are required to have agents in Palestine, the rest are selling in our market the way they have been doing for the past years.

TG: I can't tell you the names and problems of such companies. I need to get their permission first.

MM: Fine, we will discuss this further when you can share your information with us. Now what about the dispute settlement?

ABB: Our position did not change since Emmitsburg. So we need a mechanism there is no disagreement about that. The disagreement is about the involvement of a third party arbitrator. We don't like having arbitrators. We should sort our problems bilaterally. Arbitration is different from a court and an arbitrator is different than a judge.

The moment you are a member of the WTO, there is a mechanism there. For the short term, our philosophy is that taking problems to courts or arbitration leaves a bad taste. Better to sort it between us. We don't have arbitration with Egypt or Jordan.

MM: Yes, we agree that we will eventually resort to the mechanism in the WTO. In the meantime, we believe that some problems might arise in our new relation. We have witnessed problems between us that were never solved and dragged on leaving anxiety and a worse taste. So we need to solve problems effectively. You prefer a judge to an arbitrator that is fine. Name three or five judges, that should be fine with us. Just give me a solution.

ABB: You fear problems will last long. It is a short period until, I think, you can enter the WTO.

MM: No one knows how long it will take us to get to the WTO. What is the problem with having a dispute settlement apparatus for the short time. I hope we want use it.

TG: But if it is there, we will use it in every case and not put effort to sort our problems bilaterally.

MM: So we will build a mechanism with steps. Bilateral consultation and conciliation first and then arbitration. We don't expect something major. In Emmitsburg,

you said, that you will work on a proposal that addresses our needs and here we are with no such thing. What is the problem, if you agree to the WTO?

TG: But the WTO does not deal with bilateral relations.

MM: In the final analysis it does. At the end it is dealing with a problem between two members.

TG: But it only deals with WTO issues.

MM: Fine, we will have that. We will agree to resort to the good offices of the WTO only on those matters that are regulated by the WTO. Do you agree?

ABB: Let me tell you honestly. The dispute settlement in the WTO is a necessary evil that we had to accept to become members of the WTO. Without agreeing to it, we would not have become members.

MM: But you also agreed to refer to the WTO dispute settlement in your bilateral agreement with the EU. Even more, you agreed to arbitration in your free trade agreement with Canada. So why not with Palestine?

MA: Yes, we agreed to arbitration with Canada and maybe another party but that was a mistake we should not repeat.

MM: There is no point in continuing this discussion. Let us register this issue as a point of disagreement between us.

Meeting adjourned. Monday's meeting to discuss the effective economic borders together with the security experts.