THE LEGAL FRAMEWORK OF THE EXTERNAL RELATIONS OF THE EUROPEAN ECONOMIC COMMUNITY AND THE EUROPEAN COAL AND STEEL COMMUNITY WITH LEBANON

A THESIS SUBMITTED FOR THE AWARD OF THE DEGREE OF DOCTOR OF PHILOSOPHY IN LAW

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BUT SAY O MY GOD! ADVANCE ME IN KNOWLEDGE

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Dedication

To the blessed hands
Cultivating the lands
Seeking best their future
To my Parents.

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ABSTRACT

The present thesis, "The legal framework of the external relations of the European Economic Community and the European Coal and Steel Community with Lebanon", examines the legal aspects of the external relations of these two Communities with respect to Lebanon, with special reference to their common commercial policy and development policy. In examining twenty five years of relationship between the two parties, the thesis endeavours to answer whether Lebanon, at any time, received special treatment from the EEC corresponding to the historical, political, economic, cultural and geographical close ties between them as reflected in the legal rules which provides the framework for the EEC-Lebanese trade and commercial relations. The thesis, moreover, evaluates the developments in the legal framework of these relations in the light of the developments in international trade rules and whether the European Communities' agreements with Lebanon responded to Lebanon's special characteristics and level of development and consequently responded to its special needs. Furthermore, the thesis assesses the contribution of the contractual relationship of the relevant parties to the development of their trade relations, with particular emphasis on Lebanon's exports to the EEC markets.

The relationship between Lebanon and the European Communities passed through three stages in its form of development, from non-preferential trade arrangements to reciprocal partial preferential trade arrangements and thereafter to non-reciprocal preferential trade arrangements.

Experience shows that where the right terms and suitable conditions

were given, relations between the EEC and a less developed country can be fruitful. However, although Lebanon received preferential treatment within the EEC Mediterranean policy, this preferential treatment proved to be fruitless. The European Economic Community moved half-heartedly in developing the legal framework of its relations with Lebanon, thereby offering preferences to Lebanon on the one hand and making inroads into them on the other.

Following the adoption of preferential treatment within their trade legal system, Lebanon's exports to the EEC fell. In addition, the EEC development aid to Lebanon represents "a drop in the Ocean".

The justified conclusion is that any future equilibrium in trade relations between both parties is not expected. Is it not now the time for attempting to develop a legal framework for integrating the natural regional markets of Lebanon?

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1972	O.J No. L 18/10, 22.1.74.	Agreement between the EEC and Lebanon.
1973	O.J No. L 18/3, 22.1.74.	Protocol laying down certain provisions relating to the Agreement between the EEC and Lebanon consequent on the accession of new member states to the EEC.
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1980	O.J No. L 382/48, 31.12.80	Protocol laying down arrangments between Lebanon and Greece.

1982	O.J No. L 337/, 29.11.82	Protocol on financial and technical cooperation bewteen the EEC and Lebanon.
1986	25 I.L.M (1986), P 564	Vienna Convention on the Law of Treaties Between States and International Organisations or Between International Organisations.
1987	O.J No. L 22/25, 27.1.88	Protocol on financial and technical cooperation bewteen the EEC and Lebanon.
1987	O.J No. L 250/1, 1.9.87	Protocol laying down arrangements between Lebanon on the one hand and Portugal and Spain on the other.
1987	O.J No. L 297/1, 21.10.1987	Additional Protocol to the Cooperation Agreement between the EEC and Lebanon.
1991	Initialed in June 1991	Protocol on financial and technical not yet publishedcooperation between the EEC and Lebanon.

Most of these Agreements and Protocols are reproduced in Council of the European Communities, Protocols to the EEC-Lebanon Cooperation Agreement and other texts, (1990).

ABBREVIATIONS

Am. J. Int. Law	American Journal of International Law
BISD	Basic Instrument and Selected Documents
Brit. Y. B. of Int'l L.	British Year Book of International Law
Bull. EC	Bulletin of the European Communities
Bull. EEC	Bulletin of the European Economic Community
C.M.L.R	Common Market Law Reports
C.M.L.Rev	Common Market Law Review
CAP	Common Agricultural Policy
CCP	Common Commercial Policy
CCT	Common Custom Tariff
CET	Common External Tariff
Cur. Leg. Prob.	Current Legal Problems
EC	European Communities
ECJ	The European Court of Justice
ECR	European Court Reports
ECSC	European Coal and Steel Community
EEC	European Economic Community
EIB	European Investment Bank
EPC	European Political Cooperation
EURATOM	European Atomic Energy Community
GATT	General Agreement on Tariffs and Trade

Gen. Rep. EC	General Reports of the European Communities
Gen. Rep. EEC	General Reports of the European Economic Community
GSP	Generalised System of Preferences
I.C.L.Q	International and Comparative law Quarterly
ICJ	International Court of Justice
ILM	International Legal Materials
IMF	International Monetary Fund
Is. L. Rev.	Israel Law Review
JWTL	Journal of World Trade Law
L. Q. R.	Law Quarterly Review
L.I.E.I	Legal Issues of European Integration
MFN	Most Favoured Nation
PCIJ	Permanent Court of International Justice
S	Supplement
SEA	Single European Act
Tex. L. Rev	Texas Law Review
U. Chic L. Rev.	The University of Chicago Law Review
UNCTAD	United Nations Conference on Trade and Development
Y.B. Int'l L. Comm'n	Year Book of The International Law Commission
Ybk of E L	Yearbook of European Law

GENERAL INTRODUCTION

This thesis examines the legal framework of the relations between the European Economic Community (EEC) and the European Coal and Steel Community (ECSC), on the one hand, and Lebanon on the other. The extent of the EEC's international activities are bestowed upon it by virtue of the Treaty of Rome, in the fields of, inter alia, commercial policy, association, common agricultural policy, and, with possible further amendments to the Treaty, to economic and monetary union in the future. These activities are traditionally part of a state's foreign policy referred to as low politics. In fact, none of the treaties establishing the European Communities contains specific commitments, notwithstanding recent and current attempts through the Single European Act (SEA) and European Political Cooperation (EPC), on the part of the member states to collaborate in the formation of common high policies. Foreign policy as pertaining to states contains all aspects of a state's international activities (both high and low politics) associated with the very definition of statehood. High politics of the foreign policy of the member states of the EEC, a most jealously guarded sphere of national sovereignty, remains within the competence of the member states. Hence, the activities of the European Communities in the international sphere are referred to as external relations as opposed to foreign policy.[1]

The foreign policy of a state concerns a most controversial issue touching the heart of its sovereignty and sometimes reflecting its identity. The sensitivity of foreign policy may divide the people of that state, especially if the people possess multi-cultural elements. This widely accepted view does not only apply to states, but also to international

organisations and in particular to the EEC: the interests (and sometimes selfishness) of the elements comprising the organisation may contest with each other. If this generally is true, then it is all the more evident in the case of a state like Lebanon. Lebanon's foreign policy, including its foreign trade policy, is a most protracted and unsettled policy area, being in some aspects a main source of the civil wars since independence.

Prior to the independence of Lebanon in 1943, communities (confessional sects) forming Lebanon were divided on its foreign policy. Following independence, a compromise was reached through the unwritten "National Pact" identifying Lebanon as having an "Arab face". This statement implicitly denies that Lebanon is an Arab country and leads to a conclusion that Lebanon has another (European) face. The popular jargon *"al`um al`hanoun"*, (meaning the affectionate mother, referred to in the Arabic language as the very heart of the relationship between a mother and her child) the nickname of France in Lebanon, illustrates a strong emotional belief in having another (European) face in a major segment of the public opinion. Reaffirming this position of having but partially an Arab face, and despite declaring its readiness to do so, Lebanon refused to join the never implemented Arab Common Market Treaty in 1964, under an allegation that such an undertaking would affect its special and unique characteristics.[2] Similarly, Lebanon did not implement the Customs Union Agreement with Syria[3] owing to similar assumptions.

In 1963, while Lebanon was engaged in its negotiations leading to the conclusion of the Trade and Technical Cooperation Agreement with the EEC, the Foreign ministry issued a statement denying that Lebanon was attempting to join the six European countries forming the EEC.[4] It is safe to say that Lebanon has no right to join the Treaty of Rome, not least for

geographical limitations. Article 237 EEC specifies expressly the right of only the European countries to join the EEC. Hence, the statement was aimed at directing public attention in Lebanon to the purpose of the negotiation which was to conclude an agreement with the EEC allowing Lebanon to enjoy some privileges which reflect the special ties and relationship between Lebanon and the some of the original member states of the EEC.

Typically, in international relations, special ties and relationships between states are formulated into binding rules in treaties granting some privileges not granted to any other state. For example, the relationship between Israel and U.S.A. is formulated in different defence and trade treaties. Recently, after a long period of confrontation, Lebanon concluded a "Brotherhood, Cooperation and Coordination Treaty" with Syria (1991) reaffirming their special relationship in different issues and reflecting the slogan "one people in two states".

An analysis of Lebanon's perspective on its own relationship with the countries of Western Europe in general, and France in particular, could be explained from different points of view, namely historical, cultural, geographical and economic and political factors.

With regard to historical and political factors, present-day Lebanon did not exist prior to September 1920, the date when General Gouraud (the High French Commissioner to Syria and Lebanon during the French mandate) annexed some other cities to "Mount of Lebanon" declaring it as "Grand Liban". An autonomous province in 1860, the Mount of Lebanon emerged when the Ottoman Empire signed the "Reglement Organique" under direct supervision and with certain privileges, to the then European superpower, France, and other European countries. "Mount of Lebanon" was inhabited by two rival sects, Christian Maronites and Druze. As

minority groups within the Muslim world in the Levant, seeking certainty and survival, these groups linked their existence with other external, powerful countries. The French Catholic missionaries motivated France into declaring itself as a protector of the Catholics in the Levant and were of great significance for the development of the relationship between France and the Maronites of Lebanon.

Following the collapse of the Ottoman Empire, the Maronites felt the taste for independence, albeit wanting French protection out of fear of other groups in the region, should the French leave the area. However, under the Sykes Picot Agreement, and upon the request of France, Lebanon became directly under French control, with Britain, France's partner in the Agreement, recognising the French special sphere of interest there. Subsequently, the Mount of Lebanon was expanded by the French to become the present day "Grand Liban" under the French mandate, and the independence of Lebanon was granted on 22 November 1943. Moreover, prior to the independence of Lebanon, France introduced the constitutional law of Lebanon in May 1926 with a unique Article 95 which recognised and formulated a confessional political system in Lebanon by which the Maronites have held power ever since. Under this system, the President and the key posts of the states must be Maronites. Present-day Lebanon owes, therefore, its very existence to the French, and the special relations between the French and Lebanon via the ruling Maronites sect became closer. Lebanon's issues were (and still) usually used as internal political subjects in France, particularly for opposition groups.[5]

Several factors can be identified which reflect the close ties between Lebanon and France. Cultural factors: The deep roots of the European presence in general, and the French in particular, in Lebanon led to the establishment, in addition to their political interests, of cultural,

philanthropic and economic interests. The French had (and still have) extensive educational activities including the University of St. Joseph in Beirut, eighty French schools, hospitals, and orphanages. The French language became the first spoken language amongst the Lebanese Christians. French educational and cultural interests extended to cover religious matters backed by the Churches (of both Lebanon and France).[6]

Economic factors: The French shaping of Lebanon did not limit itself to the political and cultural life of Lebanon. The political economic structure in Lebanon was reshaped as well, 'by splitting off "Grand Liban" from its natural hinterland. The French not only confirmed the financial and commercial hegemony of Beirut over the Mountain, but also strengthened a pattern of economic activity in which agriculture and industry became more subordinate to banking and trade' activities.[7] As a consequence, a particular characteristic of the Lebanese economy emerged. Its pattern is well illustrated by the figures below which show the contribution of the various sectors to gross national income: in 1950, agriculture 20%; industry 13.5%; and trade 28.9%.[8] The reshaping of the Lebanese economy, as the figures show, illustrates the transformation from a manufacturing and industrial based economy, albeit not very advanced, to an economy based on trade and services. Between 1950 and 1957 the value of Lebanese commercial activities increased by 56.3% and in 1957 itself contributed nearly a third of the Lebanese national product. A last feature of the Lebanese system as it developed during the French Mandate era was the pattern of economic activity. While "what remained of the silk industry was allowed to die off from want of support from the French and from the financiers of Beirut, the service sector continued to prosper, assisted by a policy of low tariffs and the creation of an infra-structure of harbours and roads ideally suited to the further expansion of

trade, and the new business of tourism".[9] This process of reshaping Lebanon's economy was supported by a legal framework establishing a free market economic system, encompassing a free convertible currency, and possessing a banking system unique in the Middle East. The intercorrelation of these elements, in amalgamation with the geographical proximity of Lebanon, made Lebanon an ideal gateway for Europe to the Middle East, and in particular to the Arab world. The combination of these factors with the record of European states in the region, which left wide mistrust and anti-Western feeling particularly after the Palestinian issue came into being, enabled Lebanon to believe that it had unique features and, consequently, special relations with Western Europe in general and France in particular. This relationship was formulated into "special" commitments undertaken by some of the original member states of the EEC to contribute to Lebanese efforts in economic development.

On the other hand, the EEC external relations, including foreign trade policy, has not been established over night. In conformity with the life cycle theory of every single entity, the EEC, established in 1958, countered many difficulties as regards defining its external relations policy.[10] The crisis it went through in 1966 reflects one side of these difficulties. During the transitional (introductory and growth) stage, the EEC was keen to establish its external relations policy taking into consideration its inward-looking policy, as its first priority, on the one hand, and to strengthen the recognition of its independent international legal personality on the other. After all, the "primary objectives of the European Community is not to create some kind of common policy for Europe's relations with the world. The objective is unity (economic unity) which implies essentially inward-looking policy".[11] This is evidenced by a handful of patchwork fashion, incoherent and incomprehensive agreements with different third states.[12]

Nonetheless, the EEC "foreign policy is not a luxury for the Community, but a plain necessity".[13] Reaching the maturity stage, the EEC established a more coherent external relations policy encompassing foreign trade policy and development policy (attempting to lay down the principles of its common foreign policy) within which the "Global" Mediterranean policy and Lome´ conventions were adopted.

The Mediterranean policy was designed in such a way as to encompass crucial elements of cooperation with a view to promote social and economic development in the Mediterranean countries. This cooperation comprises technical assistance, financial aid and the furthering of investment necessary to give substance to the move towards regional cooperation, the provision of free access and better conditions for migrant workers employed in the Community countries and joint measures of environmental protection.

Therefore, the most promising approach to reconciling these different objectives would be to contribute to the economic development of the Mediterranean countries. One basic tenet of the Mediterranean policy is that it claims to function by taking the level of economic development of the respective countries into consideration and operates within the efforts of these countries, and not in isolation from such efforts. It is thus expected to meet their special needs.

It is agreed by most economists that contribution to economic development and economic growth is dependent on the availability of four elements, capital, (skilled) labour, raw materials and technology. The problem in the developing countries is that not only are they deficient in some of these components, but are also hindered in their attempts to obtain them. The Greek experience shows that, given the right terms and suitable conditions, association between a less developed country and a group of developed economies can enable the former to increase its pace of

industrialisation and improve the welfare of its people.[14]

Lebanon, as one of the Mediterranean countries whose characteristics match most elements in EEC's Mediterranean policy, was the first to approach the EEC within the Arab world, and the first to conclude a trade agreement with the EEC involving reciprocal preferential trade treatment.

The present thesis attempts to examine exhaustively the substantive rules contained in the four Agreements concluded between the EEC and the ECSC on the one hand, and Lebanon on the other, before and after the Mediterranean policy. The purpose of the study is to define whether Lebanon had, at any time, a special relationship with the EEC as reflected in the legal rules which provide the framework for the EEC-Lebanese trade and commercial relations. It is certainly the case that a section of the Lebanese elite, the Maronites, believed that Lebanon should be in position to exploit its unique situation vis-a-vis the EEC. Cultural, historical, geographical and economic and political factors, plus Lebanon's gateway position to the Middle East could have provided the rationale for a distinctive pattern of agreements between the two partners. In conformity with such a belief, Lebanon presented a memorandum to the EEC in the early sixties requesting a preferential trade agreement. It is certain that such treatment violated (at that time) GATT rules which the EEC applies. Since Lebanon did not ask for a free trade area or for a customs union, exempted under Article 24 GATT from MFN treatment, the Lebanese view is understood to be that a special relationship did exist and as such it should be reflected in a trade agreement.

On the other hand, the EEC addressed its attention to an outward looking policy following the Paris Summit in 1972. During that year, the Commission endeavoured to lend its help in finding solutions to problems posed by the development of the Community's special relations

with the countries of the Mediterranean region. It is generally accepted by most writers that the "relationship between the EEC and a number of developing countries has mainly been determined by a number of historical and political factors".[15] Thus it is safe to say that "historical links, geographical proximity and a degree of interdependence in a number of crucial areas combine to make the Mediterranean region of special interest and special responsibility for the European Economic Community". Reaffirming this assumption, the Communique´ of the Paris Summit in 1972 called upon the Community to, "without detracting from the advantages enjoyed by countries with which it has special relations, respond, even more than in the past, to the expectations of all developing countries". At this time, the non-European Mediterranean countries were faced with the choice of aligning with one of the super powers who dominated the scene, the then Soviet Union and the U.S.A. Lebanon, was almost unique in sticking to the European choice and particularly France. Evidently, Lebanon was the only country in the Arab world who enjoyed the "special relations" referred to in Communique´. Franco Malfatti, the President of the Commission in 1972, did not believe that "any one can contest the constructive role that can be played *by the EEC* in relieving the strains and pressures felt by the countries bordering the Mediterranean".[16]

The present thesis examines the developing legal framework of relations between the EEC and the ECSC on the one hand, and Lebanon on the other. However, since the EEC is competent in the foreign trade field only, the thesis concentrates particularly on the EEC common commercial policy and development policy in an endeavour to examine the compatibility of the declared objectives of the relationship and evaluate the effects of the legal framework on the EEC foreign trade relations with

respect to Lebanon. The Communique´ of the Paris Summit in 1972, attached "essential importance ... to the fulfillment of the EEC commitments to the countries of the Mediterranean Basin with which agreements have been or will be concluded, agreements which should be the subject of an overall and balanced approach". Taking into account the special characteristics and the level of economic development of each country, "balanced approach" would refer to the advantages arising from the policy and not that all agreements should be identical. In other words, "balanced approach" in term of quality of advantages arising from this policy and not in terms of identicality of the agreements between the EEC and the Mediterranean countries. Hence, the present thesis attempts to identify whether the European Communities agreements with Lebanon's responded to Lebanon is special characteristics and level of development, and consequently its special needs.

The present study is not intended to draw a comparative analysis of the agreements between the EEC and Lebanon on the one hand, and EEC major bilateral agreements concluded with countries belonging to the same region on the other, since such an attempt has been dealt with elsewhere.[17] However, some comparative reference are included, against this general rule, wherever this is necessary to underpin the central argument of the thesis.

The EEC's foreign trade policy cannot be understood properly without some reference to the GATT, with all the EEC member states as contracting parties. It provides a framework for international trade relations. International trade law is an extremely complex matter, requiring special attention. The present thesis seeks to explore, through a historical exposition, the nature of these relations, adopting as a basic tool of analysis international trade rules. This does not mean that it seeks to determine

the compatibility of EEC policy with these rules, but rather that it analyses the development of the legal framework of the EEC's relationship with Lebanon and the development of the norms of international trade.[18]

In examining the legal aspects of the relationship between two entities, interaction exists between legal, economic, political and social factors, and the case of Lebanon is no exception. In fact the correlation between these components has a dialectical dimension based on the interrelation of effects. For the purpose of this study it is very difficult, if not impossible, to discuss and analyse the legal framework of these relations in isolation from these factors.

Analyses of the EEC's external relations and in particular, foreign trade policy with third countries including developing countries in general and within the Mediterranean policy in particular are numerous. However such studies cover mostly political and economic aspects rather than legal. The EEC's relationship with the individual Mediterranean countries, and particularly the Mashreq countries, has not, to date, been evaluated from a legal perspective. The EEC's relationship with Israel on the one hand and Lebanon on the other demonstrates the heart of this relationship since the Trade Agreement with Israel was the first agreement with a non-European country causing controversy within the EEC institutions, and the Trade and Technical Cooperation Agreement with Lebanon was "the first of its kind", let alone the first in the Arab world. Moreover, this Agreement was concluded at the time the Mashreq countries in particular, and the Arab countries in general, were cool towards the EEC viewing it at that time as a form of "neo-colonialism". This Agreement is significant, not because of its impact on Lebanon's efforts towards economic development, but because it illustrates the Community's practice in carrying into effect the commitments contained in the sixth and seventh indent of the preamble of the Treaty of Rome:

"To ensure the progressive abolition of restriction on international trade; and to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity". It is very enrichening for legal literature to evaluate the legal aspects of the EEC trade and cooperation relationship with Lebanon.

For a student of European law from the Mediterranean region, there are three main reasons for undertaking the present study. The most paramount of these is to fill a striking deficiency in the legal literature in this area. Perhaps the main reason which explains the neglect of legal analysis of the EEC Mediterranean region relationship is the marked attention in the past to the economic aspects of the relationship. A major problem when undertaking a legal study here is the scarcity of primary data. The present thesis concentrates on an analysis of the available primary legal data, the texts of the agreements between Lebanon and the EEC, the decisions of the European Court of Justice (wherever relevant) and the explanations for the adoption of texts in a given manner offered by the Community institutions. What is lacking is an analysis of the minutes of the meetings held to negotiate the content of these agreements as such records are confidential. The thesis is, therefore, limited to an analysis of the available materials on the negotiations, such as the statements by the Commission published in the Bulletin of the European Communities. Attempts were made to interview representatives of the European institutions and certain of the key foreign ministries, in particular the French. Such attempts ended in a complete refusal to cooperate on the part of the representatives concerned.[19] Further useful information could no doubt be elicited by such interviews. The sources of materials which have been used are mostly available in English, though a few official records in the Arabic language have been used.

The second reason is that writers tend to analyse the EEC Mediterranean policy as a whole and have not studied the relationship between individual Mediterranean countries and the EEC, and in particular the special characteristics of the Lebanese case. The relationship between the EEC and Lebanon has unfortunately not attracted writers from either side.

The third reason is that this is a new subject area for scholars from the Middle East and the Arab World in particular. With the EEC legal order as a new phenomenon, and a civil war in Lebanon for the last sixteen years, there has been little scope for the subject to be introduced or examined. Indeed, the case is similar in all Arab countries, despite some attempts in English or French for academic purposes, but, not from a legal perspective.[20]

Relations between Lebanon and the original member states of the European Communities before the inception of the EEC and encompassing different aspects of activities, including trade and technical cooperation with a view to contributing to the economic development of Lebanon, have been of great importance. The First Chapter is devoted to an examination of the legal framework which regulates these relations. The objectives of the relevant treaties are examined, the substantive obligations arising therefrom are scrutinised with the focus on the trade arrangements and technical cooperation between the contracting parties.

Since analysing the legal aspects of foreign economic policy cannot be isolated from political and trade elements, trade flows for the respective periods of time are examined to illustrate the trade movements between Lebanon and the six original member states of the EEC, and thereafter, with the EEC and its member states. The outcome of these developments enables us to outline their contribution to the underlined objectives

declared in the preambles of the Agreements between Lebanon and the EEC. In addition, statistical trade figures are analysed enabling the research to draw a framework relating to the importance of trade flows to and from Lebanon and, consequently, the balance of trade between Lebanon and the six original member states

It is widely accepted that fundamental to the thinking of the relevant countries throughout the world is the view that the international rules relevant to trade embodied in GATT, were established in the interests of the economically strong countries. These rules are still largely influenced by the economic superpowers. Against this backdrop, there was for Lebanon no interest in remaining a party to GATT and hence it withdrew in 1951. However, the cornerstone of GATT, Article 1, MFN, was adopted by Lebanon in its agreements with the EEC. The Second Chapter examines the significance of incorporating this article in the Trade and Technical Cooperation Agreement between the EEC and Lebanon. Then the Agreement itself is analysed in its substantive and institutional elements, in addition to providing the general background of its conclusion. While the first enlargement of the EEC was underway, the Agreement was in operation, thus the legal implications of the first enlargement for the Agreement and subsequently for trade relations between Lebanon and the EEC is investigated. The establishment of the EEC required the member states to surrender their power in the fields of EEC activities. The second chapter includes a general examination of the powers of the EEC to conclude agreements with Lebanon. Moreover, it investigates the legal basis for concluding the Agreement by the mixed procedure as far as the EEC Treaty is concerned. It defines the EEC's arguments concerning the international trade rules behind the Agreement.

Chapter Three examines the reciprocal preferential Trade Agreement concluded in 1972. It examines whether any developments in

international trade regulations took place allowing the relations between the EEC and Lebanon to develop. In analysing the content of the Agreement a method similar to the Second Chapter is followed.

Chapter Four examines the Cooperation Agreement concluded under the auspices of the EEC Mediterranean policy still in operation. Following the evaluation of trade relations, a general background to the Agreement is drawn. The legal basis of the Agreement is examined taking into consideration developments incorporated into new international trade norms, since the EEC does not operate in isolation from the outside world. The objectives and substance of the Agreement are scrutinised, emphasising, in addition the rights and obligations of each contracting party arising from the development of the Agreement and whether it achieved its objectives of contributing to the social and economic development of Lebanon. Moreover, the legal implications arising from the EEC's southward enlargement (accession of Greece, Portugal and Spain) for the relations between the EEC and Lebanon is examined

Chapter Five examines the Agreement between the Member states of the ECSC and Lebanon. It highlights the lack of power of the ECSC to conclude or to participate in the Agreement. Since the Agreement was concluded in conjunction with the Cooperation Agreement, similar points are not examined, although a similar methodology is followed.

Chapter Six examines the development cooperation policy of the EEC and its relevance to Lebanon, embracing two dimensions, financial cooperation and food aid policy. Having highlighted the legal basis of this policy, the emphasis is on answering the question whether the EEC development policy responds to Lebanon's special needs.

The General Conclusions discuss the question whether Lebanon could be considered by any means and any time during its relationship

with the EEC as having a special relationship with the European Communities (the EEC and the ECSC). On the evidence of the legal framework it takes into account whether the relationship within the framework of the EEC's external policy could be deemed either beneficial, detrimental or perhaps neutral or indifferent as regards the economic development of Lebanon. In other words, whether these relations met Lebanon's special characteristics and subsequently needs for its efforts in economic development. The present study summarises the expectations of a friendly third developing country considering itself as particularly close to the Community, and concludes that the outcome of the relationship as regards expectations, is one of disappointment.

FOOTNOTES

1 - For further details on why the EEC's international activities are referred to as external relations as opposed to foreign policy see, inter alia, Feld W., The European Community in World Affairs, (1983), p 12-14; Twitchett K., Europe and the World: The External Relations of the Common Market, (1976), p 1-35; Ginsberg R., Foreign Policy Action of the European Community: The Politics of Scale, (1989).

2- BISD 14/S, p 20 & 94; See Sanan F., *Wakia Lebnan Al`iktisadi Wa Tatwerihi*, Arabic language, "The Fact of Lebanon's Economy and its Development" (1979), p 229.

3- Annex G of GATT, 30.11.38.

4- Foriegn Ministry of Lebanon, No 2050/5, 13.03.1963.

5- For details concerning Lebanon's political history see, inter alia, an extensive work, Meo L., Lebanon Improbable Nation, (1965), Hudson. M, The Precarious Republic, (1968); Hitti P., History of Lebanon from the Earlieast Time to the Present, (1957); Hourani A., The emergence of Modern Middle East, (1981); Vocke H., The Lebanese War, (1978), Salibi K., The Modern History of Lebanon, (1977); Browne W., "The Political History of Lebanon (1920-1950)", in Lebanon Struggle for Independence, (1980).

6- Zamir M., The Formation of Modern Lebanon, (1985), p 38-9; Meo L., op cit, p 25-8.

7- Owen R., The Political Economy of Grand Liban, (1920-1970), in Essays On The Crises in Lebanon, (1976), P 23-24.

8- Badre.A.Y,"The National Income of Lebanon", Middle East Economic Paper, 1956, p 13.

9- Owen R., note 7, p 26.

10- Twitchett K., note 1, p 13.

11- Weil, found in Everst H., The European Community in the World, (1972), p 131.

12- Ginsberg R., note 1, p 61.

13- Edward Heath, the Times, 3 Jan 1973; adopted from Twitchett K., note 1,

p 12.

14- Avi Shlaim, "The Community and the Mediterranean Basin", in Twitchett K. (ed), note 1, p 95.

15- Everts H., note 11, p 131.

16- Background Information, No 15, 15 June 1972, p 15.

17- See Sorkhab, A, Legal Aspects of EEC's External Relations: with particular Reference to Bilateral Trade and Economic Cooperation Agreements with the Developing countries, Ph.D thesis submitted to the University of Exeter, Faculty of Law, (1985).

18- For compatibility between the EEC external relations and GATT rules see, Spandidos-Krempenios P., The External Trade Policy of the European Economic Community in the Context of the GATT Framework, Ph.D thesis submitted to the University of Glasgow, Faculty of Law, (1984).

19- The Lebanese Ambassador to Brussels made special attempt to arrange such interviews however, unsuccesfully, nonetheless, I owe him special gratitude.

20- Mani S., Associative Diplomacy: A Study of the European Approach Towards the Arab World. Ph.D thesis submitted to the University of Southern California, U.S.A., (1981)

CHAPTER ONE

TRADE RELATIONS BETWEEN LEBANON AND THE SIX ORIGINAL MEMBERS PRIOR TO THE INCEPTION OF THE EEC (1958) UNTIL 1965.[1]

I-INTRODUCTION

The importance of international trade and its sophistication drives states as participating parties to establish legal frameworks for their mutual trade relations. Lebanon's most important trade partners are the Arab states particularly the Gulf countries, followed by West European countries. The Arab countries represent the markets which absorb most of Lebanese exports, particularly agricultural products, while European countries are its major suppliers. Arab markets absorbed 65 per cent of Lebanon's total exports compared with 13 per cent as regards the six original member states of the EEC in 1965. The corresponding figures in 1965 for imports from the original member states of the EEC accounted for about 45 per cent of its total imports.

International trade rules which regulate trade between customs territories are embodied in the General Agreement on Tariffs and Trade (GATT). Lebanon, is not a contracting party to it: it joined GATT in 1949, and withdrew in 1951. Consequently, Lebanese foreign trade relations have not been governed by GATT rules. Lebanese foreign trade policy operated through a network of bilateral instruments with most of its trade partners, that is in the form of (several) bilateral trade agreements with trade partners. These trade agreements became consequently the only source of knowledge of the Lebanese foreign trade legal system. The trade agreements in question include those concluded with some of the original member states of the EEC.

The present Chapter is devoted to the analysis of the legal aspects of

trade agreements between Lebanon and the six original member states of the EEC prior to the inception of the latter in 1958. Firstly, the importance of trade with them will be demonstrated. Such an examination (of trade relations between the EEC and Lebanon) will make it possible to trace the effect of the establishment of the EEC on the flow of trade between Lebanon and its European trade partners. This will be followed by a survey of the implications of trade relations on the legal framework underlying them.

II THE IMPORTANCE OF TRADE RELATIONS BETWEEN LEBANON AND THE SIX ORIGINAL MEMBERS OF THE EEC BEFORE ITS INCEPTION.

Although the main purpose of this Chapter is to present in the first place the basic legal structure underlying trade relations between the six original member states of the EEC and Lebanon without aiming to give a complete background to the history of Lebanon's external trade, it is still useful to describe briefly the political and economic structure of Lebanon. This is justified by the fact that political and economic interests constitute the background which influence and shape the legal issues associated with trade relations and trade agreements concluded between states. Moreover, the legal aspects of Lebanon's external trade system cannot be examined without reference to the political environment and economic issues in Lebanon. A legal study on Lebanon's foreign trade cannot exclude reference to historical, political, and economic aspects from an analysis. Political and economic data can provide support to conclusions in a legal analysis.

Trade relations between Lebanon and western European countries can be easily traced to a time prior to the independence of Lebanon in 1943. Lebanon was then a mandated territory with France as the mandate power playing the major role in the establishment of an economic infrastructure

in Lebanon. Particular characteristics of the then emerging Lebanese economic pattern is illustrated by the figures below. These figures show the contribution of the various sectors to national income in 1950: agriculture 20%; industry 13.5%; and trade 28.9%.[2] Between 1950 and 1957 the value of Lebanese commercial activities increased by 56.3% and in 1957 contributed nearly a third of the Lebanese national product.

The free economic market system, free transfer of currencies, and the existence of a banking system, unique in the Middle East, were advantages which enabled Lebanon to be (in economic terms) the most active country in the Middle East. Consequently, external trade is a most important sector in the Lebanese economy. In 1971, Lebanon's imports amounted to 51% of its gross national income and 31% of its gross domestic product. In addition, external trade in Lebanon promoted the development of other activities in the country, such as navigation, transport, and triangular trade.

The examination of trade relations between Lebanon and the six original member states of the EEC 1953-1958, that is, before the founding of the EEC, supplies a basis for an analysis of the impact of the establishment of the EEC on trade relations between Lebanon and west European states. While the European Coal and Steel Community was established earlier, in 1957, Lebanon did not formalise its links with the ECSC until 1977, that is within the EEC global Mediterranean approach (fifteen years after Lebanon began negotiations for a trade agreement with the EEC).

A-IMPORTS

Imports to Lebanon in general doubled between 1953 and 1957. Lebanese imports from the six original members, collectively, doubled in the same proportion as regards their value.[3] However, the substantial increase in these imports in relation to their percentage of the total Lebanese imports increased slightly, amounting to 23 per cent in 1953 and

25 per cent in 1957 of total Lebanese imports. A question arises as to the importance of these imports from the original six members of the EEC. It may be raised in the light of the table below.

Fig -1.1-

Flow of imports from the six original members to Lebanon.

Value in mL£ (C.I.F)

	1953	1954	1955	1956	1957
BELGIUM[1]	8.02	9.74	14.65	20.07	18.01
FRANCE	32.75	38.91	52.25	54.42	52.32
GERMANY	13.67	23.93	34.01	39.71	43.97
ITALY	11.04	16.67	19.84	24.1	34.38
NETHER LANDS	18.67	17.78	8.81	9.83	10.66
LEB T.I[2]	361.68	484.4	527.32	561.19	626.57
T.I S.O [3]	84.24	107.03	129.56	148.13	159.34

Source:U.N, Yearbook of International Trade statistics,1957

(1): Throughout the Thesis, Belgium and Luxemburg figures are calculated together.

(2) :Lebanese total imports.

(3):Lebanese total imports from the six original member states of the EEC.

During the years 1953-1957, Lebanon had trade relations with most of the EEC founder states, but France claimed the lion's share of Lebanese total imports; she was the biggest single exporting country to Lebanon. Imports from France counted for 68 per cent of the European share and 25 per cent of total Lebanese imports in 1950,[4] totalling L£ 80 m. The share

of the other EEC founder states ranged between 5 per cent and 10 per cent at most, for the same year 1950, of Lebanese imports. However, imports from France fell in 1953 and later in 1957 regained their previous level with the same value of imports in 1957. However, while Lebanese imports from France trebled between 1950 and 1957, the French share in the Lebanese market imports fell to 8 per cent of total Lebanese imports. Nonetheless, as regards the importance of French exports to Lebanon with reference to France's European competitors, they were higher than exports to Lebanon from the other six original members. French exports represented in value 33 per cent of the European share in 1957 of the Lebanese market.

The share of French supplies in the Lebanese import market was in competition with other European suppliers, particularly Germany and Italy. Exports from these countries to Lebanon increased in the years after 1953 and their value trebled by 1957. This share in the Lebanese markets developed from 3.7 and 3 per cent in 1953 to 7 and 5.4 per cent in 1957 for Germany and Italy respectively. Their share, as far as imports from the six original members is concerned, doubled for the same period of time. They amounted to 16 and 13 per cent in 1953, increasing to 27.6 and 21.5 for Germany and Italy in 1957 respectively.

The corresponding figures as regards the Benelux countries does not show an identical progress. Imports from Belgium and Luxembourg together contributed only 2.8 per cent of total imports in 1953. They slightly increased to less than 3 per cent in 1957, though the value of these imports doubled for the same period of time. Lebanon had relatively strong trade relations at that time with the Netherlands, which supplied the Lebanese market with 5 per cent of its imports in 1953. As such, the Netherlands was more important than the other original member state of the EEC save France. However, following the adoption of the boycott rules on Israeli goods in 1955,[5] and owing to close trade relations between The Netherlands and Israel, Dutch products became subject to the rules of

boycott of Arab countries, and Lebanese imports of Dutch products decreased. In 1957 they were worth only 1.5 per cent of total Lebanese imports or 6 per cent of the European share in the Lebanese market.

Thus, Lebanese imports from the six original members prior to the inception of the EEC show that France was the major supplier to Lebanon with considerable competition from Germany and Italy. Imports from the Benelux countries remained marginal in comparison with other European countries.

B-EXPORTS

Lebanese exports in general developed, over the years, in proportion to its imports by doubling between 1953 and 1957. The share of the six original members of the EEC in Lebanese exports represented 17 per cent of the total Lebanese exports in 1953. These exports fluctuated over the years and eventually decreased, by 1957 standards, when they amounted to about 14 per cent of total Lebanese exports. This is well demonstrated in the table below.

Fig-1.2 -

Lebanese exports to the six original Members of the EEC

Value in mL£ (F.O.B)

	1953	1954	1955	1956	1957
BELGIUM	1.86	0.57	1.86	4.92	0.93
FRANCE	9.79	4.45	5.73	11.08	7.5
GERMANY	0.39	2.34	2.31	3.78	5.31
ITALY	2.63	2.87	3.17	.6.46	7.88
NTHRLND	0.67	1.35	1.07	0.34	0.64
T Leb.Expt	87.71	87.71	120.53	145.8	152.32
T Expts to the Six Orig	15.34	11.58	14.14	26	22.26

Source : U.N, Yearbook of International Trade Statistics, 1957.

The above table indicates that in the founder members of the EEC, the French market was the most important for Lebanese exports. It absorbed 11 per cent of total Lebanese exports to the EEC area. However, while this market remained more important than other members' markets until 1957, Lebanese exports to France declined drastically in value and in substance, falling from 11 per cent in 1953 to 4 per cent of total Lebanese exports in 1957. As to their share of the six original members of the EEC, they were worth around 63 per cent in 1953 and likewise declined to 33 per cent in 1957. In contrast, Lebanese exports to Germany and Italy, insignificant in comparison with other European countries, expanded rapidly by 1957 as regards their value. In fact, they increased substantially as to their percentage of European imports from Lebanon and of total Lebanese exports as well. The German market absorbed 3 per cent of total Lebanese or 23 per cent of total members' imports from Lebanon , while

the share of Italy was 5 per cent of total Lebanese exports worth 35 per cent of the original members' imports from Lebanon in 1957.

As regards Lebanese exports to the Benelux countries, they decreased in both value and substance. They were insignificant, amounting to less than 3 per cent of total Lebanese exports in 1953. To the disadvantage of Lebanon, they declined to only one per cent of total Lebanese exports in 1957. As to their share in comparison with the other six original members, they decreased from 17 per cent in 1953 to 7 per cent in 1957.

Therefore, similar to Lebanese imports from the six original members of the EEC, Lebanese exports to these countries were concentrated between Lebanon, on the one hand, and France , Germany and Italy on the other. Moreover, the French share of the Lebanese exports market declined as Italy and Germany improved their position. This indicates that on the eve of the inception of the EEC, Lebanon was in the process of a diversification of its trade flows in relation to the six original members of the EEC.

C-BALANCE OF TRADE

Trade relations between Lebanon and the six original members of the EEC suffered from significant deficits which doubled between 1953 and 1957. They contributed to the total trade deficit of Lebanon by an average of between 25 per cent and 29 per cent in 1953 and 1957 respectively. The trade deficit resulted mainly from the poor performance of Lebanese exports to the markets of the six original members of the EEC, covering only 14 per cent of its imports from these countries. However, a question pertains as to whether such a trade deficit between Lebanon and the EEC countries would necessarily mean that it runs contrary to Lebanon's interests. In fact, Lebanon's imports can be classified, according to the Lebanese Custom and Excise classification, into three categories: imports for internal consumption; imports for direct exports or as it is known triangular trade, and imports for manufacturing purposes directed towards

exports.[6] Moreover, at that time, Lebanon concluded different technical and cooperation agreements with some of the original member states of the EEC. This implies purchasing of capital product for development purposes. Therefore, three categories of imports out of four are for exporting purposes. Against these conditions, and since economic analysis is beyond the scope of this study, one can hardly judge the effect of the trade deficit on Lebanon.

It is generally accepted by economists that trade deficit could be detrimental if it affects the balance of payments in the long run. In other words, since Lebanon works as a gateway for Europe, it is likely that its trade deficit with the original member states may be overcome by its trade surplus with the Arab world. However, during the given period of time, Lebanon's trade deficit with the original member states of the EEC contributed to 30 per cent of total Lebanon's trade deficit. Hence, it is logical to assume that Lebanon's trade deficit with the EEC countries is largely influenced by the purchasing of capital products necessary for launching the process of economic development in Lebanon. To underpin such an assumption, the improvement in the economic development should be reflected in Lebanon's trade flow in the following years, particularly as regards Lebanon's exports to its main Arab markets and to the European markets. However, a persistent trade deficit is certainly inimical to Lebanon's economic development and would have a direct effect on Lebanon 's balance of payments. Consequently it would be detrimental to the external purchasing power of Lebanon, with subsequent effects on the economic and political relations with the major exporting countries to Lebanon, the original member states of the EEC.

III-LEGAL ASPECTS OF TRADE RELATIONS BETWEEN LEBANON AND THE SIX ORIGINAL MEMBERS PRIOR TO THE INCEPTION OF THE EEC.

The flow of trade between Lebanon and the six original members of the EEC shows that Lebanon has had relatively stronger relations with the former colonial country France than with Germany and Italy. Trade relations with Benelux countries remained marginal in comparison with France, Germany and Italy. Consequently, the importance of such patterns of trade, seen from Lebanon's perspective, led her to make efforts to promote trade relations through normative means with her main European trading partners. It is not therefore surprising to find that Lebanon, while concluding more than fifty different bilateral agreements with the six original members of the EEC, concluded seven agreements on trade, economic and technical cooperation, exclusively with France, Italy and Germany.[7]

The codification or legal regulation of trade relations between Lebanon and France led to the conclusion of the Agricultural and Technical Cooperation Agreement in 1951,[8] Exchange of Trade and Economic Cooperation Agreement in 1955[9] and the Economic Cooperation Agreement in 1967.[10]

A number of agreements were concluded with Italy before the inception of the EEC. Amongst these agreements, relevant to trade, economic and technical cooperation, are the Friendship, Trade, and Navigation Treaty, of 1949,[11] and the Exchange of Trade Agreement concluded in 1950,[12] the Trade Agreement in 1955,[13] and another Agreement on Economic and Technical Cooperation also concluded in 1955.[14]

In addition, Lebanon had concluded six agreements with the Federal Republic of Germany. These included, the Payments Agreement (1951), Most Favoured Nation Agreement (1951), an Exchange of Trade

Agreement (1951), replaced by another Exchange of Trade Agreement (1954), and an Economic Cooperation Agreement in the same year, in addition to exchanges of letters.[15]

Lebanon had thus concluded trade, economic and technical cooperation agreements in addition to some financial arrangements, with France, Germany and Italy, but it made no effort to establish treaty relationships with the Benelux countries.

The analysis of the substantive rights and duties arising from the afore mentioned agreements are analysed below under the following headings.

1 - Aims and objectives;

2 - MFN treatment;

3 - Economic and technical cooperation;

4 - Financial cooperation;

5 - Common institutions.

A-AIMS AND OBJECTIVES

Each of the agreements which Lebanon concluded with France, Italy and Germany opened with a preamble setting out expressly the resolutions and the political intentions of the contracting parties.

The main objectives, according to the preambles, concerned two points, trade and economic development. The trade agreements aimed at enhancing and developing trade relations on a reciprocal basis. The economic cooperation agreements aimed at strengthening and developing the economic and technical cooperation between the contracting parties with a view to contributing to the process of Lebanon's economic development. However, the agreements used different means to reach these objectives.

The preambles of the trade agreements between France and Lebanon referred to the intention of the contracting parties to intensify and develop mutual trade. The trade agreements were concluded at the same time as other economic and technical cooperation agreements encompassing agricultural and industrial fields. The Agricultural Technical Cooperation Agreement aimed at enhancing and advancing the agricultural sector of the Lebanese economy. The industrial field received similar attention in the Economic Cooperation Agreement intended to provide Lebanon with technical assistance with a view to increasing its productivity.

The respective agreements of Lebanon with Italy and Germany similarly covered trade, economic and technical cooperation with respect to agriculture and industry. The objectives of these agreements resemble, in broader terms, the aims and objectives of the agreements with France, for strengthening trade relations between the contracting parties. As regards economic cooperation, the preambles of the agreements with Germany and Italy provided for technical and economic assistance to be offered by the developed contracting party to Lebanon to contribute to the process of the economic development of Lebanon.

The technical cooperation agreements with Germany and Italy state expressly a commitment to contribute to the economic development of Lebanon. This differs from the preamble of the agreements with France which expressed, in broader terms, only an intention to contribute to increasing the level of productivity of Lebanon. This difference is clearly manifested in the detailed provisions of the agreements.

B-THE MOST FAVOURED NATION TREATMENT

Lebanon became a contracting party to GATT on 30 October 1947, and signed in addition, the provisional protocol and all other relevant protocols related to GATT, until its withdrawal in 1951. Lebanon did not provide any explanation for its withdrawal.

The principal provision of GATT is the MFN clause which is based on reciprocity, equality and universality between all the contracting parties prior to recent developments in the area of international development law as part of the GATT system.[16] It seems that Lebanon found no interest in opening its markets to all the contracting parties to GATT on an MFN basis. Its participation in GATT probably became a burden rather than an advantage. Consequently, Lebanon ceased to apply the MFN clause in its relations with its former GATT partners. It negotiated instead trade agreements with different countries with whom it had a significant flow of trade.

The MFN clause in GATT covers in broad terms all trade activities. It relates not only to customs duties but also to any advantages, favours and privileges accorded to imports and exports from one contracting party to another. Once the most favoured nation treatment is accorded to a GATT contracting party, it has to be extended unconditionally and immediately as to like products in question to all other contracting parties. The application of this provision is subject, however, to formal derogations embodied in the GATT text.

The rights and duties arising from the application of the MFN clause were adopted by Lebanon in its contractual trade relationships with all its trade partners, particularly in its trade agreements with France, Germany and Italy. However, after Lebanon withdrew from GATT, it had to spell out in detail the rights and duties related to the MFN clause covering the areas intended for most favoured treatment.

At the early stage of trade cooperation between Lebanon and France, the application of the MFN treatment was limited to specific areas of trade. The contracting parties granted each other MFN treatment concerning products originating in their territories and imported into the territory of the other party. The MFN treatment covered all fees levied on imports and exports; regulations relating to taxes, formalities, and licenses concerning imports, exports and transit trade.

Although the MFN clause was confined to these areas, some advantages or privileges were accorded, or were to be granted under certain circumstances, for exemption from the application of the MFN treatment. The MFN clause did not apply to privileges which France had granted to territories within the "Union Française", or to any advantages offered or to be offered by Lebanon to the member states of the Arab League, particularly to Syria, Iraq, Egypt, Saudi Arabia, Jordan, Yemen and Libya. Moreover, the most favoured nation treatment did not apply to countries adjacent to either party. The same applied to other privileges consequent to the establishment of a customs union or a free trade area as recognised under Article XXIV GATT. Similarly, the advantages to be enjoyed or granted through the participation of either party in any economic or trade organisation were waived from the most favoured nation treatment.

The trade agreements with Italy covered areas similar to those embodied in the agreements with France. Both parties granted each other the MFN treatment, but some traditional waivers were granted. The MFN treatment covered, in addition, customs duties, any other duties or charges having equivalent effect, the methods of applying such measures, the formalities relating to exports and imports, beside all the available facilities related to trade. Under Article 6 of the agreement between Italy and Lebanon, certain advantages were excluded from the application of the MFN treatment. Thus, the MFN treatment between Italy and Lebanon did not apply to advantages accorded to adjacent countries with a view to "facilitating frontier zone trade", or to other advantages granted to a third party with the aim of forming a customs union, or a free trade area or as required by such a customs union or a free trade area. In addition, the advantages granted by Lebanon to the member states of the Arab League, and by Italy to the member states of the ECSC, Libya, San Marino, Vatican, and Somali land were exempted from the application of the MFN clause.

Lebanon and Germany, devoted a separate agreement to MFN

treatment, the Most Favoured Nation Agreements concluded at Rome on 16 October 1951; it coincided with the withdrawal of Lebanon from GATT.[17]

According to this Agreement, both parties offered each other MFN treatment, particularly concerning customs duties, charges having similar effect, and all other levies. In addition, any other procedures which might facilitate the mutual trade relations between both countries, particularly the entry of shipping to the ports of both parties, and granting the use of all available facilities were subject to MFN treatment. Moreover, the most favoured nation treatment covered the authorization of importation and exportation wherever such was needed. The agreement further stated that the entry of industrial and trade professionals of both nationalities to the territories of either party, including residency and the establishment of economic and trade activities were encompassed by MFN treatment.[18] However, the regulation of the activities of such establishment and firms is governed by another separate agreement. The MFN Agreement also provided that both parties , according to their respective national regulations, were to offer natural and legal persons the same treatment as their own nationals, specifically concerning industrial property as regards imports or exports from one party to another.

As in the case of the MFN clauses agreed with Italy, the agreement between Germany and Lebanon provided for similar exceptions. The most favoured nation treatment did not apply to privileges provided to adjacent countries for facilitating trade between the neighbouring states for promoting frontier zone traffic, neither did it apply to advantages granted to other countries for the formation of a customs union, or a free trade area. It also excluded special privileges and advantages which Lebanon offered to the independent Arab states at that time such as Saudi Arabia, Syria, Iraq, Jordan, Yemen, and Egypt.

It is clear that the privileges and advantages arising from MFN treatment between Lebanon and France, Italy and Germany covered

similar areas. The agreement with Germany did not confine itself to them, as it additionally included more detailed provisions relating to persons who wished to undertake trade and economic activities. Identical exceptions provided in the agreements were otherwise repeated always. The exceptions to the MFN seem to constitute a policy by Lebanon as it incorporated identical exceptions in every trade agreement concluded with other countries.

C-TRADE COOPERATION

The trade agreements between Lebanon and the three original members of the EEC were not confined to MFN treatment, even if such treatment was the major instrument for developing trade relations. The agreements embraced several articles for liberalisation of trade, laying down specific arrangements (where relevant) to quantitative restrictions or quotas, in addition to other arrangements relating to imports and exports between the contracting parties. These arrangements were intended to underpin the MFN clause in achieving the objectives of the trade agreements.

The trade agreements with France provided that the import of French products would be subject to Lebanese national legislation in force and applicable towards all third countries, although certain Arab countries were offered greater privileges . In addition, Lebanon had to facilitate and France had to authorise the flow of products originating in Lebanon and specified in a list annexed to the Trade Agreement. The list systematically outlined the quotas which were allocated to Lebanon, as well as an import calendar applicable to Lebanese exports, subject to modification by a simple exchange of letters by both governments during the implementation of the agreement.

In the agreements of 1949 between Lebanon and Italy, the contracting parties were committed not to disturb their reciprocal trade by enacting

economic and technical cooperation was conditional, similar to the arrangement with France, in the sense that specialized German firms had to take part, totally or partially, in the execution of the important construction projects provided those firms enjoyed the widest advantages envisaged under the Lebanese legal system.

A financial arrangement was provided as well to underpin economic and technical cooperation. For that purpose, payment for equipment would be met according to certain specified procedures, whereas all other payments would be subject to the payment agreement concluded in 1954. However, where the Lebanese government was engaged in the projects, the payment was to be subject to special protocols.

E-COMMON INSTITUTIONS

The contractual relationship between Lebanon and France, Germany and Italy provided for the setting up of common institutions to supervise and help in the implementation of the agreements. These bodies, with different names in each agreement, were given specified tasks.

In the Agreements with France, the parties established an "Economic Cooperation Committee" with a view to examining the best possibilities for exploiting most usefully Lebanese economic resources. The Committee would be composed of representatives of the two governments, assisted by experts and appointed by the authorities of the respective countries.

In executing its task, the Committee was to enjoy the necessary collaboration of all the respective ministerial departments of both parties. Moreover, as regards the tasks of the Committee, it had to examine all projects which emerged consequent to the implementation of the Agreement. Furthermore, it was to encourage and promote the exchange of technical information and ideas between the contracting parties.

The contracting parties established another independent Mixed Commission composed, similar to the Committee, of representatives of both governments. However, the Mixed Commission was assigned the task of examining and proposing the means of developing the relations between both countries. It had the power to recommend possible solutions to problems which might emerge during the implementation of the Agreement. Lastly, the Commission would be convened once a year upon a request of either party.

The Trade Agreement between Italy and Lebanon established a similar joint body, the Mixed Commission, with the task of developing economic relations between both parties and dealing with the problems that might emerge while the Agreement was being implemented.

The Economic Agreement with Italy established another Mixed Commission composed of representatives of both parties, assisted by Lebanese and Italian experts. Its task was to deliver recommendations concerning projects, investments required, and payment arrangements. The Commission was to promote the exchange of ideas and technical information. It could organise training periods for technical personnel from both countries.

The Mixed Commission experienced a widening in its scope of tasks. These tasks ranged from overcoming the difficulties which might emerge during the application of the Agreement to examining in detail the economic relations between both countries, and providing essential proposals to help enhance and develop relations. In addition, the Mixed Commission had to work out the statistical data for the rate of exchange and the balance of payments of both parties.

The Agreement with Germany chose different means for the joint institutions entrusted with more limited tasks. The contracting parties to the Agreement established a "Bureau de Recherches et d'Orientation Economiques" or Bureau of research and economic orientation. It had the task of providing the necessary orientation planning and aid to German

firms wishing to contribute to the development of the Lebanese economy.

IV-CONCLUSIONS

Trade relations between Lebanon and the six original members of the EEC predate Lebanese independence. These relations involved a continuous trade deficit for Lebanon irrespective of whether Lebanon's trade aspects are taken collectively or individually. However, the importance of the trade flow varied relatively between one country and another. Lebanon had more significant trade relations with France, Italy and Germany than with the other original members, leading to the adoption of a trade relationship, based on agreements with France Germany and Italy. There are two likely reasons for Lebanon's trade deficit with the EEC countries. Either Lebanon's imports from the original member states of the EEC were for export purposes particularly to its principal markets (Arab markets) or the deficit resulted from purchasing capital products necessary for its endeavour towards a process of economic development. In the following Chapters, trade flows will continue to be analysed in order to reveal the probability of these assumptions.

The analysis of the legal aspects of the contractual trade relationship between Lebanon and France, Italy and Germany demonstrates that the promotion and the development of trade between the parties formed the principal aim of their agreements. However, the contracting parties made no reference to the differences in their level of economic development. To underpin the achievement of the objectives, the contracting parties extended their cooperation to economic and technical fields designed to bring about conditions to help Lebanon in its efforts to develop economically.

To achieve their aims and objectives, the contracting parties granted each other MFN treatment, with respect to areas relating to trade activities.

This was effected in similar, but not identical manner, in every agreement between Lebanon and each of the three original members. The agreement with Germany extended such treatment to cover treatment for personnel involved in trade. In addition, the contracting parties undertook further commitments for liberalising trade, particularly the reduction of non-tariff barriers impeding trade besides necessary measures to facilitate mutual trade relations. However, certain measures were exempted from the application of both MFN treatment and liberalisation clauses. In addition to the traditional exceptions embodied in GATT, and in conformity with its foreign trade policy, Lebanon treated certain advantages accorded to the Arab countries as excluded from the application of MFN treatment. The liberalisation clauses were, however, more detailed in the case of the agreement with Italy, whereas it was incorporated in more general and broader terms in the Agreements with France and Germany. The Agreement with Italy alone included exceptions to liberalising trade with Lebanon, particularly as regards non-tariff barriers.

Lebanon and France, Italy and Germany did not restrict their cooperation to the trade field. The interdependence between strengthening trade on the one hand, and economic and technical cooperation on the other, was recognised as a condition to achieve the envisaged objectives, particularly in the case of relations between developed and less developed countries. Economic and technical cooperation was based on respect for the mutual interests of the contracting parties. The interests of the developed contracting parties was manifested in the incorporation of certain provisions which linked such cooperation to the execution of projects by firms of the relevant developed cooperating contracting party. This approach was applied to all agreements with the three original members, particularly to the agreements between Lebanon and France and Germany. Economic and technical cooperation was backed by some modest financial arrangements aimed at facilitating trade, in addition to the acquisition of technical

equipment necessary for the execution of the agreed projects.

The major apparatus of cooperation and fostering cooperation in areas of interest to the parties was the establishment of common institutions. These, though given different names, had similar tasks to perform. The Economic Cooperation Committee, composed of representatives of Lebanon and France, had to make the best use of Lebanese resources. The Mixed Commission was responsible for proposing the means of developing relations between France and Lebanon. Two Mixed Commissions were established between Lebanon and Italy, with the task of delivering recommendations concerning projects to be executed in Lebanon and of helping the implementation of the Agreement. The Agreement with Germany established a Bureau de Recherches et d'Orientation Economiques with the task of providing the necessary orientation and aid to German firms wishing to contribute to developing the Lebanese economy.

The contractual relationship between Lebanon and the original members of the EEC, at the time of the conclusion of the agreements, could be divided into two categories: trade and technical cooperation.

As regards trade, the relationship governing the contracting parties may be described as one of normal trade relations between two equal parties, but they were not on an equal footing as regards their balance of trade or their level of economic development. This indicates that, although Lebanon has characteristics which enable her to claim that she possesses strong historical and political links with some of the original member states of the EEC, relations between them were not codified in their trade agreements into binding undertakings, let alone preferential treatment. Nonetheless, a strong and friendly relationship was translated into technical cooperation commitments undertaken by the relevant states with a view to contributing to Lebanon's endeavour to bring about the necessary conditions for her economic development. Notwithstanding, the interest of the original member states were taken into account in

implementing the relevant agreement.

This contractual relationship governed the attitude of the contracting parties from the adoption of the Agreements until the inception of the European Economic Community. However, following the establishment of the EEC, the member states had, during the transitional period, to "coordinate their trade relations with third countries". Therefore, the agreement between Lebanon and the relevant original member states had either to expire or be renewed. Since the member states are no longer competent in this field, Lebanon had to formulate its contractual relationship with the member states via the EEC. A Trade and Technical Cooperation Agreement, was thus concluded between the EEC and its member states on the one hand and Lebanon on the other.

FOOTNOTES

1- In 1965, the first Trade and Technical CooperationAgreement betweeen Lebanon and the EEC was signed. Hence, the indication in the title to the present Chapter to 1965.

2- Badre.A.Y,"The National Income of Lebanon", Middle East Economic Paper, 1956, p 13.

3- The expression value stands for the prices of the imports or exports as they stand in the year of transaction, whereas the word substance refers to the percentage of these imorts or exports as to either the total Lebanese trade or its trade with the EEC and members states.

4- The figures of 1950 domenstrate that trade relations were strong then between Lebanon and France. Following the independence of Lebanon in 1946, the importance of these trade transactions between Lebanon and France gradually decreased.

5- For further details concerning this issue see Chapter Four, non-discrimination policy, p 200.

6- Sanan F., *Wakia Lebnan Al`iktisadi Wa Tatwerihi*, Arabic language, "The Fact of Lebanon's Economy and its Development", (1979), p 229.

7- Rohen P., "World Treaty Index", pt iv, 2nd ed., (1984), p 366 & p 367.

8- Abou Fadel. H, "Ses Traites Et Ses Conventions", Beirut, (1966), p 725.

9- Ibid, p 455.

10-This Agreement has been quoted at this point for the sake of completeness; Traites Et Conventions Internationaux, (1966-1972), p 216.

11-Boustany E., Accords Et Conventions Bilateraux Et Multilateraux, (1955), p 324.

12-Ibid, p 339

13-UNTS, 1957, p 115.

14-UNTS, 1957, p 149.

15-Abou Fadel,supra note 8, p 209.

16-The introduction of pt IV in 1965, the incorporation of the Generalised System of preferences in 1970, The Agreed Conclusions, and the Enabling clause in 1979.

17-Lebanon withdrew from GATT in 1951, see Jcakson J., World Trade and the Law of GATT, (1969), p 898..

18-Art 1 of the MFN Agreement.

19-Art 18 of the Agreement of 1949.

20-List A of the Agreement of 1955.

21-Art 2 of the Exchange of Trade Agreement of 1950.

22-The Annexed List of the Exchange of Trade Agreement of 1955.

23-Supra note 9.

24-On other hand, the project for the account of the Lebanese government was subject of separate protocols Art 5 of the Agreement on Economic and Technical Cooperation of 1955.

CHAPTER TWO

THE PHASE OF NON-PREFERENTIAL TRADE RELATIONS (1965-1972)

I-INTRODUCTION

Prior to the inception of the European Economic Community (EEC),[1] Lebanon enjoyed a treaty relationship with three original members of the Community regulating, inter alia, trade relations and the commitments arising from the economic and technical cooperation of the relevant contracting parties. The member states of the EEC are, as a group, the second major important trade partner of Lebanon. Their trade relations contributed to a quarter of the needs and absorbed one sixth of the total exports of Lebanon. Their relations as regards economic and technical cooperation aimed at contributing to efforts made by Lebanon to promote its economic development.

Following the establishment of the EEC a new era of trade relations between Lebanon and the member states of the EEC emerged. Lebanon's interest was manifested in the pledge given by Lebanon to ensure the development of its exports and to increase the level of technical and economic cooperation with the member states of the EEC. However, the development of Lebanese exports to the EEC could not be achieved unless Lebanon was to increase its productive capacity and to dismantle barriers to its exports. This raised the need for strengthening its existing trade and technical cooperation with the EEC member states.

Subsequent to the inception of the EEC and, particularly, with the development of its common commercial policy, the member states lost their privileges in having bilateral trade agreements with third parties. The EEC became the exclusive organ qualified to handle trade relations on behalf of its member states.

The extent to which the EEC is legally qualified to undertake such a task is of great importance and needs some recapitulation. This importance is clearly manifested already in the fact that Lebanon recognised the new entity and entered into a trade agreement with it.

II-LEGAL PERSONALITY AND THE TREATY MAKING POWER OF THE EUROPEAN ECONOMIC COMMUNITY

A-LEGAL PERSONALITY

In general, a legal person is "an entity, subject of law capable of entering into binding relations, possessing rights and undertaking duties".[2] At the international level, the International Court of Justice, in its advisory opinion on the Reparations Case U.N v. Israel,[3] defined the U.N - and by implication laid down a cornerstone for the definition of the international legal personality of international organisations- as a, "subject of international law and capable of possessing international rights and duties and having the capacity to maintain its rights by bringing international claims".[4]

There has been considerable debate in the past as to whether or not international organisations could possess international legal personality. However, it is now universally accepted that international organisations are capable of possessing international legal personality albeit with limited functions.[5]

Indeed, different theories[6] have been devoted to the international legal personality of international organisations. They all affirm that, if an international organisation is entrusted with certain functions at the international level, independently from its members states, it should possess legal personality as a necessary prerequisite for its actions. This view is based on ICJ's advisory opinion in the Reparations Case which stipulated that the U.N "could not carry out the intentions of its founders

if it was devoid of international personality".[7]

The practice of international organisations shows that more than a quarter of treaties are concluded by international organisations with sovereign states or other international organisations.[8] This involvement has never been challenged by states either as member states of an international organisation or as treaty partners.[9]

These developments have accelerated the demise of the traditional theory which basically proceeded from the assumption that an international organisation cannot possess legal personality since such a qualification belongs only to states.[10] Following recent developments in Eastern Europe, after perestroika, the traditional view is no longer held even by the USSR. In fact, its basic pillar no longer exists, as the theory's existence was heavily politically motivated in the era of the cold war. Consequently, socialist legal writers now show their receptivity towards the legal personality of international organisations, particularly towards western legal theories[11] on the international legal personality of international organisations.

Therefore, following the unchallenged practice of international organisations, in view of the principles of customary rules of international law, accompanied with opinio juris, one can assert that the international personality of international organisations has become universally recognised as part of, and governed by, a corpus of international law.[12]

The EEC, therefore, as an international organisation,[13] possesses international personality by virtue of the norms of international law. In fact, this legal personality of the EEC is recognised in the Treaty of Rome, where Art 210 EEC confirms that "the Community shall have legal personality". This article, strictly speaking, does not confer the legal personality upon the EEC; it only provides a conspicuous proof of the intention of the framers of the EEC Treaty to recognise the Community's legal personality.

B-TREATY MAKING POWER OF THE EEC

In 1957, the six original member states founded the European Economic Community (hereinafter referred to as EEC). In the Treaty of Rome the founders committed themselves through the organisation, amongst other things, to promote "an ever closer union" among the peoples of Europe and to promote the "harmonious development of economic activities".[14]

By creating the EEC for an unlimited duration, and in order to fulfil its objectives, the six original member states endowed the EEC with the power, albeit within limited fields, to act independently at the international level. For the purpose of achieving its entrusted objectives, the EEC exercises its power in accordance with the provisions of the Treaty of Rome. As such, the EEC is distinct from its member states, and accordingly, third countries can no longer, after the transitional period, have direct relations in the form of concluding treaties with the member states within the areas of the EEC's competences.

It has been shown above that the legal personality of an international organisation is attributed to it by virtue of international law. However, the pertinent question, as far as the EEC as an organisation is concerned, is whether or not it possesses an absolute or limited competence.

Unlike states, whose international personality carries inherent treaty making competences,[15] the EEC as an international organisation does not. The treaty making competence of an international organisation is an attribute of both its constitutional documents and additional recognised practice.

In the field of external relations, the Treaty of Rome confers upon the EEC an express power to undertake obligations by concluding international agreements with third parties in four main areas:

1- Commercial and trade agreements;

2- Association with other states;

3- Cooperation with international organisations;

4- Admission of third European states to membership in the Community.[16]

Commercial and trade agreements, which concern amongst other sources the common commercial policy,[17] irrespective of whether they are bilateral or multilateral agreements encompass tariff and trade agreements, export policy measures to protect international trade (safeguard measures), and uniformity in measures of liberalization of trade.[18]

The EEC is empowered to conclude treaties or agreements with third parties where they are necessary to fulfil the common commercial policy by virtue of Art 111 and 113 EEC. The former article deals with the transitional period, whereas the latter has been cited frequently, especially whenever a trade or tariff agreement is being concluded by the Council, as a legal basis for such an agreement.

Art 113 EEC para 2 sets out the procedures for negotiating an envisaged agreement with a third state in addition to the measures which ought to be taken in order to conclude the agreement . Moreover, within the jurisprudence of the European Court of Justice, the concept of the common commercial policy has been interpreted in a wide sense.[19] Article 113 EEC has to be considered in the light of the overall aims of the common commercial policy. This implies that the EEC is competent in all issues related to the common commercial policy.[20]

Another area where the EEC is given an express authority to conclude agreements with third states is association agreements. Article 238 EEC expressly authorizes the EEC to conclude association agreements with third parties. It empowers the EEC to "conclude with third states, a union of states or an international organisation agreements establishing an association involving reciprocal rights and obligations".[21] Association agreements play an important role in the EEC's international relations. They have in the past been considered to be a preliminary step in the

process that leads to accession to the EEC. As such, the association agreement with Greece, Portugal and Spain led to these countries accession to the EEC. The association agreement with Turkey, which was concluded nearly thirty years ago, has been deemed by the EEC as a substitute for membership although Turkey has applied for membership in 1987.[22]

Moreover, the Treaty, with due regard to historical relations with the "overseas countries and territories",[23] has enabled the EEC to conclude multilateral association agreements with most of the former colonies of the member states.[24]

Furthermore, the establishment and maintenance of appropriate relations with all international organisations, and particularly with the organs of the U.N and GATT, has been provided for expressly by Articles 224 -231 EEC. Amongst them, is Art 229 which stipulates that the Commission has to ensure the maintenance of all appropriate relations with the organs of the U.N, and the GATT, whereas the Community *(EEC)* establishes a form of "cooperation with the Council of Europe".[25] The power to conclude agreements governing the admission of any European state is governed expressly by Art 237 EEC.

C-THE EVOLUTION OF THE COMPETENCE OF THE EEC.

Although the Treaty of Rome has clearly established, by virtue of certain rules, the competence of the EEC, these provisions, nevertheless, are by no means exhaustive. It could be inferred from the practice of the EEC that such provisions are not considered as the only basis of competence. The ICJ stressed that the U.N must be considered to have such powers which (as competences), "though not expressly provided in its charter are conferred upon it by necessary implication as being essential to the performance of its duties".[26] Thus, an international organisation which possesses international personality by virtue of international law,

does not simultaneously hold an inherent treaty making competence. The latter is considered to be derived either from an express provision of the organisation's constitutional documents, or implicitly through its general objectives and functions entrusted to it and which are expected to be discharged.[27] The latter forms the legal basis of the organisation's recognised practice.

The European Court of Justice has played a significant role in defining the Community's legal order and clarifying the scope of the EEC's authority in external relations as a field covering the whole spectrum of objectives of the Treaty of Rome, to which should be added any other provisions or rules adopted internally by the EEC institutions. In Commission v. Council Re the European Road Transport Agreement (hereinafter ERTA)[28] the Court adduced the theory of parallelism "in foro interno in foro externo".[29] In its decision, the ECJ established a firm foothold for the process of developing the Community's legal order. In answering whether or not the member states of the Community or the Community exclusively had the power to enter into the ERTA, the Court went beyond the express provisions which grant treaty making powers to the EEC. It said "such authority arises not only from an express conferment by the Treaty..... but may equally flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions".[30]

However, this theory did not go unchallenged. Judge Pescatore affirmed the view that "any limitation of the sovereignty of states in matters of treaties cannot be implicit ... it must be expressly provided for in the constituent treaty".[31] This was consistent with the view of the EEC Council of Ministers who opposed the theory of parallelism.[32]

Despite the Court's decision in ERTA, another problem presented itself again, as to whether or not the mere existence of internal legislative power is sufficient to assume capacity to act at the international level, or should such an internal legislative power be exercised as a prerequisite for

assuming such a capacity by the EEC. By implication, this has given rise to the question as to whether or not the member states may retain any concurrent, residual, or transitional powers.

It seems, in principle, that whenever the Treaty expressly provides for an external power, the member states must refrain from any action which might "jeopardize the attainment of the objectives of the treaty".[33] Instead, member states should facilitate the achievement of the Community's task. If the member states retain such a concurrent power, the divergence of the substantive interest of the member states might lead the latter to undertake commitments at the international level which may not be consistent with their pledge towards the Community and which ultimately would jeopardize the achievements (purposes) of the EEC. Moreover, once the Community has established its common policies which require high levels of uniformity, the member states must refrain from assuming any concurrent powers "since any step taken outside the framework of the Community institutions would be incompatible with the unity of the common market and the uniform application of community law".[34] However, one might argue that collective action by the member states would not hinder the unity of the common market; neither would it jeopardize the uniformity of Community law or weaken its legal order. It is interesting to distinguish between collective action within the sphere and supervision of the EEC where the latter delegates such power, for different reasons, to the member states, in order to achieve the objectives of the Treaty, and collective action outside the sphere of the EEC institutions.[35] The Court responds to the above assumption by saying that the Community alone "is in a position to assume and carry out contractual obligations towards third countries affecting the whole sphere of application of the Community legal system".[36]

Later, the Court confirmed its position in the Local Cost Standard Case.[37] Answering the question whether the member states presumed any

concurrent power "in the field of the understanding", the Court, after examining the nature of the understanding, concluded that it fell within the ambit of the common commercial policy. Subsequently, when a common policy is established, it is intended to serve the interest of the member states, and, therefore, it would be inconsistent if the member states had concurrent powers in the same field.

In retrospect, as to the question of exclusiveness, in fact, the Court highlighted this issue when it was questioned on whether or not the EEC holds an exclusive power irrespective of whether such power is being exercised or not by the Community.

The Court dealt with the question whether or not the mere existence of an internal Community power is sufficient to prevent the member states from assuming any powers in two cases. In Kramer,[38] after asserting the Community's authority to enter into international commitments,[39] the Court considered that the member states may retain the power to regulate the unexercised area of the Community's internal power, provided that they do not impair Community rules.[40]

The second instance was the European Laying -up Fund for Inland Waterway Vessels.[41] On delivering its opinion on whether the internal power of the Community could be extended to the external field, the ECJ went further than the earlier cases. Since Arts 74 and 75 EEC lay down provisions for the establishment of a Common Transport Policy (hereinafter CTP) realising the fact that the internal measures of the CTP had not been implemented, the Court assumed that the Community exclusively, had the competence to enter into international agreements, though it authorised the member states to participate in the agreement on the ground of special circumstances.[42] It is clear that the Court gave no priority to internal or external measures which may be first taken, since the Court in this case extended the doctrine of parallelism even to cover unexercised internal power. In its opinion, the Court said that "the treaty making power of the Community flows by implication from provisions of

the Treaty creating the internal power and in so far as the participation of the Community (in the international agreement) is necessary for the attainment of one of the objectives of the Treaty".[43]

However, those developments (as regards Community law) concerning the scope of the EEC's competence, have been confronted with major difficulties at the international level concerning the accession of the EEC to international organisations, especially to those of the U.N family. Even where the EEC possesses an exclusive power to participate and act at the international level, particular arrangements had to be made, in order to maintain the presence or at least the consent of the EEC.[44]

The conclusion that the EEC possesses legal personality by virtue of international law, is recognised under Art 210 EEC. It is competent to conclude treaties with a third party in areas expressly provided by the Treaty provisions, by the act of its institutions and for other relevant measures .

The Court clarified the powers of the EEC to cover other areas not expressly provided for by the Treaty and enlarged the concept of implied powers to cover areas where no exercise of such granted powers has yet been exercised. It left no room for concurrent powers to be assumed by the member states unless the technical circumstances for such a case provided otherwise.

Regarding the capacity of the EEC to conclude trade agreements with Lebanon, it is beyond any doubt that the EEC is fully competent to conclude such agreements and Lebanon recognised such powers and established a mission at the seat of the EEC.

III-TRADE RELATIONS BETWEEN THE EEC AND LEBANON PRIOR TO THE NON-PREFERENTIAL AGREEMENT

Following the inception of the EEC, Lebanon had to reorganize its flow of trade with its European partners as a direct consequence of the

creation of a customs union. Such a customs union entails the mutual elimination of all tariff barriers among its member states and the setting up of a common external tariff system (hereinafter called CET) on goods imported from non-member countries.[45] Moreover, Lebanon, at that time, had to review its relations with the member states of the EEC since it would no longer be able, especially after the end of the transitional period, to maintain direct relations with them in the field of competences of the EEC, especially since already existing agreements with the member states would either expire or be terminated.

Consequently, Lebanese trade relations with the original member states of the EEC would be affected in two ways. Firstly, depending on the new level of the common external tariff (whether it was decreased or increased), the flow of trade, particularly exports, would either be developed or would deteriorate. Secondly, in principle, the comparative advantages of Lebanese exports, if any, to the EEC would be countered by the elimination of tariff barriers between the member states of the EEC and consequently, trade would be diverted in the interests of the member states (internal trade).[46] Subsequently, exports would be deflected between Lebanon, on the one hand, and different member states on the other. This raised the question as to to what extent Lebanon's trade relations with the member states of the EEC would be affected consequent to the establishment of the EEC leading Lebanon to engage in a trade agreement with the new entity.

A-IMPORTS

The impact of the inception of the EEC, which is more than a mere customs union, on trade relations with Lebanon did not take place instantly. Following the establishment of the EEC, trade relations had to go through a transitional period during which the CET was to be consolidated against third countries, and existing trade agreements with

third countries were to be harmonised.[47] Consequently, exports of a third party into the EEC would be subject to the new common external tariff. It was these exports which were most affected by the creation of a customs union. On the other hand, imports from the EEC into a non-member state would either be subject to counter measures or remain unchanged. It would, therefore, not be surprising if Lebanese trade relations with the original member states maintained their position, as regards imports, following the establishment of the Community. This point deserves two remarks. Firstly, general trends in Lebanese trade show that the flow of imports had over the years increased in both value and substance.[48] Lebanese imports from the EEC member states trebled in value from £L145 m to £L585 between 1958 and 1965. Secondly, the fact that Lebanon's trade agreements with France, Italy and Germany were operative at that time might have resulted in active trade between them and Lebanon.[49]

In 1958,[50] Lebanese imports from the European Community increased slightly to over 28 per cent of the total Lebanese imports compared with figures for the previous years, though it was less than by 8 per cent of its share in 1950. The EEC share fluctuated then till it reached its peak of 32 per cent of the total Lebanese imports in 1965. In that year the Trade and Technical Cooperation Agreement between the EEC and Lebanon was concluded. Similarly, imports from individual member states were affected after the entry into force of the Treaty of Rome. The flow of the imports in question is illustrated by the following table.

FIGURE NO 2.1

Lebanese imports from the Member States of the EEC post Treaty of Rome.

Value in m L£ (C.I.F)

	1958	1959	1960	1961	1962	1963	1964	1965
BELG & LUX	17.16	17.38	27.08	31.34	29.43	29.54	29.53	37.91
FRANCE	47.71	50.97	64.25	70.5	64.8	79.26	88.6	254.2
GERMANY	38.51	55.92	71.92	78.27.	68.78	77.04	89.73	145.77
ITALY	31.9	37.88	48.96	56.23	54.98	59.84	74.09	111.46
NTHRLND	10.66	14.54	18.34	20.16	21.65	23.16	24.8	36.43
IMPORTS FROM M.S	145.94	176.73	230.55	256.5	239.64	268.64	306.75	585.77
T. LEB IMPTS	518.33	699.83	854.6	1061.3	1049.56	996.59	1194.88	1791.87

Source:UN. INTERNATIONAL TRADE STATISTICS, V.1, 1965.[51]

The above table shows that, with the implementation of the Treaty of Rome, the importance of trade with the member states of the EEC, shifted between them as sources of Lebanese imports. As such, EEC exports to Lebanon became more evenly distributed among its member states. Thus France no longer claimed the uncontested major share of total Lebanese trade. Its exports had been overtaken by Germany, and, to some extent, by Italy as one of the major competitors, particularly in 1960-61 and 1964. The share of the Benelux countries was negligible compared with other member states of the EEC not reaching more than two per cent of total Lebanese imports in 1965. The French share fluctuated between 6 and 9 per cent, save in 1965 when it was 14 per cent. The German share in the Lebanese market was nearly 8 per cent of the total Lebanese imports over

all the years while the Italian exports to Lebanon remained constant at a level between 5 and 6 per cent. The diversity of Lebanese imports from other member states of the EEC other than France could be affected, as mentioned earlier, by the fact that Lebanon had concluded different trade and technical cooperation agreements with Germany and Italy alongside the agreement with France. By the terms of those agreements, in addition to facilitating trade and granting each other MFN treatment, technical cooperation took place between them and Lebanon. The technical cooperation included the implementation of different economic projects entailing the purchase of capital equipment necessary for such projects from Italy and Germany.

Therefore, following the creation of the EEC, the imports from the latter to Lebanon improved dramatically. Prior to EEC's inception, Lebanon's imports from its member states doubled, whereas after the establishment of the EEC these imports improved more than four times, (which is more than the increase in Lebanese total imports) . Indeed, the substantial improvement of these imports as a percentage of total imports is shown by an increase to 32 per cent compared with 26 per cent just before the creation of the EEC.

B-EXPORTS

Lebanese exports to the member states of the EEC were subject to the newly established tariff barriers.[52] It is not surprising to find that exports from Lebanon to the EEC countries, after the Treaty of Rome, did not improve as substantially as imports did, though their value increased. The table below shows the trends in Lebanese exports to the member states of the EEC after the inception of the latter.

FIGURE NO 2.2

Exports from Lebanon to the EEC Member States post Treaty of Rome.

Value in m L£ (F.O.B)

	1958	1959	1960	1961	1962	1963	1964	1965
BELG & LUX	0.48	0.89	0.64	0.59	0.95	1.77	1.72	2.17
FRANCE	7.39	3.29	2.27	1.69	5.34	7.54	4.98	8.61
GERMANY	3.5	2.87	1.71	1.96	6.48	8.24	6.29	6.12
ITALY	3.22	4.4	5.43	3.88	9.25	8.92	7.16	10.55
NTHRLND	0.64	0.04	0.31	0.54	1.6	1.88	1.9	1.47
T. Expt to EEC	15.23	11.49	10.36	8.66	23.26	28.35	22,22	28.92
Total Leb Expt	110	139.1	218	4397.2	192	196.3	216	324.06

Source: UN. INTERNATIONAL TRADE STATISTICS, V.1

The above table shows that Lebanese total exports, worth £L110m in 1958, parallel to an increase in imports, trebled by 1965, though less in relative terms than the increase in imports. However, although Lebanese capacity to export increased, the level of exports to the EEC deteriorated sharply. They represented a value of nearly £L15 million in 1958 or 13.8 per cent of total Lebanese exports. Thereafter, they gradually decreased in value and percentage, reaching their lowest point of less than 2 per cent of total Lebanese exports in 1961. This deterioration was a direct consequence of the creation of the EEC and the establishment of a Community CET with high levels of duties beside an inward looking policy of its member states. However, following the first general reduction in the level of duties as a result of the GATT Kennedy Round, Lebanese exports to the

EEC increased slightly over the years but never exceeded 9 per cent of total Lebanese exports. Subsequently, Lebanon exports concentrated on Arab markets as a principal destination where no real trade barriers existed.

Contrary to a policy prior to the establishment of the EEC, and within the small share of Lebanese exports to the EEC, Lebanon no longer concentrated only on the French market as a target for its exports as far as European markets were concerned. It diversified its export trade between France, Germany and Italy. Moreover, Lebanese exports to Germany and Italy outpaced the share of exports to France. After 1959 Italy became the most important market among Lebanon's European partners with a highest share of some 30 per cent in total exports to the EEC, increasing gradually over the years up to 36 per cent in 1965. Trade relations with Germany followed the same trend as with regard to Italy. Though quantitatively less it had significance for Lebanon.

C-BALANCE OF TRADE

It is clear that an imbalance prevailed in the terms of trade between Lebanon and the member states of the EEC. The imbalance, existing already prior to the establishment of the EEC, was accelerated by the high level of the CET which the EEC adopted. It was a major obstacle to Lebanese exports to the EEC. Consequently, Lebanon's trade relations with the original member states of the EEC showed a larger gap in Lebanon's trade deficit following the inception of the EEC. The trade deficit, in favour of the original member states, increased four fold and contributed by 40 per cent to the Lebanon's general trade deficit. Lebanese exports to the EEC did not amount to more than 10 per cent of Lebanese imports from the EEC (the range was between 3 and 10 per cent).

Needless to say, from Lebanon's perspective, the improvement of trade relations with the EEC and its member states by developing exports became an essential strategic necessity. A better balance of trade would

enhance Lebanon's balance of payments, contributing in turn to the process of economic development in Lebanon through the availability of capital resources.

Earlier in the Chapter (balance of trade), it was stated that the increase in Lebanese imports from the EEC member states could be related to two major items; imports for export purposes and imports of capital equipment. As to total Lebanese exports, they continued to improve rapidly but deteriorated sharply consequent to the establishment of the EEC, with a sharp deterioration in Lebanon's (negative) total balance of trade, with a value changing from £L408m in 1958 to L£1667m in 1965. The deterioration in the total balance of trade was directly connected to Lebanon's trade with the EEC, with a direct effect on Lebanon's (negative) balance of trade between 1958 and 1965. This negative balance increased from -130 in 1959 to -279 in 1965.[53] Taking this development into consideration, it would in principle be almost inevitable for Lebanon to seek better access for its exports to EEC markets. Backed by its historical, political and cultural links, in addition to the state of relations between the EEC and Israel,[54] Lebanon assumed that the member states could provide some "needed" special or preferential treatment. However, as the member states were no longer competent in the field of external trade, Lebanon's desire and need to boost trade with the EEC could only be achieved by concluding a new trade agreement encompassing preferential arrangements with the EEC and not with the member states.

III-THE TRADE AND TECHNICAL COOPERATION AGREEMENT (1965)

A-GENERAL BACKGROUND.

When the Lebanese government sought to strengthen its relations with the EEC and its members states, it was influenced not only by

economic considerations, but also by political, historical and cultural ones as well. During the early sixties, the political environment in the Arab world was hostile towards Western Europe, particularly after the tripartite attack in 1956 on Egypt. Lebanon, however, sought, for many reasons, strong links with Western European countries. Lebanon's readiness to strengthen its political links with such countries aimed at countering pressure exerted by Pan Arabism.

Economically, Lebanon survived through trade and foreign investment, particularly in the financial sector. In the trade sector, agricultural products were the pillar of its exports, namely fresh vegetables and fruit, particularly lemons, bananas, and apples. Following the inception of the EEC, with adverse consequences for trade relations with its member states, Lebanese exports faced a high level of EEC import duties which severely impeded the flow of Lebanese products to the EEC countries.

Lebanon had ties of economic cooperation with France, Italy and Germany; it was in the interest of Lebanon to maintain these ties. They were -as shown in the first chapter- formalized by means of bilateral treaties concluded between Lebanon and some of the original member states of the EEC. However, Lebanon had to face the fact that, from a legal perspective, concluded treaties and agreements would expire in due time, if not terminated or renewed, and, therefore, Lebanon would no longer benefit from such agreements with individual member states, after the transfer of powers in the field of commercial policy to the EEC. Lebanon was also observing the Israeli application to the EEC for preferential trade arrangements and detailed discussions within the EEC on the best way for providing favourable treatment.

Against this backdrop, Lebanon authorised its mission in Brussels to explore possibilities of formalizing relations with the EEC as a Community. From the outset, Lebanon hoped to secure preferential trade treatment, in keeping with the political and economic support by

governments of the EEC for Lebanon.[55] Lebanon hoped that the EEC would offer specific trade concessions to Lebanon.

A state should have a minimum level of knowledge concerning international trade rules to be taken into consideration when negotiating a trade agreement between two parties, one of whom is a contracting party to GATT. Lebanon would have to be aware, not least as a former contracting party to GATT, that any contracting party to GATT such as the EEC and its member states, would not be able to extend preferential treatment to any country, unless the favourable treatment in question would be unconditionally and immediately extended to all other states who are contracting parties to GATT. Therefore, the conclusion which may be drawn from the Lebanese request for preferential treatment is that Lebanon's "special" relations with the EEC member states would enable the EEC to exempt relations with Lebanon from the application of the MFN clause. Lebanon did not request preferential treatment falling within the ambit of Article XXIV of GATT. The GATT however, system provides for itself special relations exempted from the application of the MFN clause in specified cases. Otherwise, the Lebanese request would be irrational.

On 2nd October 1962, the Lebanese mission in Brussels transmitted a memorandum to the EEC proposing exploratory talks with a view to developing economic relations.[56] On the basis of this initiative, the officials of the EEC showed readiness to consider the formal Lebanese contact seriously and positively.[57] The Council of Ministers of the EEC consequently agreed, at its meeting on 22-23 October 1962, that exploratory talks should begin between the interested parties.[58]

Lebanon's primary interest, according to the memorandum, was intended from an economic and trade perspective, to improve the stubborn trade deficit, to promote exports of Lebanese agricultural products to the EEC, exports of oil to Europe and to encourage European investment in Lebanon. To this end, Lebanon requested the EEC to offer

one way tariff concessions identical to the treatment granted to Israel, and technical assistance in the industrial, hydroelectric, civil aviation, and tourism fields. This was tantamount to special preferential treatment.

However, the Lebanese demands faced some difficulties. As explained earlier, while conditions for imports to the EEC were very rigid, the member states of the EEC were no longer individually, capable of providing Lebanon with any preferential treatment because they lacked capacity to do so. Again, from a legal perspective, the EEC was not capable of providing Lebanon with special preferential treatment,[59] because such treatment could constitute a violation of GATT's provisions, unless the arrangement in question was to lead to the establishment of a free trade area, customs union or an association based on reciprocal rights. It should be borne in mind that the debate on non-reciprocal preferential treatment was only beginning at the time. Were the EEC to offer *erga omnes* tariff cuts, Lebanon would gain nothing.

Moreover, European investment in Lebanon was beyond the capacity of both the EEC and its member states. Their free market economy system did not entail state-intervention affecting such issues. Furthermore, capital investment belonged to the private sector based on "fair competition" in the market. Hence, foreign inward investment depended heavily on incentives which the Lebanese government (or any host government) would be able to offer to foreign investors.

Lebanese interest in oil exports was of great importance, even though Lebanon was not and is not an oil producing country. Lebanese interest in oil exports is based on the fact that most of Iraqi and Saudi oil was exported through pipelines from both countries to terminals in Lebanon and from there to Europe. Lebanon exported Saudi and the Iraqi oil and secured income therefrom.

The promotion of Lebanese exports to the EEC market is related to Lebanon's productive capabilities entailing the need to secure preferential treatment for enabling exports to reach the European market. Lebanon's

principal interest was in this respect the export of agricultural products. In 1960, Lebanon was capable of producing 100 tons of oranges, 35 tons of lemons and 53 tons of apples. Out of that productive capacity, Lebanon exported to its main trade partners (the Arab countries) 70 tons of oranges, 20 tons of lemons and 49 tons of apples. The rest was for internal consumption.[60] Had Lebanese production of fruits increased later, according to estimates of the Lebanese Fruit Office, Lebanon would have not been able to export yearly to Europe more than 1.6 tons of apples, 5 tons of lemons and 5 tons of oranges.[61]

Concerning fruit, the six original member states of the EEC did not produce any bananas, and only produced 200,000 tons of lemons estimated to be 10% of EEC consumption. Similarly, apple production did not satisfy market consumption in the EEC.[62] Moreover, most of the EEC member states did not apply quantitative restrictions in the form of quotas applicable to Lebanon as to imported lemons, bananas, and apples. If any member state applied such quotas, it already had offered special quotas to Lebanon.[63]

Despite the capacity of the EEC markets to absorb Lebanese exports, Lebanon was incapable of producing export products oriented to the needs of the EEC. This may lead one to question the rationale behind the Lebanese application to the EEC for favourable treatment, despite its small share in the EEC. We may however note Lebanon's ambition to offset its trade deficit with the Community. Unlike its attitude towards Israel, the EEC was determined not to treat Lebanon's requests favourably.[64] It is not surprising that negotiations following the Lebanese memorandum and the EEC Council's decision for exploratory talks with Lebanon, reached an impasse. In the view of the EEC, it was in the absence of part IV of GATT and GSP, impossible to respond to the Lebanese request positively. Consequently, Lebanon revised its requests and submitted a new memorandum to the EEC in February 1964. The memorandum requested the opening of negotiations for a commercial and technical cooperation

agreement.[65] On 9th - 10th of March 1964 the Council decided to open negotiations.[66] At its session on 13-15th April 1964, the EEC Council,[67] instructed the Commission, in accordance with the Treaty of Rome, to resume negotiations with Lebanon aimed at a mutual MFN treatment, coordination of the member states technical assistance to Lebanon and the establishment of the necessary common institutions.

The negotiations took place from 13th to 15th May 1964.[68] The EEC delegation was headed by the Director General for External Relations, and the Lebanese delegation was led by the Head of the Lebanese Mission to Brussels. The negotiations covered the advantages of the MFN clause in addition to proposals by both parties. The negotiations were resumed in early July 1964. A "satisfactory agreement" on trade and technical cooperation was initialled on the 9th of March 1965 and signed with all relevant documents in Brussels on 21st May 1965.[69] It was the first Agreement on Trade and Technical Cooperation reached by the EEC and its member states with a non-member country. The European Parliament approved the conclusion of the Agreement,[70] and called for a uniform arrangement to be applied with respect to all the Mediterranean countries prior to the completion of the common commercial policy.[71] The national procedures for the ratification of the agreement were completed by all relevant parties in 1967. The Agreement entered into force in the same year.

B-THE LEGAL BASIS OF THE TRADE AGREEMENT.

The Treaty of Rome empowers the EEC to conclude agreements with third parties, within the ambit of its competences, and when it engages in relations at the international level, it has not only to respect its constitutional document, but also the norms of international law in the relevant field. Thus, if the EEC practice was inconsistent with its treaty making powers, this would be in violation of its constitutional

documents, possibly in terminating the practice in question. The EEC argued that, if it offered preferential treatment to Lebanon, such a practice would be deemed to be incompatible with the norms of international trade law: it would be in violation of GATT rules. What then is the legal basis of the Trade and Technical Cooperation Agreement at both internal and external levels.

i-THE INTERNAL OR COMMUNITY LEVEL

As the EEC is expressly empowered to conclude trade agreements with third countries, even during the transitional period, the Council of the EEC, in ratifying the Trade Agreement, had cited Articles 111, 114 and 228 as a legal basis for concluding the Agreement.[72] However, the Agreement was not concluded by the Council exclusively. The member states joined the EEC in the conclusion of the Agreement by means of a mixed procedure without any legal explanation for it. However, the question which ought to be considered is whether the cited articles were suffieicent to confer upon the EEC the necessary powers to conclude the Agreement.

The Trade Agreement was concluded in 1965, that is, during the transitional period due to expire formally by 1969. It expired eighteen months earlier by virtue of the Council's decision in 1968. In 1965, the common commercial policy was not completed and the EEC legal order was not very clear: the legal position of the EEC had then not been explained by the ECJ through the evolution of its jurisprudence on the competences of the EEC. Therefore, one can wonder whether the conclusion of the Trade Agreement during the transitional period may be invoked as a reason for the participation of the member states in the Agreement. In other words, did the member states possess concurrent powers during the transitional stage?

As to the common commercial policy, the Treaty of Rome devoted Article 111 EEC to deal with the transitional period. This article asks the member states "to coordinate their trade relations with third countries so as to bring about by the end of the transitional period the conditions needed for implementing a common policy in the field of external trade". This means that, though trade relations of the member states with third parties then existing would not be affected by the Treaty, the member states were required to eliminate any incompatibilities with the Treaty.[73] However, the member states were not entitled to engage in new trade agreements with third parties, as such power was transferred by the EEC Treaty to the institutions of the EEC. Article 111 EEC expressly authorised the EEC to conclude trade agreements with third countries in respect of the common customs tariff. When authorised by the Council, in response to a Commission recommendation, according to Para (2) of the same Article 111 EEC, the Commission may conduct the negotiations on a proposed trade agreement. The general scope of the Trade Agreement shows that it was entirely devoted to trade issues dealing with MFN treatment which falls under the commercial policy of the EEC and, consequently, within EEC competence. Art 111(2) and (3) EEC are similar to Art 113 (3) and (4). It means that in conjunction with Art 5 EEC, the member states are prevented from undertaking any measures which could jeopardize the attainment of the objectives of the Community. With regard to the Trade Agreement concluded with Lebanon, according to Art 111 EEC, there could subsequently no longer be any question of autonomous national capacity to be exploited by the member states during the transitional period.[74]

Art 228 EEC, on the other hand, was cited in the Agreement presumably because it provides procedures for the conclusion of such agreements within the scope of the EEC Treaty. The Article expressly binds the institutions of the Community as well as its member states.

As mentioned earlier, the EEC is competent to act in many areas at international level. Art 113 EEC explicitly confers upon the EEC the power

to conclude trade agreements with third countries, but, this Article concerns the post-transitional period. After the transitional period, when the Trade and Technical Cooperation Agreement had to be renewed, Art 113 EEC was cited as a legal basis for the Council's decision.[75]

As the Treaty of Rome vests powers in the EEC to conclude agreements with third countries, this power becomes exclusively enjoyed by the EEC represented by its competent organs. This gives rise to the question as to why the member states joined the agreement with Lebanon, even though the EEC is competent to conclude trade agreements with third countries

The EEC Treaty provides no provisions identical to Art 102 of Euratom by which, expressly or implicitly, one or more member states may join the EEC in concluding an envisaged agreement. Nevertheless, in the light of the practice of the EEC, similar agreements with different third states were concluded in the form of mixed agreements.

In general, according to of Ehlerman, the use of mixed agreement procedures is related to external and internal factors.[76]

The most important external reason is the negative attitude of some states towards the recognition of the EEC as a legal person capable of acting at the international level. This stand used to be explained by reasons of ideology, alongside the fact that the Treaty establishing the EEC does not create duties for third parties. Moreover, the participation of the member states, removes from the third party's perspective, any legal uncertainty of such a proposed agreement; it consequently ensures total respect for the undertaking (for the agreement) and for the EEC as well.[77]

The internal factors justifying resort to the form of mixed procedures, concern the consideration that the proposed undertakings could be either broader than the EEC competences, or may cover certain fields where the members states retain a residual power.[78]

As far as the the first assumption is concerned, and as regards the case relating to Lebanon, it should be remembered that Lebanon adopted a

constitution derived from the French constitution. This means that, in addition to its liberal and market oriented economy and democratic regime, Lebanon reflects a western understanding of the theory of international law. Relations between Lebanon and the founder states of the EEC were good, as shown by the variety of treaties concluded between Lebanon and three of the six original members states. Furthermore, the practice of the French mandate in Lebanon (before its independence) became a main source of international law in Lebanon,[79] with an understanding favourable to western theories of international law. Above all, Lebanon as a small and poor developing country had (and has) little influence, if any, in the international sphere. This may explain, especially politically or ideologically and less so legally why Lebanon could not reject or be hostile towards the legal personality of the EEC. Since the inception of the EEC, Lebanon has in fact recognised the new entity and established diplomatic links with it. The recognition by a third state of an international organisation as a legal person competent to act at the international level leaves no justification for asking its member states to join, in the area of the organisation's competences, either the negotiation or the ratification of a proposed agreement with the organisation. Therefore, regarding the first assumption, there seems to be no justification for resort to the use of mixed procedures. Nevertheless, Lebanon had no interest to object, and did not object to the member states of the EEC joining their Community in the conclusion of the Trade Agreement, particularly as it had and has (as a non-member) no say in internal Community matters. The participation of the member states increased, on the other hand, the certainty of the Trade Agreement and imposed duties on the member states to fulfil the Trade Agreement.

The other reason for the adoption of a mixed agreement may be explained by internal reasons, the most important point being that the Trade Agreement exceeds the EEC's explicit (and even implicit) treaty making-powers. An examination of the Trade Agreement may reveal

whether there was a need for resort to use of the mixed procedure. It is necessary to establish the demarcation of powers of the EEC on the one hand, and the member states on the other, in order to establish that the use of a mixed agreement is conditioned by Community's internal reasons.

The general scope of the Trade Agreement covers : (a) a MFN clause, and its traditional exceptions; (b) the establishment of two common institutions, the joint committee and the joint technical group; (c) technical cooperation.

The most-favoured nation treatment, in addition to its exceptions, concerns duties and charges relating to imports and exports. In other words, this part of the Agreement deals with issues falling within the scope of Art. 111 EEC during the transitional period, and Art 113 EEC post in the transitional period. From a legal point of view ,it means that the EEC is, in this respect, competent to conclude treaties with third parties.

Technical cooperation, on the other hand, is aimed at increasing technical assistance granted to Lebanon by the EEC Member States.[80] This part of the Trade Agreement neither was or is covered by any express provision in the EEC Treaty, particularly with reference to those Articles which empowered the EEC to conclude agreements with third states. On this issue, Han Van Houtte has a different view.[81] He says that technical cooperation is a matter covered by Art 238 EEC, consequently, technical cooperation is within the competence of the EEC. A plain reading of this Article shows that it confers powers upon the EEC to conclude, with third states, a union of states or an international organisation, association agreements based on reciprocal rights and duties. It does not explicitly authorise any form of technical cooperation. However, as Van Houtte argues, the Council could have cited Art 238 as a legal basis for the Trade Agreement. In opposition to this view, Parry and Hardy[82] argue that technical cooperation measures provided in the Trade Agreement are not within the competence of the EEC. Furthermore, Art VIII of the Trade

Agreement involves, inter alia, the sending of experts and teachers to Lebanon and the training of Lebanese citizens in commercial, educational and industrial establishments in the member states. This has financial implications. Since Art VIII (c) provides that Lebanon assumes a part of the administrative costs involved in the implementation of related projects, the word "such part" means that most of the financial implications which result from technical cooperation will be a burden on the member states of the EEC though each specific case shall be determined by mutual agreement.

The Articles cited by the Council as a legal basis for the Trade Agreement apply only to the fields of trade and tariffs. The Articles do not cover financial assistance granted to third parties. This may be considered to have been the case even more so during the transitional period when no independent financial resources were provided. To supplement this deficiency, the member states added their own authority as they did in the case of other similar agreements.[83]

By analogy, the European Court of Justice, in its opinion on the Natural Rubber Agreement,[84] answering the question whether or not the member states are capable of participating in the Agreement, said that as the matter (the Agreement) considered by the Court fell within the C.C.P, the Commission had exclusive competence to participate in the Draft Agreement. Nevertheless, since the financial implications of the Agreement were not yet settled, and until this issue was settled internally, the member states might, participate in the Agreement.[85]

There are therefore, two reasons underlying the participation of the member states in the Trade Agreement with Lebanon : Firstly, the Trade Agreement went beyond the treaty making-powers of the EEC, and secondly, the financial implications which arose from technical cooperation were to be borne directly by the member states, implying the participation of the latter.

ii-THE EXTERNAL OR INTERNATIONAL LEVEL

As already stated above, when the EEC concludes a trade agreement with a third party, it has to do so within its field of competence and, in compliance with the norms of international law. The international rules which regulate world trade are embodied in the General Agreement on Tariff and Trade. The EEC and its member states are contracting parties to GATT and consequently governed by its provisions. Lebanon however, since its withdrawal from GATT, has enjoyed only observer status, and ,not a contracting party, is consequently not bound by GATT provisions.[86] As explained earlier, the EEC argued that any preferential treatment to be accorded to Lebanon would be in violation of Article 1 of GATT. One may, however, wonder whether the GATT rules were considered to be exhausted for seeking "dispensation" from the application of the MFN clause for granting Lebanon tariff concessions.

From the outset, the EEC did not show Lebanon much sympathy or by to understand its needs or work out the best means to meet them without infringing international trade norms embodied in GATT. During the discussion of the Israeli application, the EEC ruled out the possibility of creating a free trade area with that country on political grounds fearing that this would annoy Arab countries.[87] Such a political element did not exist in the case of Lebanon. EEC's attitude towards Lebanon at that time would therefore be, free of the need to find a political *modus vivendi* relating to the EEC external policy. This left the Commission to concentrate on the technical issues of that policy in the negotiations with Lebanon, without profoundly investigating Lebanese needs. In addition, existence of the political links (which Lebanon used to claim it enjoyed with respect to some member states of the EEC) was not reflected when deliberating within the EEC' institutions, on the Lebanese application with a view to extending preferential treatment to Lebanon. One may question

why the Commission did not suggest any dispensation from the application of Article 1 of GATT.

Article 1 of the General Agreement does not permit any contracting party to offer any advantage to any other country unless such treatment immediately and unconditionally is extended to all other contracting GATT parties. However, the practical application of this obligation is possible to minimise through different derogations. These derogations can be found in GATT provisions with the meaning and scope agreed upon by the Contracting Parties to GATT. [88]

According to GATT provisions, historical preferential treatment in existence before the creation of GATT and specified in annexes A, B, C and D have been maintained by GATT.[89] Moreover, derogations from MFN treatment are extended to facilitate frontier traffic,[90] customs union,[91] free trade areas,[92] and the conclusion of interim agreements leading either to the formation of a customs union or a free trade area.[93] A further waiver from MFN treatment is permitted under exceptional circumstances in accordance with Article XXV GATT.[94]

Among the above derogations, there are two Articles under which the EEC might waive the application of the MFN clause. These are Articles XXIV and XXV of GATT.

At an earlier stage of its appearance in the international sphere, the EEC was not prepared to engage in agreements with a view to forming either a customs union or a free trade area, unless such agreement was deemed to be a preliminary step for joining the EEC.[95] However, from a legal standpoint, and apart from an economic perspective, there was a possibility of concluding an interim agreement leading in the long term to the formation of a free trade area with Lebanon.

An interim agreement leading to the formation of a free trade area entails that, "duties, charges and other restrictive regulations of commerce" are to be substantially eliminated on all trade between the

contracting parties [Art XXIV: 8 (b)]. Nevertheless, such suppression of the barriers to trade are not required to be reciprocated immediately. Instead, an interim agreement leading to the formation of a free trade area may be subject to a plan or schedule for such formation within a reasonable length of time. Therefore, by adopting such a method, the EEC would have been able to grant Lebanon tariff concessions, with or without receiving immediate reciprocity, without violating the rules of GATT.

Furthermore, the EEC could have sought special dispensation on grounds based on GATT Article XXV. The needs of Lebanon could have been invoked as exceptional circumstances with a view to waiving obligations imposed by the MFN clause. Although recognising the exceptional circumstances of Lebanon required the approval of the vast majority of votes of the contracting parties to GATT [two third majority, see BISD 5 S/25, & Art XXV (4) of GATT], the EEC was reluctant to seek dispensation from the obligations of Article 1 GATT on such grounds.

The EEC attitude towards the application by Lebanon and consequently its alleged adherence to international trade rules could therefore be justified on political rather than legal grounds. This may be clearly contested in the EEC view as regards the application to the EEC by Israel for tariff concessions. Therefore, Lebanese ambitions to gain some preferential treatment reflecting the historical, cultural, and political links with some of the EEC original member states of the EEC failed to be translated into legal reality.

C-THE SUBSTANTIVE CONTENT OF THE TRADE AGREEMENT

The Trade and Technical Cooperation Agreement opens with a preamble of four paragraphs which set out the intentions and the general objectives of the contracting parties in concise and plain language. The Agreement is then divided into two parts, covering trade activities and

technical cooperation.

It was a non-preferential agreement aimed at strengthening the existing relationship between the six original member states of the EEC and Lebanon, in the economic and trade fields, by means of developing trade relations and increasing the effectiveness of their technical cooperation.

i-AIMS AND OBJECTIVES

The preamble of the Trade Agreement refers to the reasons and purposes behind the adoption of the Agreement. Both the Community (including its member states) and Lebanon expressed their determination to "consolidate and extend their economic and trade relations" since they realised the importance of a harmonious development of trade between themselves. However, while serving as a guideline to the intentions of both parties towards their envisaged trade and technical cooperation, the preamble of the Agreement set no specific or detailed objectives as the ultimate end, nor did the contracting parties undertake commitments towards the elimination of the obstacles to trade. After the preamble, the rights and the commitments of the parties in the field of trade were set out. Thereafter, the EEC paid little attention to contributing to the process of economic development in Lebanon. It is clear that the preamble does not help to show how to eradicate the gap, in both economic development and trade deficit, between the contracting parties.

As far as technical cooperation is concerned, the EEC and its member states undertook to coordinate measures for the purpose of increasing and promoting "the technical assistance granted to Lebanon, besides the best possible use of the material and the human resources assigned to that assistance". The Trade Agreement made no mention of any specific objectives in this field. This could be related to the fact that, at that time, the transitional period was in operation and the respective powers of the

EEC had not been elaborated. Moreover, the economic issue was not dealt with within the EEC, but was left within the jurisdiction of the member states. Similarly, the financial sector received no specific attention in the preamble. The member states bore the financial cost of the technical cooperation.

ii-MOST FAVOURED NATION TREATMENT.

Concerning trade issues, the two parties granted each other most favoured nation treatment.[96] The scope of this clause was extended to encompass duties and charges on imports and exports and all related formalities from one party to another.

This principle, as a traditionally recognised one (explained earlier in the present thesis), is subject however, to certain derogations from its application, in the form of exceptions. For example, it does not apply to nations engaged in a customs union, or in a free trade area; neither is it applicable to certain countries falling within the ambit of Art XXV GATT. Moreover, most favoured nation treatment does not affect the special relations or advantages, for example granted by Lebanon to adjacent states in order to facilitate frontier zone traffic, or other advantages awarded by Lebanon to the member states of the Arab League.

The most favoured nation clause, as it stands, is a cardinal principle of GATT serving world trade . It is internationally recognised that this clause[97] is based on two fundamental legal principles: equality of treatment and implied reciprocity between states in the field of international trade relations.

During the early sixties, this provision was profoundly criticised by different legal writers and international authorities. It was said that as a cornerstone of GATT, the significance of the MFN clause stemmed from the fact that its original authors enjoyed, between themselves, the same level of development. However, as a principle the MFN clause proved to

be inoperative as new countries with unequal growth levels became involved in international trade.[98] The limitations of the clause were identified by legal writers and experts on developing countries. The thrust of their argument was based on the fact that equality between unequal states as regards trade relations entails unequal treatment.[99] This argument however fell, however, short of meeting the aspirations of the developing countries, since the distinction between equality and similarity (or identical terms) is not drawn carefully. As regards trade relations and the issue of economic development, two unequal parties in terms of economic development necessarly not entail unequal treatment. The natural resources of different countries could compensate for the disadvantages of a less developed country and provide a potential capacity neutralising such inequality and consequently advancing or enhancing the process of economic development. This point may lead one to classify countries according to their level of economic development on one hand, and to their potential capacity on the other. For example, the rich oil producer countries could not be treated on footing identical to that of other poor countries in terms of natural resources, even though both may possess low levels of economic development. Therefore, inequalities should not be interpreted only according to the level of development criterion, but should refer also to the potential capacity of the given country. In other words, unequal parties in terms of economic development may receive unequal treatment, provided that such treatment is compatible with the degree of the needs and wants of that given country. Therefore, the country which needs much more should receive better treatment than other countries that need less.

By analogy, one wonders how the MFN principle could be expected to operate well for the achievement of the objectives which were referred to in the Trade and Technical agreement between Lebanon and the EEC.

Prior to the Trade Agreement, Lebanon incorporated the MFN clause in all relevant agreements with the former member states of the EEC.

However, it is worth repeating that Lebanon withdrew from GATT in 1951. The mere fact of this withdrawal shows that Lebanon is not legally bound to extend the MFN clause to third countries unless its interests require it to do so through bilateral arrangements. It can be questioned whether Lebanon's interests are served by the inclusion of the MFN clause since trade between Lebanon and the member states of the EEC was characterised by a chronic deficit. Pursuing such relations on an equal footing by means of homogeneous and identical terms as was proposed in the Trade Agreement, given the huge gap in the level of development between both parties, together with the fact that Lebanon is a poor country in terms of natural resources, would lead only to an increase in the trade deficit of Lebanon. On a wider scale, at international level, it sap the international legal order of trade.[100] Consequently Lebanon, a weak state (developing country), would no longer be able to afford to import from the member states, owing to its lack of counterpart products in exchange for such exports. This inevitably would lead to the commercial and possibly financial collapse of a weak country like Lebanon with recessional consequences in the strong nations. Therefore, this clause as it stands could not be helpful in consolidating and extending trade relations between the contracting parties nor helping the harmonisation of the development of trade. These objectives could only be achieved by acknowledging a principle of equality based on the substantive needs of a country and not on homogeneous and identical terms.[101] In other words, if the EEC were to recognise the substantive needs of Lebanon, it should do so by meeting them through offering asymmetric treatment geared to the needs of Lebanon's level of economic development. However, the EEC's view was that the international trade legal order prevented the EEC from providing Lebanon treatment in accordance with its substantive needs and wants.[102]

Assuming this to be the case, one could ask a legitimate question: on what legal basis did the EEC offer Israel tariff concessions regarding specific

Israeli goods, though on a temporary basis, in 1964.[103] Were the selective temporary tariff concessions offered by the EEC to Israel contrary to the rules of GATT?

The key factor in the argument related to these questions thereto is whether there are specified waivers as regards the EEC, permitted by either the rules of GATT or the provisions of the Trade Agreement (between Lebanon and EEC) since the Agreement between Israel and the EEC was concluded on 4th June 1964[104] a few years before the incorporation of part IV of GATT and the establishment of a General System of Preferences (hereinafter called GSP). Part IV of GATT and the GSP recognise the problem of development in developing countries[105] and the latter allows the developed countries to grant the developing countries trade preferences without being bound by extending such preferential treatment to other developed countries.

The agreement between Israel and the EEC[106] entitles the former to selective tariff cuts on several industrial and agricultural products, though on a temporary basis.[107]

In principle, any tariff concessions made by one country subject to GATT rules to another country (whether or not a contracting party to GATT) entitles other contracting parties to invoke their rights for similar treatment. Therefore, it is not surprising that the contracting Parties to GATT are reluctant to make tariff concessions outside GATT tariff negotiations. However, the pro-Israeli argument viewed the EEC's tariff concessions to Israel as a suspension of these tariffs rather than preferential treatment.[108] A tariff suspension differs from tariff reduction in so far as the former is granted on a temporary basis.[109] Henig argues that a suspension of tariffs could later be consolidated in the context of general tariff negotiations when reciprocity might be obtained from other countries benefitting from the lower tariff.[110]

The legal effectiveness of the "suspension" of the rate of tariffs, according to the agreement between Israel and the EEC, emanated from

Art 2 of that agreement which calls for immediate acceleration of the higher tariff of some member states to the suspended level. This tariff cut provided better access for Israeli products into the EEC markets consequently leading to conditions of imperfect competition with other similar third countries exports. Therefore, this form of tariff concessions advantaged Israeli exports to the EEC markets.

The MFN clause states that any "advantages, favours, privileges, or immunity granted by any contracting party to any product originating in or destined for any country shall be accorded immediately and unconditionally to the like products originating in or destined for the territories of all other contracting parties". As such, the EEC had to extend the advantages and favours (which took the form of tariff cuts, and acceleration of the application of the CET to the level of the suspended tariffs) to Lebanon by virtue of their MFN treatment clause. Otherwise, unless the EEC had sought special dispensation from GATT rules, it would have been acting in violation of GATT rules on the one hand, and its commitments toward Lebanon on the other.

A thorough and profound reading of the derogations from the MFN clause under Article 1 para 2 reveals that such derogations concern historical trade relations existing before the establishment of GATT.[111] Since Israel was founded after GATT, there is obviously no connection between the said derogations and the case of the EEC and Israeli agreement. Moreover, the agreement was far from establishing a prospective customs union or a free trade area or even an interim agreement with an intention to lead to a customs union or a free trade area.

Furthermore, Article III of the Trade Agreement with Lebanon, which entitled the EEC and its member states to derogate from applying the MFN clause to Lebanon in accordance with Article XXV GATT, provided that such a derogation, would only be admissible within the

framework of GATT[112] and may be permitted in accordance with the procedures set out for that purpose.[113]

Two conditions must be met under Article XXV GATT[114] in order to have a country granted a waiver from applying the MFN clause. Firstly, Article XXV GATT, entitles the Contracting Parties to define "certain categories of exceptional circumstances. This means a discretionary power has been retained by the contracting parties to accommodate such exceptional circumstances according to their interests. However, it imposes a substantive prerequisite to make use of such waivers. This prerequisite includes, in addition to the procedures and voting system (two thirds majority approval), that such derogations should not be provided elsewhere under the General Agreement. The second condition is that the necessity of such a waiver must be demonstrated. The EEC neither requested nor was granted such a waiver.[115]

Moreover, the last permissible waiver granted to the EEC was in Article III (e) of the Trade Agreement with Lebanon. However, the beneficiaries of this waiver were well defined in Protocol 1 annexed to the Trade Agreement, which denies any favourable treatment to Israel.

Therefore, the practice of the EEC as far as the agreement with Israel is concerned, shows that the agreement ran contrary to the principle of multilateralism upon which GATT is built, albeit that the tariff preferences were on temporary grounds, and as such the practice constitutes an effectual means of obviating the rules of GATT.

Be that as it may, one wonders whether Lebanon, despite its withdrawal from GATT, could invoke this precedent to seek preferences similar to those which were granted to Israel, according to the MFN clause between Lebanon and the EEC?

It is well known, according to the norms of international law, that an agreement between two or more subjects of international law does not create obligations or grant advantages to third parties.[116] In this context it should be pointed out that, the application of the MFN clause between

Israel, the EEC and its member states was subject to GATT rules; the application of the MFN clause as regards Lebanon and the EEC was subject to their Trade Agreement. Moreover, regarding GATT provisions, EEC practice involves ambivalence towards the MFN clause since it granted Israel preferential treatment without resorting to any justified waiver in accordance with GATT procedures. Furthermore, the MFN treatment extends any advantages or preferential treatment to any product originating or destined for any other country immediately and unconditionally to a like product originating or destined for the territories of all other contracting parties. However, since the two provisions of MFN, as found in (1) GATT and (2) the Agreement with Lebanon are in identical terms, Lebanon and the EEC may be considered to be bound by the commitments and enjoy the advantages which arise from the MFN clause. Therefore, by the terms of the Trade Agreement, the Most Favoured Nation treatment should apply to "imports into the member states of the EEC of products originating in Lebanon". Consequently, Lebanon should enjoy at least similar and identical advantages to these granted by the EEC to Israel, even if only on a temporary basis. However, if Lebanon was to be granted advantages similar to those of Israel, would it be under an obligation to accord Israel the same advantages granted to the EEC?

The application of the MFN clause between the EEC and Lebanon is governed by their bilateral Trade Agreement and not by a multilateral agreement. By virtue of its Trade Agreement, Lebanon is committed to extend any advantages it may grant to any country to the EEC. This does not create any right for a third country which is not bound by a similar agreement with Lebanon. Consequently, Lebanon is under no obligation to accord Israel any advantages similar to those granted to the EEC.

iii-TECHNICAL COOPERATION

EEC-Lebanese technical cooperation took place for the first time in 1965. This cooperation aimed to coordinate and intensify the technical assistance from the member states of the EEC to Lebanon. It was intended to make the best use of the material and human resources available in Lebanon in her interest. By virtue of the Trade and Technical Cooperation Agreement the member states of the EEC undertook to send experts, specialists and technical staff to public, educational and research bodies in Lebanon.[117]

Through cooperation Lebanon was provided with the necessary human resources, and the technical capital equipment, with a view to enhancing the quality of the educational, research, and public bodies in Lebanon. The more important technical assistance provided to Lebanon at that time was training of Lebanese technicians. Related training programmes took place in public bodies, educational and research establishments, and industrial, agricultural, commercial, and banking undertakings in the member states of the EEC. It was hoped this would lead, inevitably, to a transfer of know how to Lebanon.

Lebanon's undertaking in this cooperation was, inter alia, to facilitate the execution of the relevant technical cooperation measures. Lebanon pledged to abolish consequently all duties, charges having equivalent effect and any other fiscal charges relating to the equipment supplied to Lebanon. In addition, private belongings of the European personnel who were involved in the execution of the agreed projects were exempted from similar charges. Moreover, Lebanon had to provide lands and premises wherever necessary, besides taking part in the administrative costs in individual cases.[118] It is clear that the technical cooperation between the EEC and Lebanon was an implicit succession to the earlier technical cooperation agreements between Lebanon and the original member states of the EEC, the burden of the technical cooperation remaining on the

member states.

D-INSTITUTIONAL CONTENT

The Agreement established a Joint Committee representing all the interested parties, which had the task of supervising the proper application of the Agreement of studying the development of trade relations between the EEC member states and Lebanon; and of recommending any possible furtherance of their trade.

Moreover, a Joint Technical Group was established with particular interest in technical cooperation. It was assisted by experts representing all parties. Its task was to examine Lebanese requests. The Group was to report the outcome to all its parties. These conclusions should have been taken into consideration when even a decision on technical cooperation was to be made. The Group also supervised the execution of the agreed projects.

E-RELEVANT PROTOCOLS

The Trade Agreement was supplemented by two protocols; a declaration of intent and a joint declaration annexed to the Agreement.

The protocols concern the internal German trade in goods of German origin, and the exceptions to the MFN clause as regards the Vatican City and the Republic of San Marino. Further, it covers the market of oranges in the Community. The declaration of intent pertained to the grant of credit insurance to those Community exporters who trade with Lebanon in accordance with the national legislation of every concerned party. The joint declaration reaffirmed the readiness of the member states of the EEC and Lebanon to apply the articles of the Agreement in accordance with the national legislation of each country. Lastly, the Trade Agreement was originally concluded for three years. It was, however, renewed every year

until it was replaced by the Cooperation Agreement in 1977.

Had Lebanon achieved its objectives and, subsequently did the new Trade Agreement bring about any developments in the relations between the interested parties? Alternatively, was it disappointing for Lebanon? Did it serve a political means only?

From the outset, Lebanon was overly ambitious towards its relations with the EEC, presumably relying on its historic relations with France. However, relations between states are governed by more than moral and emotional issues. Economically, Lebanon was in no desperate need for preferential treatment, particularly in the presence of Arab markets which absorbed most Lebanese exports. Moreover, the lack of productive capacity for exporting purposes in agriculture and manufactured goods at that time made the question of penetrating the EEC market largely irrelevant. The absence of international developments left Lebanon with no justification for demanding preferential treatment. Therefore, it is more than likely that the Lebanese memorandum to the EEC was politically motivated rather than anything else. In the end, Lebanon and the EEC reached no more than a traditional trade agreement, though Lebanon continued to receive technical assistance.

V-THE IMPLICATIONS OF THE FIRST ENLARGEMENT ON THE TRADE RELATIONS BETWEEN LEBANON AND THE EEC

Similar to the formation of a customs union, the accession of new member states into the EEC will have various political, economic and legal implications both within the EEC itself and within the new member states in addition to their external relations.[119]

Politically, the accession of a European state to the EEC may bring the new state and a third country into a direct relationship which they may have previously had no interest to maintain. Moreover, the accession

may put the new member state face to face with certain political issues in which it previously had no say. For example, the Palestinian cause became an issue for Ireland. The Irish Foreign Minister said in 1974 that "membership of the EEC has brought us into a new and direct relation with countries throughout the world between whom and ourselves, until last year, there was virtually no political and economic contact".[120]

The economic impact of the enlargement of the EEC internally, (on the EEC itself and its member states), and externally (on a third party) has been discussed intensively by academic writers.[121] However, concerning the implication of the enlargement on the external relations of the EEC and its new member states with Lebanon in particular has not been analysed. The question which ought to be tackled in this respect is to what extent the first enlargement had an impact on trade relations and the legal framework of such relations between the EEC and its acceding countries on the one hand, and Lebanon on the other? The answer to such question entails as a background an analysis of trade between Lebanon and the new member states prior to the date of their accession.

A-THE IMPORTANCE OF TRADE RELATIONS BETWEEN LEBANON AND THE NEW MEMBER STATES OF THE EEC PRIOR TO THEIR ACCESSION.

Trade relations between Lebanon and the new member states prior to their accession to the EEC was no less significant than the trade with the six original member states. This is particularly the case with the U.K. The three new member states, Denmark, Ireland, and the United Kingdom had different level of trade transactions with Lebanon.

i-IMPORTS

Similar to other EEC member states, Lebanon's trade relations with

the new member states involved in the first Community enlargement could be traced back to years before Lebanese independence. This applies particularly to trade relations with the United Kingdom. The tables below show that, among the acceding countries, the U.K was the most important trade partner for Lebanon.

Figure No 2.3

Lebanese imports from the new member states prior to their accession

Value in 000$ (C.I.F)

	1968	1969	1970	1971	1972	1973
U.K	34980	38541	42057	50263	67025	92009
DENMARK	6614	6918	8070	8888	12093	8604
IRELAND	624	667	1048	774	1437	--
EEC(9)	204214	212461	223797	290339	361886	549441
T.LEB. IMPT	521142	531983	567489	677121	849347	122522

SOURCE: UN International Traade Statistics, V.I, (1972&1973)

As regards imports, the U.K was, among the acceding countries, the most important supplier to the Lebanese market. Its imports to Lebanon had nearly trebled by 1973. As such, the U.K share was equivalent to 6.7 per cent of total Lebanese imports in 1968, and improved to over 7.5 per cent in 1973. Moreover, in substance, British exports to Lebanon as regards the European share in the Lebanese market and the total Lebanese imports, increased slightly, but continuously, over the years until the year of accession. The corresponding figures for Denmark in the Lebanese market were less important. Its exports to Lebanon corresponded always to less than 2 per cent of the total market. The trade relations between

Lebanon and Ireland were negligible.

In comparison with other individual member states of the EEC, trade relations with the U.K were as important as those with Germany, France and Italy, though the U.K was trailing behind them as one of the major suppliers to Lebanon.

ii-EXPORTS

The U.K was a principal market for Lebanese exports not only among the acceding European countries but also as far as all the member states of the EEC are concerned. Lebanese exports to the U.K multiplied five times between 1968 and 1973. In comparison with the six original member states, their imports from Lebanon show that they always lagged behind those of Great Britain.[122] Moreover, while the percentage of Lebanese exports to the six original countries was declining , exports to the U.K were in substance improving between 1968 and 1973.

Figure No 2.4

Lebanese exports to the new member states prior to their accession

Value in 000$ (C.I.F)

	1968	1969	1970	1971	1972	1973
U.K	5639	5628	4614	8313	12950	25351
DENMARK	1590	1133	893	735	4921	2380
IRELAND	0	55	9	370	21	58
EEC(9)	17525	19477	19499	26621	37424	58363
T.L.EXPT	146048	170476	197833	256039	350605	502467

SOURCE: U.N. International Trade Statistics,V.I , (1972&1973)

The above table shows that Lebanese exports to the U.K were slightly less than 4 per cent of total Lebanese exports in 1968, developing steadily and reaching their peak in 1973 with over 4 per cent of the total exports.

The corresponding figures for the Danish market were less important for Lebanese exports. Moreover, Danish imports from Lebanon decreased over the years. As regards Ireland, along with its exports to Lebanon, Irish imports from Lebanon remained negligible.

Therefore, trade relations between Lebanon and the U.K, among the new members, were of great significance to Lebanon, concerning both imports and, especially, exports. This importance manifested itself through expanding Lebanese exports to its market, consequently helping to narrow the trade deficit between both countries. However, after the first enlargement of the EEC, trends in trade have changed dramatically as far as the acceding countries are concerned. Imports into Lebanon from the U.K between 1977 and 1979 fell from 17 per cent to 10 per cent of total EEC exports to Lebanon. Moreover, Lebanese exports to the U.K between 1977 and 1979 fell from 43 per cent of EEC imports from Lebanon to 32 per cent.

Similarly,the corresponding figures for Lebanese imports and exports as regards Denmark and Ireland deteriorated sharply. This deterioration of trade between Lebanon and the acceding countries could be attributed to two factors:

1-The diversion of trade as a consequence of accession, and

2-special circumstances which Lebanon has experienced since 1974.

Accession of new states to the EEC, entailing as it did the elimination of trade barriers between the original and the acceding member states, minimised the comparative advantage of Lebanese exports to the new member states. Subsequently, Lebanese exports found themselves on a footing of inequality with the member states of the EEC. Moreover, Lebanese exports had to face a new wall of customs duties likely to be different from the earlier ones. Furthermore, some products may have fallen within the category of sensitive products within the EEC countries,

by virtue of adopting the EEC acts. Consequently new barriers had to be encountered by the relevant products.

On the other hand, it should be remembered that soon after the first enlargement of the EEC, Lebanon experienced a continuous severe civil war with major devastation to the infra-structure of the Lebanese economy, consequently, disturbing the growth of national production and, exports toward the EEC. However, total Lebanese exports have developed steadily. Therefore, it is likely that it is deviation of trade which lies behind the deterioration of trade between Lebanon and the acceding countries.

B-THE LEGAL IMPLICATIONS OF THE FIRST ENLARGEMENT ON THE EEC RELATIONS WITH LEBANON.

The legal impact of the first enlargement is reflected in the internal and external spheres. Internally, various constitutional and institutional changes have taken effect in both the Community and individual acceding member states.[123] Externally, trade and legal changes may place burdens on third parties, particularly if any such third party enjoys preferential treatment with any of the acceding countries.

As far as the Community is concerned, several amendments were made to the Treaty of Rome, particularly as regards institutional changes. As to the new member states, they were under an obligation to amend their constitutional provisions particularly where these provisions were not in conformity with the Treaty of Rome.

Regarding the external implications of the enlargement on the legal framework of trade relations with third countries, such implications would be likely to be related to in the following:

1-The third party has no legal framework governing its trade relations with either the EEC or its new member states.

2-Experience gathered from all existing legal frameworks of trade

relations between the new member state and a third party, particularly if there has been any kind of special relation with a historical or colonial background similar to the case of the U.K and the Commonwealth countries.[124]

3- A third party's arrangement between the EEC itself and its member states jointly.

It would be superficial to assume that since a third country had no legal framework governing its trade relations with either the EEC itself or its new member states, it would not be affected by the enlargement of the EEC.

Apart from any economic and trade consequences of enlargement, entry into the EEC entails for the member states the adoption, amongst other things, of the CCP and CAP. Therewith, a new wall of trade barriers is created consequent to the application of the above two policies of CCP and CAP, particularly if the CET involves higher levels than existing tariffs. Moreover, some products which are in trade prior to the accession may fall into the red zone of sensitive products depriving therewith the third country from seeking certain markets or even looking for fair competition in the acceding countries. Subsequently, third county exports to the new member states of the EEC may face new regulations. However, assuming that a third country had a bilateral agreement with any of the acceding countries, one wonders what would have been the implication of accession of on a third country.

Once a European country joins the EEC, it is governed by Art 234 EEC, which determines that the rights and obligations of pre EEC Treaties involving non-member states "shall not be affected by the provisions of this treaty" despite the fact that the member states are required to take due steps to amend or withdraw from treaties the provisions of which are not compatible with the EEC Treaty. The question arises as to the position of previous provisions of the treaties concluded with third parties which cover wholly or partly the areas of Community competences since the

new member state would no longer have the power to implement such provisions according to Community law. After the transitional period, the EEC Treaty prohibited any member state from undertaking any measures which fall within the powers (as far as external trade is concerned) of the EEC and are controlled by EEC institutions. The member states must refrain from any action which may jeopardize the attainment of the objectives of the EEC, and also should ensure the fulfillment of their obligations. Therefore the new member state has either to transfer its powers to the EEC institutions or seek special authorisation to conduct such relations.[125] This explains why, unless special arrangements are be made through the EEC institutions, a new member state would have either to amend any agreement with a third country, and subsequently impose new customs duties and regulations in conformity with the CET, or demand the termination of the supposed agreement with the third party. Consequently, the latter may lose any advantages or preferences that it hitherto enjoyed.

Lebanese foreign relations records show that prior to the accession of the new European states to the EEC, Lebanon had no bilateral legal framework which regulated its trade relations with these new member states. Lebanon concluded a Trade and Technical Agreement in 1965 with the EEC and its member states.

From the date of accession, the new member states become bound by acts adopted by the institutions of the Community (acquos Communitaire).[126] Consequently, agreements concluded between the Community and a third party are acts of the institutions of the Community and as such are directly binding on the member states, including any new member states.[127] Thus, the latter have to undertake to accede to such agreements.[128] As far as the Lebanon is concerned, Art 8 of the Act of Accession, (taking into consideration the necessary transitional period) referred to the fact that the new member states shall be subject to protocols to be concluded with the third party that is Lebanon as

a party to the agreement concluded jointly by the EEC and the original member states, with particular reference to third countries in the Mediterranean region, of which Lebanon is one. However, since the Trade and Technical Agreement of 1965 was a straightforward MFN agreement, it did not necessitate a transitional period . Consequently, in 1973,[129] Lebanon on the one hand and the EEC and its member states acting jointly on the other, concluded a protocol by which the new member states became contracting parties to the Agreement.

As far as the substance of the Agreement is concerned, the protocol bound the new member states and Lebanon to grant each other MFN treatment with no discrimination between any of the member states of the EEC.

VI-CONCLUSIONS

Following the establishment of the EEC, Lebanon's exports to the individual original member states were adversely affected. In contrast, its imports expanded, resulting in a widening trade deficit which led Lebanon to seek to develop the level of cooperation with the EEC and its member states, aimed at securing Lebanon better access for its exports to the EEC markets. Lebanon's interest in this respect was shown by the pledge to ensure continuity and development in relations with EEC member states.

Lebanon and the member states could no longer engage in trade agreements outside the framework offered by the EEC which, by virtue of the norms of international law, possesses legal personality and competence anchored in its constituent Treaty to conclude trade agreements with third states. Such a power springs from express provisions in its constitutional documents in addition to the implicit powers recognised by the ECJ over the years.

With this reality in mind, since Lebanon considered itself possessing strong political links with some of the EEC member states, Lebanon

submitted a memorandum to the EEC seeking preferential treatment at least similar to that extended to Israel. Consequently, however, a simple MFN trade agreement was concluded between the parties, marking the first step in their long-term relations. The Agreement comprised two subjects trade and technical cooperation.

As regards trade, the Agreement led to disappointment for the Lebanese government since Lebanon was denied any trade preferences from the EEC owing to international legal barriers according to the EEC view. Indeed, preferential treatment is provided only in conformity with the rules of GATT. These rules, permit, however, waivers from the application of the MFN clause under different GATT Articles in particular Article XXIV GATT. An interim agreement leading to the formation of a free trade area between Lebanon and the EEC would be permissible under this Article, by which Lebanon could receive preferential treatment according to a set timetable at the end of which Lebanon would provide the EEC reciprocal preferential treatment. Such a possibility, would satisfy Lebanon's needs for better access to the EEC markets without flouting international trade rules and would translate political links between the EEC and Lebanon into real and effective measures anchored in a treaty. However, the EEC turned down the Lebanese request while offering Israel limited tariff concessions, thus flouting its international obligations under GATT and the Trade Agreement with Lebanon.

Assuming that a special relationship between Lebanon and the EEC member states did exist, a simple MFN agreement would question the rationality (correctness) of such an assumption.

As far as technical cooperation incorporated in the Agreement is concerned, it could be considered as a continuation of their previous cooperation between the relevant member states and Lebanon. The implementation of technical cooperation was left mainly to the member states of the EEC.

Following the first enlargement of the EEC, with already no

provisional preferences in the Trade Agreement, the legal implications of the enlargement were bound to remain rather formal for Lebanon. That is, the enlargement did not bring or involve any new a substantive advantages for Lebanon.

EEC legal practice with Lebanon as regards the Trade Agreement could be attributed to three factors:

1- The Trade Agreement was concluded during the transitional period when EEC's external policy was not yet fully elaborated.

2- Political relations between Lebanon and some of the member states were not strong enough or were not sufficiently experienced for securing for Lebanon's exports better access to the EEC markets

3- The Trade Agreement served merely to succeed the previous trade and technical cooperation agreements between Lebanon and the relevant original member states with no development.

Against this background, it would be safe to conclude that the Agreement does not support the claim that Lebanon's historical, political, cultural and geographical links with the EEC member states could be considered as corresponding to a special relationship with the Community. The Agreement even indicates quite the opposite: a country next door to Lebanon, Israel, was granted preferential treatment and better access to EEC markets despite the fact that it did not have that historical and cultural and political relationship which it has been claimed Lebanon had with the EEC member states. Moreover, trade and technical cooperation did not effect any progress in the legal framework of the relationship between the EEC and Lebanon. Lastly, there was never any pretence that the Trade Agreement satisfied the objectives laid down in its preamble, let alone the expectations of Lebanon.

FOOTNOTES

1 - Throughout this thesis the acronym EEC and the word Community, save in Chapter five, stands for the European Economic Community, where as the acronym EC and European Communities refers to the EEC and ECSC (European Coal and Steel Community).

2- Akehurst.M.B, A Modern Introduction to International Law, 6th.ed, (1987), p 7.

3- Reparations Case, ICJ Reports, (1949), p 174.

4- Ibid, p 179.

5- According to the classical doctrine of public international law, only sovereign states had international legal personality. However, this view has changed as public international law has reacted to legal developments and the needs of international society. See Chiu H., International Personality of International Organisations to Conclude Treaties, (1966), p 3-48; Lauterpacht.H, "The Subjects of Law of Nations", L.Q.R, Vol.63, October 1947, p 450.

6- According to Seyerstedt, all international organisations possess objective treaty making capacity by virtue of general rules of international law (Seyerstedt F., Objective International Personality of IntergovernmentalOrganisations, (1963); Moreover, Prof Thames, in his commentary on draft Art 6 of the Vienna Convention On The Law of Treaties said that the capacity of an organisation could not be provided for by the internal law of the organisation itself. This means that the existence of such capacity does not stem from its constitutional documents, but by virtue of international law, Y. B. Int'l L. Comm'n, Vol.1, (1974), p 136; Lachmann.P, "International Legal Personality of the EEC: Capacity and Competence", L.I.E.I, pt.1, (1984), p 3-21. Furthermore, Prof Reuter says that an international organisation is a body independent from its member states and has the right to participate in the international sphere Reuter, La Communaute´ Europeenne Du Charbon Et De L`Acier, (1953), p 116-117, Found in Werner F., "The Competence of the European Communities For the Conduct of External Relations", Tex. L. Rev, Vol.43, p 891 at p 894.

7- Reparations Case, supra note 3 , p179.

8- For the period between 1/1/46 to 31/12/65; Zemanek K., Agreements of International Organisations and The Vienna Convention on the Law of Treaties, (1971), p155.

9- Zemanek K., ibid, p 152.

10-The positivist theory of international law stipulates that only states are subject of international law; See Lauterpacht H., supra note 5.

11-Theodor S., "The Treaty Making Capacity of the CMEA...", 22 C.M.L.Rev, 615-647, p 618; "A Joint Declaration on 25 June 1988 (O.J L 157 / 35, 88) implies, after years of deadlock between the EEC and the Eastern Block, a recognition of the EEC by the individual member states of the CMEA", Maresceau M., The Political and Legal Framework of Trade Relations between the European Community and Eastern Europe, (1989), p 4.

12-Jenks, "International Organisation and International Law", 22 Brit Y. B. of Int'l L., (1945), p 267; Chiu. H, supra note 5, p 33-48; Zemanek K., supra note 8, p133.

14- Art 2 EEC; Dolmans.M, Problems of Mixed Agreements, (1985), p 7.

15-PCIJ Case of the SS "Wimbledon", PCIJ ser no 1, 1923, p 23 .

16-Arts 110-116, 111, 113, 237 and 238 EEC; Leopold.P.M, External Relations Power of the EEC in Theory and Practice, I. C. L .Q, Vol.26, (1977), p 56.

17-The other legislative sources, as suggested by Usher are:(1) continuation of the former policy of the member states, (2) Community unilateral measures; Usher, Ybk of EL, Vol.6, (1986), p169.

18- Arts 110-116 of EEC Treaty.

19-For general review see Case 8/73, Massey-Ferguson, (1973) ECR, p 908; Donckerwolcke, 141/76, (1976), ECR, 1921; Opinion 1/78, Natural Rubber Agreement, (1979) ECR, 2871. For a detailed legal analysis of Art 113 EEC see, Ehlermann.C.D, "The Scope of Article 113 of the EEC Treaty", in Teigen P., and Manin P., Etudes de droit Communaute's Europe'ennes, (1984), p 149.

20- Ibid, Opinion 1/78.

21- Art 238 Para 1 EEC

22-On 14 April 1987 Turkey made formal application for membership of the Community ; Bull EC 4- (1987), pts 1.3.1 and 1.3.2; 21st Gen Rep EC , (1987), p 303, pt 783.

23- Hartley T C., The Foundation of European Community Law, Chapter 6, "Agreements with third countries", 2nd ed. (1988), p; Arts 131-136 EEC.

24- The Lome´ Coventions are the best examples.

25- Art 230 EEC.

26- Reparation case, supra note 3 p 182.

27- See Chiu H., supra note 5; Lauterpacht H, supra note 5.

28- Case 22/70 Commission v. Council, ERTA [1971], E.C.R 263.

29- For discussion about the theory of parallelism see: Leopold P., supra note 16, p 62; Costins J., "The Treaty Making Power of the EEC", 5 C.M.L.Rev, (1968), p 421 at p 444; Landau.C, "The International Legal Personality of the EEC and its Treaty making power", Is L. Rev, Vol.20, (1985), p341 at p 348.

30- Case 22/70 supra note 28 para 16, at p 274; For a brief background and discussion of the case see Hartley.T.C, supra note 23, p155.

31- Pescatore P., "External Relations in the Case-Law of the Court of Justice of the European Community", 16 C.M.L.Rev, (1979), p 615 at p 620-621; For further reading see Pescatore P., Law of Integration, (1974).

32- It is worth saying that, from the outset, the member states tried hard to retain their power to conclude agreements with third countries in areas which were not expressly vested in the EEC; see Hartley T. C., supra note 23, p 150

33- Art 5 EEC.

34- Case 22/70, supra note 28, Para 31, p 276.

35- For example the recent EEC Council decision "Authorising extension or tacit renewal of certain agreements between some member states and third countries", Council Decision (EEC) 90/235, O.J No L 133/85, 24.05.90.

36- Case 22/70, Para 18, p 274.

37- Opinion 1/75 Local Cost Standard Case, [1975], E.C.R 1355 at p 375; Mass.H.H, "The External Power of the EEC With Regard to CCP : Comment On The Opinion 1/75", 13 C.M.L.Rev., (1976), p 379; Hartley, note 23, p 157.

38- Cornelis Kramer and others, Cases 3, 4, & 6 /76, [1976], E.C.R 1279; Hartley, note 23, p 158-161; Simmonds K., "The Evaluation of the External Relations Law of The EEC", Int'& C.L Q, (1979), p 644, at p 657-660.

39- Kramer, Para 33, p 1309.

40- Kramer, Para 39, p 1290; Hartley.T.C, note 23, p 160.

41- Opinion 1/76, Laying Up Fund For Inland Waterway Vessels, (1977), ECR 741.

42- Ibid Para 7; the member states were allowed to participate in the agreement on financial grounds despite the exclusive competence of the Community in that area; see: Hartley.T.C, supra note 23, p 162 ; See Opinion 1/78, (Natural Rubber Agreement), (1979), 3 C.M.L.R. p 639.

43- Opinion 1/76 supra note 41 Para 4 of the reasoning of the Court; Volker and Steenbergen, Leading Cases and Materials on the External Relations Law of the EC, (1985), p 445; Hardy.M, Opinion 1/ 76 of the Court of Justice, 14 C.M.L. Rev., (1977), p 561-600.

44- This is due either to the internal structure of such international organisations where only states may participate, or due to political opposition to recognition of the legal personality of the EEC (see the stand of USSR in the Conference on Security and Cooperation in Europe in 1975); See European Documentation, 25 Years of European Community External Relations, (1979), p 20.

45- The creation of customs union may entail (1) an increase in all duties (2) an increase in some duties while decrease others and(3) a decrease in all duties; See Art XXIV 8 (a) GATT; Lasok D. & Cairn W. (2nd ed.), The Customs Law of the European Economic Community, (1990), P 1&187-8; The Benelux countries raised their rates of duties consequent on the creation of the EEC. Such an action is recognised by Art XXIV(6) GATT.

46- Art 19 EEC; Lasok D, supra note 45 p 144.

47- Art 111 EEC Para 1 reads as follow : "Member States shall coordinate their trade relations with third countries so as to bring about, by the end of the transitional period, the conditions needed for implementing a common policy in the field of external trade"; The CET was completed in 1968.

48- The word "value" in this sense means the amount of exports or imports, and substance reflects the real trade importance as a percentage of total. It should be borne in mind that an increase in imports or exports does not necessarily mean improvement in trade since such figures may include an increase in prices as a result of

inflation and/or devaluation in the exchange rate of the Lebanese currency.

49- This assumption could be tested through examining Lebanese imports from these countries on a commodity by commodity basis. However, the unavailability of such data made a thorough analysis almost impossible.

50- Due to lack of data which is indispensable for the analysis of trade diversion, the present analysis will rely on existing data which is presented in the tables.

51- Figures related to Belgium and Luxemburg are added together.

52- Although the CET was completed in 1968, it was drawn up and adopted in 1960. At the negotiations on the compatibility of the Treaty of Rome with GATT, the representatives of the contracting parties to GATT made reservations against the EEC, arguing that the rate of the CET which was set up in accordance with Art 19 EEC was higher than the average of the duties previously applicable; Lasok D., supra note 45, p 13 et seq.

53- Makdisi S., Financial Policy and Economic Growth :The Lebanese Experience, (1979), p 159.

54- See note 107.

55- Lebanese Foreign Office (hereinafter called L.F.O) 2262 / 40, No 1264, 12.4.1962; A letter from the Lebanese Government to its Mission to Brussels.

56- 6th Gen Rep EEC (5-6), (1963), p 250, pt 273.

57- L.F.O 2262 /40 , 8.5.62 , No 427.

58- Bull. EEC , No 12, Dec 1962, p 18 ,sec 5.

59- This was the EEC's formal view.

60- Beirut Chamber of Trade and Industry, *Tatweer Al-iktisad Allobnany*, Arabic Language, "Development of Lebanese Economy", (1960).

61- L.F.O 2262 / 40, Annex No 4 "Exports of Lebanese fruit to the EEC, concerning the current negotiations; Lebanese Fruit Office", memorandum dated 10/1/1963.

62- L.F.O 2262 / 40 ,inward 592 / 1962.

63- France offered special quotas concerning lemons and apples. Belgium and Luxemburg offered quotas concerning apples.

Luxemburg offered quotas concerning apples.

64- A discussion concerning the EEC-Israeli Trade Agreement is followed at page 54.

65- 7th Gen Rep EEC , 7-8 June 1964, p 285, Sec 304.

66- Bull.EEC , May 1964 , No 5, p 13, Sec 4.

67- Art 228 para 1 EEC reads that "where this Treaty provides for a conclusion of agreements between the Community and one or more states.... the agreement shall be negotiated by the Commission , subject to the power vested in the Commission in this field" ; Art 111(2) reads "The Commission shall conduct these negotiations.....within the framework of such directives as the Council may issue to it".

68- Bull.EEC , June 1964, no 6, p 10, Sec 6 ; 8th Gen Rep EEC, June 1965 p 299, Sec 307.

69- Bull.EEC , July 65, No 7, p 20 , Sec 6 ; Bull.EEC, May 1965, No 5, P 40, Sec 54 and 55; 9th Gen Rep EEC, June 1966, p 297, Sec 320; Bull.EEC , July 1965, No 7, p 33, Sec 36.

70- Surprisingly the European Parliament hoped that the Trade Agreement might help to improve relations between the Arab countries and Israel, although it was not suggested how?

71- Bull.EEC, August (1965), No 8, p 90.

72- Council Decision, 18.June 1968, 68/263/EEC, J.O No L.146, 27.06.68, P 1.

73- Art 234 EEC.

74- Kapteyn and Van Themaat, Introduction to the Law of the European Communities, (1990), p 361 ; Freeman E., "The Division of Power Between The European Communities and the Member States", Current Legal Studies, Vol.30, (1977), p 167.

75- Council Decision, 73 / 258 / EEC, 4/06/73 ; O.J No. L.224, 31.08.73, p 14.

76- Ehlermann, "Mixed Agreements A List of Problems", in O'keefe D., & Schermers H., Mixed Agreements, (1983), p 5-9.

77- Bleckman A., The Mixed Agreements of the EEC in Public International Law, in O'keefe D. & Schermers H., Mixed Agreements, (1983), p 158.

78- For full details about mixed agreements, see in particular: O'Keefe and Schermers (eds.), Mixed Agreements, (1983); Dolmans, Problems of Mixed Agreements, (1985); Timmermans and Volker (eds.), Division of Powers Between the European Communities and their Member States

In the Field of External Relations, (1981).

79- Gemayel A., The Lebanese Legal System, (1985), p 445-457 at p 445-6.

80- Art V of the Trade Agreement.

81- Prof Van Houtte says "According to the letter of the Treaty, Art 113 agreements differ considerably from Art 238 association agreements. First while the former is restricted to trade, the latter covers a broader range of subjects including, for example, technical cooperation". Van Houtte H., "International Law and Community Treaty Making power", Northwestern Journal of International Law and Business, (1981), p 627.

82- Parry and Hardy, EEC Law, (1973), p 448.

83- Everling U, "Legal Problems of the CCP in the EEC", 4 C.M.L.Rev., (1966), p 150.

84- Opinion 1/78, 26:3 C. M. L. R, (1979), p 639 at p 682-3.

85- Volker and Steenbergern, Leading Cases and Materials on the External Relations Law of the EEC, (1985), p 20-23; Hartley.T.C, supra note 23,p 164.

86- Israel became an effective CONTRACTING PARTY on 5th July 1962 whereas Lebanon withdrew from GATT in 1951.See Jackson.J, p 898.

87- Henig. S, External Relations of the European Community: Association and Trade Agreements, (1971), p 91-126.

88- Hydar.K, Equality of Treatment and Trade Discrimination in International Law, (1968), p 97 127, Jackson J ,supra note 92, p 264-272 ; Khan K., The Law of Organisation and the International Commodity Agreements, (1982), p 25-35.

89- Art 1 para 2 of the General Agreement provides that "The provision of para 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in para 4 of this Article and which fall within the following descriptions:

(a) Preferences in force exclusively between two or more of the territories listed in Annex A,subject to the conditions set forth therein ;

(b) Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relation of protection of suzerainty and which are listed in Annexes B,C, and D, subject to the conditions set forth therein;

(c) Preferences in force exclusively between the United States of America and the Republic of Cuba;

(d) Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

90- Art XXIV para 3 GATT.

91- Art XXIV para 5 (a) GATT.

92- Art XXIV para 5 (b) GATT.

93- Art XXIV para 5 (c)GATT.

94- Art XXV Para 5 GATT.

95- See the Association Agreement between the EEC and Greece, O.J (Special ed. 2nd. ser.), No L 26/3, 18.12.63.

96- The obligations under this Article encompass "any advantages, favours, privileges, or immunity granted by any contracting party to any product originating in or destined for any country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties"; Art 1 par 1 GATT.

97- The subject of the MFN clause has been examined exhaustively. For general reading about this subject see: Yusuf A., Legal Aspects of Trade Preferences for Developing States, (1982), P1-23 ; Espiell H. G., "The Most Favoured Nation Clause Its present Significance in GATT", 5 JWTL, (1971), P29-44; GATT Secretariat, "The Most Favoured Nation Clause in GATT", 4 JWTL, (1971), p 791; Schwarzenberger, "The Most Favoured Nation Standard in British State Practice", Brit Y. B. of Int'l L., (1945), p 102; Usher.E, "The Most Favoured Nation Clause", Y. B. of Int'l L. Comm'n, V.II, 1968-1976; Jackson J., World Trade and the Law of GATT, (1969), Ch 11, p 249; Dam K., The GATT Law and International Economic organisation, (1970), p 18.; Muhammad A., The Legal Framework of World Trade, (1958), Ch 5.

98- Raoul Prebisch: "Towards a new trade policy for development", Report by the Secretary General of UNCTAD, U.N, (1964), p 66; For the complaints of the developing countries see Yusuf.A supra note 91, p 14-16.

99- The origin of this notion goes back to Aristotle's thought in his Nicomachean Ethics in book V, "On Justice", "We must subtract from that which has more, and we must add to that which has less, we must

add to the latter that by which the intermediate exceeds, and subtract from the greatest that by which it exceeds the intermediate", Phrases adopted from Hector Gross Espiell in "GATT, Accommodating Preferences , 8 JWTL, (1974), p 345.

100- As a result of dead debt similar to the case of some developing countries.

101-A few years later, the EEC adopted a similar theoretical rather than substantial approach, though in different terminology through its global Mediterranean policy when it defined its policy as "coherent in principle, but adjusted in the light of the special situation of each of the Mediterranean countries concerned", European Parliament, Working Document, Doc 302/72, p 7.

102-The arguments of the Commission of the EEC against the Lebanese demands during the first round of negotiations. See the general background of the Trade Agreement, P 65 et seq.

103-The Trade Agreement which was concluded between Israel and the EEC; J.O, 13.06.64, P 1517.

104-Ibid, Bull.EEC, No 7, (1964), p 14.

105-The first widely discussed plan for selective preferences was the Brasseur Plan advanced by the Belgium representative at the ministerial meeting in 1963, see Dam.K, supra note 98, p 248. However part IV of GATT concerning trade and development opened for signature on 8th Feb 1965, see Espiell.H. G, supra note 98, P 37.

106-It was concluded upon the same legal basis as the Trade Agreement between Lebanon and the EEC, as far as the EEC treaty making power is concerned, Arts 111, 114 and 228 EEC.; J.O, supra note 107, P 1517.

107-21 industrial and agricultural products were entitled to reductions in the common custom tariff applicable toward third countries which varied between 10% and 40%. For an extensive analysis of the Agreement see, Henig S., External Relations of the European Community: Association and Trade Agreements, (1971), p 91-126.

108-Henig, ibid, p 98.

109-Ibid, p 98.

110-Ibid, p 98.

111-An excellent and thorough analysis of the Article can be found in Jackson.J, supra note 97, Ch 14; Hydar, supra note 88, p 97 et seq.

112-Art III of the Trade and Technical Cooperation Agreement stipulates that, the provisions concerning most-favoured-nation treatment shall not apply to:

(a) advantages which were or will be granted by the Contracting Parties with the object of establishing a customs union or free trade area;

(b) any special advantages which might be granted by the Community to particular countries by agreement in accordance with Article XXV of GATT;

(c) special advantages which the Lebanese Republic grants to the Member States of the League of the Arab States;

(d) special advantages which are or will be granted by the Contracting Parties to facilitates frontier-zone traffic with neighbouring countries;

(e) advantages with certain Member States of the Community grant on the basis of given special situation.

113-Guiding principles to be followed by Contracting Parties in considering application for waiver for Art 1 or other important obligations of the Agreement, BISD 5.S/25, document L / 532; See Jackson J., p 543-545.

114- Art XXV Para 5 GATT stipulates that : "In exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote

(i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations and

(ii) prescribe such criteria as may be necessary for the application of this paragraph.

115-Jackson. J, p 552. Later in 1970, the EEC failed to secure a waiver from theapplication of MFN clause on Art XXV grounds, in order to grant Israel specific preferential treatment. Consequently the EEC rescinded its application to avoid likely defeat in GATT, see Henig S., supra note 108, p 117-120.

116-Art 34 of Vienna Convention on the Law of Treaties Between States and International Organisations or between International Organisations; 25 I.L.M (1986), P 564.

117-Art VI (a) of the Trade and Technical Agreement, O.J No L 244, 31.8.73, P 8.

118-Ibid, Art VIII

119-Taylor.R, "The Implications for the Southern Mediterranean Countries of the Second Enlargement of the European Community", Commission of the European Communities, Europe Information Development, June, (1980), p 4.

120-Coombes D., Ireland and The European Communities: ten years of membership, (1983), p 89. [D'ail Debates 275 (1974):980].

121-For further details concerning this topic see: Ibid; Tsoukalis.L, The EEC and its Mediterranean Enlargement, (1981); Yannopopoulas G.N., The Enlargement of the EEC; Pinder J. & Wallace W., "The Community as a framework for British External Relations" in Wallace W. ed., Britain in Europe, (1980), p 197.

122-Lebanese exports to these countries developed as follow: Germany, 3.5%; France, 2.4%; and Italy, 2.5%.

123-For general details see: Bathurst.M.E & Simmonds.K, Legal Problem of an Enlarged Community, (1972).

124-Ibid, ch 14.

125-At that time it was easy for the member states to seek such derogations; See Council decision 69/494 EEC, O.J No L 326/39 (1969).

126-Art 2 Act of Accession (1972).

127-Art 4 Para 1 Act of Accession (1972).

128-Art 4 Para 2 Act of Accession (1972).

129- O.J N0 L 73, 27.3.72, P 14; Council Decision 73/257/EEC, O.J No L 244,31.8.73, P 1.

CHAPTER THREE

THE PARTIAL RECIPROCAL PREFERENTIAL TRADE PHASE OF RELATIONS BETWEEN THE EEC AND LEBANON (1972-1977).

I-INTRODUCTION

In 1965 the EEC had argued that its international legal commitments prevented the conclusion of a preferential trade agreement with Lebanon. Indeed, according to GATT's MFN provision, which is based on non-discrimination and equality of treatment, any preferential treatment to be offered by the EEC and its member states to Lebanon would have had to be generalised and extended to all the other GATT contracting parties.

Due to the persistent complaints of the developing countries, especially through the years that followed the conclusion of the Trade Agreement of 1965, the international community witnessed, for the first time, developments in the international economic legal order to the advantage of the developing countries. These developments led to the introduction of Part IV of GATT, and, thereafter, the enabling clause into the sphere of world trade law. Moreover, a Generalised System of Preferences was introduced into the sphere of international trade relations through the efforts of UNCTAD. Such developments in the international economic legal order enabled the developed countries to offer trade preferences to the developing countries without being fully committed to extend such preferences to other developed countries.

On the other hand there was a considerable debate at that time within the EEC institutions as to whether or not the EEC should grant Israel further preferential trade arrangements. In fact, notwithstanding providing the chances for better access to the EEC markets which were provided for Israeli products in the Agreement of 1964 through various

tariff cuts, Israel expressed its dissatisfaction demanding further significant preferential trade arrangements. The Israeli application for preferential trade agreement divided the Council of the EEC into two camps. The Netherlands, backed by Germany, was in favour of the Israeli application while France, backed by Italy, adopted an anti- Israeli stance. A compromise was reached via a set of quid pro quo deals promising a balanced treatment between Israel and the Arab countries. Consequently, Lebanon, inspired by France decided to apply to conclude a preferential trade agreement with the EEC.

Lebanon believed and was even convinced that such developments would eventually lead to the elimination of the international legal barriers, which the EEC resorted to during the negotiations of the Trade Agreement of 1965, as well as the political resentment of the EEC institutions for providing preferential treatment. In particular, Lebanon assumed that it would be possible to negotiate a preferential trade agreement with the EEC in order to enable Lebanon to develop its trade and thereby remedy its trade imbalance with the Community.

The present chapter will focus particularly, on the second phase of the legal framework which regulated trade relations between Lebanon and the EEC. The examination necessary for it will be undertaken within the context of international trade developments. However, for the sake of a wider understanding of the issue, an attempt will be made to examine the impact of the first Trade and Technical Cooperation Agreement of 1965 on the pattern of trade flows between the EEC and Lebanon.

II-TRADE RELATIONS BETWEEN THE EEC AND LEBANON POST THE TRADE AGREEMENT (1967-1973).

The preamble of the Trade Agreement expressed the aims of the contracting parties: to "consolidate and extend the economic and trade relations" between Lebanon and the EEC. The latter argued that such

developments in trade would be achieved only through MFN treatment and turned down the Lebanese suggestion for preferential treatment to achieve such objectives. In fact, the Trade Agreement was a mere reflection of the MFN clause which precipitated the question regarding the viability of this Trade Agreement. In other words, one can argue whether or not the Agreement was successful in meeting the objectives outlined by the preamble.

In order to show the success or otherwise of the Trade Agreement, it is necessary to examine the relevant trade figures.

A-IMPORTS

By and large, since the entry into force of the Trade Agreement, Lebanese imports from the EEC experienced a considerable improvement in both value and substance. This is well illustrated in the table below;

Figure No 3.1

Lebanese imports from the EEC post trade post Trade Agreement

Value in OOO$ (C.I.F)

	1967	1968	1969	1970	1971	1972	1973
BEL-LUX	11074	11903	12153	13671	17081	29654	34761
FRANCE	40940	46572	41865	47737	65805	78494	131256
GERMANY	41635	49364	57302	60324	76272	93090	142880
ITALY	36785	42036	43745	45781	58015	76638	112289
NTHRLND	11492	13197	13391	12988	17627	17438	26299
EEC(6)	141925	163072	168456	180501	234800	294314	447485
TOTAL	471027	521142	531983	567483	677121	849347	1224522

Source: U.N. International Trade Statistics, V.I.

Lebanese imports from the EEC counted for 30 per cent of its total needs in 1967. These imports improved steadily over the years until they counted for over 36 per cent in 1973. The value of these imports in the Lebanese market trebled during the above mentioned period of time, whereas total Lebanese imports did not expand at the same rate. This suggests that the EEC exports to Lebanon achieved their objectives through the Trade Agreement, i.e, the EEC consolidated and extended its trade relations with Lebanon.

A further question arises as to whether or not such an improvement in EEC exports to Lebanon was equally felt by all the member states of the EEC.

Lebanese imports from individual member states of the EEC could be divided into two groups: the dominant and the marginal groups. The former consists of Germany, France, and Italy. These countries used to have, as individuals before the inception of the EEC, different legal frameworks of trade relations with Lebanon.

The latter group which consists of the Benelux countries, did not engage, before the conclusion of the Trade Agreement in 1965, in any kind of bilateral trade agreements with Lebanon.

Germany was amongst the member states of the EEC, the most important supplier to the Lebanese market. It occupied the major share of EEC exports to Lebanon with 29 per cent in 1967. This figure grew steadily over the years until it reached its peak in 1973 with slightly below 32 per cent of the EEC share. In terms of Lebanese global imports, German exports to Lebanon counted for more than 8 per cent of the Lebanese market in 1967. They also rose over the years and were worth over 11 per cent of the total Lebanese imports in 1973. These figures reflect vital developments in German exports to Lebanon in both value and substance. Similarly, French exports to Lebanon expanded over the years though they were slightly less significant than those of Germany. They totalled 28 per cent of the EEC share in 1967 or 7.8 per cent of total Lebanese imports.

They increased constantly till they reached their peak in 1973, when they were worth 29 per cent of the EEC share or just over 9 per cent of total Lebanese imports. The position of Italy, as regards Lebanese imports, although not as important as that of Germany and France, showed an increase. Its exports to Lebanon counted for 25 per cent of the total EEC exports to Lebanon or 7.8 per cent of the Lebanese total imports in 1967. These imports trebled by 1973. However, its share among other member states maintained its same level, and counted for slightly over 25 per cent of the EEC share (over 9 per cent of the total Lebanese imports) in 1972, though they declined slightly the following year.

Lebanese imports from the Benelux countries witnessed a similar expansion, however in relative, and not in real terms. As such, although the value of Belgian and Luxemburg's exports to Lebanon trebled during that seven year period, their percentage within the Community's share was less significant. Subsequently, these imports increased in the earlier years from 2 per cent in 1967 to 3.4 per cent in 1972 of Lebanese total imports. However, in the following year, they decreased to 2.8 per cent. As regards their share in EEC exports to Lebanon, they declined slightly, from 7 per cent in 1967 to 6.6 per cent in 1973 of the EEC exports to Lebanon. Similarly, Lebanese imports from the Netherlands expanded nearly twice in value, but in real terms they decreased from 8.4 per cent in 1976 to less than 6 per cent in 1973 of the EEC exports to Lebanon or from 2.4 per cent to 2 per cent of the total Lebanese imports.

Therefore, imports from the EEC to Lebanon during the relevant period, experienced continuous expansion. In particular Germany, France and Italy, improved their position as they supplied 86 per cent of Lebanese imports from the EEC.

B-EXPORTS

The main object of the Trade Agreement was to maintain and

develop trade relations between the contracting parties. It gave special consideration to the harmonisation of such trade. Thus, as trade flows relate to imports and exports, Lebanon's exports were expected to achieve considerable improvements in the markets of the member states of the EEC in order to achieve entirely the objectives of the Trade Agreement. This gives rise to the question whether or not the Trade Agreement contributed to the expansion of Lebanese exports to the EEC in a proportion similar to the EEC' exports to Lebanon. This may be discovered through an examination of the trade figures shown in the table below.

Figure 3.2

Lebanese exports to the EEC post Trade Agreement

Value in 000$ (C.I.F)

	1967	1968	1969	1970	1971	1972	1973
BEL-LUX	550	826	1029	1690	2675	2778	3928
FRANCE	2995	3017	3488	4155	4512	5584	7297
GERMANY	2105	2429	2471	3046	4364	3894	7457
ITALY	3063	5639	6528	4614	8313	12950	8710
NTHRLND	394	810	587	1015	828	1798	3182
EEC(6)	9107	12721	14103	14520	20692	27004	30574
TOTAL	119267	146048	170476	197833	256039	350605	502467

Source: U.N International Trade Statistics, V.I

The above table reveals that Lebanese exports to the EEC increased only three times in value as compared with the four-fold increase in Lebanese total exports during the same period of time. However, in real

terms, they decreased gradually over the years from 7.6 per cent in 1967 to 6 per cent in 1973 of total Lebanese exports.

As far as individual member states' trade with Lebanon is concerned, one could classify such trade into two groups, however with inverse consequences.

Regarding Germany, France and Italy, the table demonstrates that Lebanese exports to these countries expanded over the years. Indeed, the German market expanded more than three times in volume for Lebanese exports. The other two markets, in Italy and France grew less than three and two times respectively. However, a thorough analysis of these exports reveals the contrary. As a matter of substance, total Lebanese exports developed more than four times. This suggests that although Lebanese exports to these countries grew, they were declining relative to the growth of total Lebanese exports. This may be clearly proved through the decline of Lebanese exports to these markets, falling from 89 per cent to 76 per cent as regards the EEC market. The above table shows that German imports from Lebanon, although barely increasing by 1 per cent throughout the six year period as regards EEC imports from Lebanon, decreased from less than two per cent in 1967 to 1.4 per cent of the total Lebanese exports in 1973.

Italian imports from Lebanon declined from 34 per cent in 1967 to 26 per cent of the EEC market in 1973 or 2.6 per cent to 1.7 per cent of the total Lebanese exports in 1973.

Lebanese exports to France follow a similar pattern. They declined from 32 per cent in 1967 to less than 24 per cent in 1973 of the EEC imports from Lebanon. Similarly, these exports decreased in relation to total Lebanese exports, falling from 2.5 per cent in 1967 to 1.4 per cent in 1973.

Lebanese exports to the Benelux countries expanded over the years in both value and volume. Together, markets in Belgium and Luxemburg absorbed 6 per cent of the Lebanese exports to the EEC in 1967. They increased over time with a peak in 1973 and counted for slightly less than

13 per cent of the EEC imports from Lebanon. Similarly, Lebanese exports to the Netherlands developed from 4 per cent in 1967 to 10 per cent in 1973 regarding Lebanese exports to the EEC. These exports improved in relation to total Lebanese exports (from 0.4 per cent to 0.7 per cent). However, total exports of the Benelux countries together are still of no serious significance in the pattern of trade relations between the EEC and Lebanon.

Thus, Lebanese exports varied as to the EEC and individual states. Lebanese exports to the former did not increase in substance (as regards the percentage of total Lebanese exports) but did increase in value. As to individual states, Lebanese exports declined relative to the growth of Lebanese total exports to the former group, that is France, Germany and Italy. The impact of the second group, that is the Benelux, though it expanded in both value and percentage, was marginal. This diverse result as to mutual benefits could not be clarified unless one looks at the Lebanese balance of trade.

C-BALANCE OF TRADE

It has been clearly shown that, although trade relations expanded regularly over the years, both in terms of imports and exports, they were neither consolidated nor harmonised. Regarding imports to Lebanon, there was a significant and substantial development for all member states of the EEC, though relatively at different levels as regards different individual member states of the EEC. However, as far as Lebanese exports are concerned, despite the expansion of these exports to the EEC territories, they declined in relation to the imports from the same markets as well as relative to the growth of total Lebanese exports. It was, moreover, noticeable that imports from Lebanon into the Benelux countries developed substantially. However, their trade relations with the Lebanon as a whole was of no significance, if total Lebanese foreign trade is taken

into consideration. Thus, the trade relations between the EEC and Lebanon, following the Trade Agreement, resulted in a wider (more than three times) trade deficit than before by the end of 1973. Comparing such a result with the overall Lebanese balance of trade, where its trade deficit did not expand more than twice, the developments show that trade relations during the given period of time ran contrary to the interests of Lebanon. Moreover, the extent of Lebanese exports to the EEC compared with Lebanon's imports from the EEC did not correspond, to Lebanon's disadvantage, to the percentage of total Lebanese exports in terms of its total imports. Lebanese exports to the EEC did not cover, at best, more than 9 per cent of the imports from the EEC in 1972, whereas they declined in the following year to less than 7 per cent. In comparison with total Lebanese exports, they developed from 25 per cent in 1967 until they reached their peak in 1973, covering 41 per cent of total Lebanese imports.

One may argue that the Trade Agreement between the EEC and Lebanon did not cover only trade issues (MFN clause), but also technical cooperation. Consequently, Lebanese imports from the EEC may have concentrated on capital equipment necessary for the implementation of the technical cooperation necessary for the improvement of total Lebanese exports independently from exports to the EEC. If this holds true, then one wonders why Lebanon engaged in a Trade Agreement with the EEC. It has been argued in an earlier chapter that technical cooperation falls within the jurisdiction of the member states. As such, technical cooperation provisions were in force between the most important trade partners of Lebanon among the member states of the EEC (France, Germany and Italy), by virtue of the terms of earlier relevant agreements prior to the Trade Agreement. This would suggest that the Trade Agreement failed to achieve any progress in the already existing relations between Lebanon and the EEC, except in the coordination of technical cooperation. However, the Trade Agreement with the EEC aimed not only to coordinate technical cooperation, but also to harmonise,

consolidate and expand trade relations between both parties. Therefore, increasing Lebanese exports to the EEC market was at the heart of the aims of the Trade Agreement and, was, consequently, the axis of consolidation and expansion of trade relations between the EEC and Lebanon. Since Lebanese exports to the EEC market did not increase, but on the contrary, they substantially decreased, it could then be suggested that trade relations between Lebanon and the EEC following the conclusion of the Trade Agreement fell short of meeting the objectives of the Trade Agreement, and led to results unfavourable to Lebanese interests.

III-THE AGREEMENT OF 1972 BETWEEN THE EEC AND LEBANON.

A-GENERAL BACKGROUND TO THE AGREEMENT.

During the negotiations of the Trade and Technical Cooperation Agreement, Lebanon presented its views and ambitions relating to its relations with the member states in general, and the EEC in particular. The negotiations concerning the first memorandum reached a stalemate, and consequently, Lebanon rescinded its original proposal, waiting for further opportunities to negotiate and conclude a preferential trade agreement for receiving trade concessions from the EEC.

Prior to the developments in the legal order of international trade, Israel scored a precedent by applying to the EEC for a preferential trade agreement. The Israeli application was prompted by its strongest supporter in the EEC, The Netherlands, which blackmailed (chantaged) the EEC by exercising a veto against any envisaged agreement unless a formula was agreed upon with a view to granting Israel special preferential treatment.[1] The Israeli application for preferential trade arrangements was opposed strongly by the French hostile attitude towards Israel at that time on the grounds of its aggression against the Arab countries in 1967. Consequently

the EEC became divided on its external policy into a pro and anti group with respect to Israel's application.[2] Further pressure was exerted by Germany in favour of Israel, leading France to bring forward a set of quid pro quo deals arguing that the EEC should maintain political balance between Israel and the Arab countries with a view to express its readiness to negotiate similar preferential agreements with them.[3] Consequently, the French "diplomacy" was requested by the Council to "inspire the Arab countries to apply for commercial agreements". Eventually, France managed to persuade only Lebanon and Egypt to apply for a commercial agreement promising a positive attitude from the EEC towards Lebanon for granting a more favourable preferential treatment this time. Against this backdrop, Lebanon assumed that the legal and political barriers, which left Lebanon bereft of all hopes of receiving preferential trade treatment, could be tackled.[4]

In a communication on the first of October 1969, the Lebanese mission to the EEC was instructed by its government to explore with the EEC Council and Commission methods by which the Lebanese government's desire for the possibility of concluding a preferential trade agreement with the EEC[5] could be fulfilled. The Commission welcomed the Lebanese request and held exploratory talks on the 5th and 6th of February 1970 with the head of the Lebanese mission to the EEC. The two delegations examined the Lebanese request, resulting in establishing guidelines for subsequent negotiations.[6] They reported the fruits of their talks to their authorities.[7] The Council of the EEC, in May 1970, having received the Commission's report on the 14th of April 1970, instructed the Permanent Representatives Committee (Coreper) to examine the report and draft a mandate for the opening of formal negotiations with Lebanon.[8] On the 22nd of July 1970, the Council directed the Commission to launch formal negotiations with the Lebanese government through its representatives. In its instructions, the Council drew up the framework of the negotiations aimed at concluding a partial preferential trade

agreement, providing for the elimination of customs duties as regards industrial products, and tariff cuts concerning certain agricultural products of particular interest to Lebanon.[9]

On the basis of the Council's instructions, the first phase of the formal negotiations was launched in Brussels on the 30th of September and the 2nd of October 1970. The second round of negotiations was held from the 13th to the 15th of October 1970. A further session was held during 1971, while the final session wound up on the 11th of December 1972. Initial agreement was then reached on all the points under discussion.[10] During the first round, the two delegations negotiated the EEC's offer put forward by the Commission. In the second phase of negotiations, the Lebanese delegation commented on the EEC proposal and put forward their government's offer in return for EEC tariff concessions. At the end of the negotiations, a communique' was issued expressing both delegations' "hope for a favourable conclusion to the negotiations". The draft agreement was initialed on the 11th of December 1972 and later a reciprocal preferential trade Agreement between the EEC and Lebanon was signed in Brussels on the 18th of December 1972.[11] Following the first enlargement of the EEC, the new member states adhered to the Agreement by concluding an additional protocol which was signed in Brussels on the 6th of November 1973. Both the Agreement and the Protocol were scheduled to enter into force at the beginning of 1974.[12]

B-THE LEGAL BASIS OF THE AGREEMENT

i-INTERNAL OR COMMUNITY LEVEL

The Treaty of Rome enumerates in various articles the areas where the EEC is empowered to conclude agreements with third parties. In addition, the ECJ evolved this power to include areas which are not

covered expressly by the Treaty, through implicit deduction from the whole framework of the objectives of the EEC Treaty.[13] Amongst the express areas is the common commercial policy (CCP), as the most important and detailed aspect of the external relations of the European Communities.[14] It has been assumed to include "all measures intended to regulate economic relations with the outside world".[15] The CCP is based on uniform principles, particularly as regards "the conclusion of tariff and trade agreements". In fact, tariff and trade agreements are expressly dealt with by Article 113 EEC. The ECJ interpreted this article widely to cover the attainment of the objectives set out in the CCP provisions.[16] Therefore, Art 113 is the principal provision of the CCP for it "aims to regulate commercial policy measures after the transitional period".[17]

Art 113 EEC sets out the procedures which ought to be followed in conducting tariff and trade agreements. It requires the Commission to "make recommendations to the Council" [Art 113 (3)] and to negotiate agreements with third parties, following authorisation from the Council. As such, the negotiations should be "within the framework of such directives as the Council may issue to *the Commission*" [Art 113 (3) Para 2]. In addition, such negotiations should be conducted in "consultation with a special committee" which is to assist the Commission. However, in practice, the main task of the special committee is to safeguard the interests of the EEC member states during such negotiations.

Art 113 finally stipulates that the Council has to adopt the agreement by qualified majority.[Art 113 (4)]. It is obvious that such agreements become directly binding upon the Community institutions and the member states.[18] Therefore when the EEC is empowered to act in the area of express powers, within the context of the CCP, such powers become exclusive,[19] and the member states must abide by article 5 EEC.[20]

Accordingly, the Council concluded the Agreement between the EEC and Lebanon exclusively and cited Art 113 EEC in its promulgation to the Agreement as the legal basis of its action.[21]

ii-THE INTERNATIONAL OR EXTERNAL LEVEL

In fact, tariff and trade agreements referred to in Art 113 EEC could be preferential or non-preferential agreements. However, the EEC is not only bound by its constitutional documents, but also by international commitments to which it adheres. Tariff and trade liberalisation measures are subject to treatment under GATT rules and are consequently, a matter of Community concern. GATT calls for substantive tariff reductions (The Preamble and Art 28 Bis). However, such tariff concessions which are based on equality of treatment and implied reciprocity between different contracting parties provide a legal basis for any contracting party to seek advantages from such tariff reduction by virtue of the MFN clause. The MFN clause involves different derogations which sanction certain departures from its application. International trade law experienced different developments due to the needs of international society. As such, Part IV GATT was added to the General Agreement and, later, a Generalised System of Preferences was introduced into the sphere of world trade law. One could, therefore, ask what is the legal basis of the Agreement of 1972 between Lebanon and the EEC as regards international law? To put the question differently: was the preferential trade arrangement offered to Lebanon due to legal developments in international trade norms, or were these developments not taken into consideration during the conclusion of the Agreement? Did the parties to the Trade Agreement of 1972 seek exemptions from the application of MFN clause under GATT derogation norms?

Given the fact that international developments in world trade law have been elaborately discussed by an extensive literature, there is no need to discuss them here. The emphasis will in the present context focus on a brief recapitulation of legal undertakings by the EEC as to Part IV GATT

and the GSP, and assess their legal implications for EEC's external trade relations with Lebanon.

a-THE AGREEMENT AND PART IV GATT

During the early sixties, the problem of development was hotly debated. At its 21st session, the ministers of GATT realised that "trade negotiations efforts should be made to reduce barriers to exports of less developing countries" on a non-reciprocal basis.[22] In the following year, a special session resulted in the adoption of a chapter entitled "Trade and Development" which was incorporated into the General Agreement on Tariffs and Trade and formed its Part IV, and came into force in 1966.[23]

By virtue of the new chapter, the Contracting Parties recognised the problem of development of developing countries , and agreed upon "the need for a rapid and sustained expansion of the export earnings of the less developed countries [XXXVI (2)]. Moreover, other principles were set out to treat the problem of development. The Contracting Parties pledged to provide the "largest possible measures, more favourable and acceptable conditions of access to world markets" to the primary products of the developing countries [XXXVI (4)]. In addition, the developed countries undertook to give "to the fullest extent possible" effect to different measures which liberalise and expand exports of current or potential interest to developing countries.[24] However, one could ask whether or not these undertakings contradict Art 1 GATT. Or could Part IV be regarded a mere self- waiver which leads to the non-applicability of the MFN clause?

Since its incorporation, Part IV of GATT has received different and even controversial interpretations from different legal writers as regards its departure from the MFN clause. Moreover, the legal effectiveness of Part IV has been ambiguous and indeed minimised by the cautious wording of its articles. In addition, the absence of a clear amendment of

Article 1 GATT left the legally binding nature of part IV upon the Contracting Parties to the GATT unresolved.

There are indeed many views on this issue. One view considered that any advantages which spring from Part IV GATT should not be extended to other developed Contracting Parties, otherwise, "it would make no sense and it would violate all the principles of Part IV, should these advantages also be applied to other industrialised countries which would thereby benefit from a treatment devised to promote progress and development".[25]

This argument seems to find evidence in Part IV itself. Art XXXVI (8) GATT provides for non-reciprocity for commitments made by developed countries to developing countries.[26] The view of Gross-Espiell could have been implicitly deduced from the raison d'être of part IV GATT, which forms a cornerstone of legal obligation. The reason behind the introduction of Part IV is to provide a legal instrument within the GATT to treat the problem of development within developing countries. Therefore, to extend such advantages arising from part IV GATT to other categories of states would violate the spirit and raison d'être of part IV of the General Agreement on Tariffs and Trade. This approach -that of adopting a purposive or teleological interpretation of international treaties- is not unknown in international law. Such a purposive interpretation is a reflection of the practice of both the ICJ and ECJ.[27]

However, although Art XXXVI (8) provides for non-reciprocity from the developing countries for commitments made by developed countries, this Article does not cover any express waiver from MFN. In other words, the Article stipulates for non-reciprocity as regards developing countries, and ignores the problem of extending such advantages to other developed Contracting Parties. Moreover, Art XXXVII GATT supports this argument when it refers to certain exceptions which evidently halt the legal effectiveness of the new chapter. Amongst these compelling exceptions are legal reasons which may include the international legal

commitments of developed countries towards the MFN clause. Consequently, the developed countries may argue, as was the case with the EEC and Lebanon, that they cannot offer tariff concessions to their developing trade partners for development purposes in developing countries for fear, not of violating international law this time, but that other developed countries may invoke their rights to be given the treatment similar to that given to developing countries.[28] Furthermore, from the outset, the developed countries had the intention of making inroads in the implementation of part IV GATT. Their passive attitude demonstrated itself in two cases. Firstly, through rejecting different proposals put forward by different developing countries for the purpose of amending Art 1 GATT.[29] Secondly through their refusal to support or abstain from voting for measures in favour of developing countries in UNCTAD I.[30] This attitude was confirmed by the Declaration on a De Facto Implementation, which was signed by those countries who desired to implement Part IV GATT. The Declaration was confined to the "existing constitutional and legal possibilities"[31] which reflected the intention of the developed countries to impede any progress as regards the legal effectiveness of Part IV GATT. Therefore, the language of Art IV, the numerous exceptions attached thereto such as "compelling legal reasons"; the premeditated intention of the developed contracting parties to GATT and the denial of the non-extension nature of preferential treatment offered to developing countries, leave no room for assertion that part IV of GATT is legally effective. In fact it added nothing to the "existing legal relationship between developed and developing countries".[32] As such, part IV GATT provides only for non-reciprocity between developed and developing countries. However, the non-reciprocal nature of the article was demised by the "compelling legal reasons" which served as vehicle for legal ineffectiveness of Part IV GATT.[33] Therefore, Part IV only set forth principles and objectives rather than legal obligations.[34] However, from a political perspective one can assume that Part IV was used by the

dominating developed countries as a political instrument to absorb the anger of the developing countries. According to this argument, Part IV of GATT, which is legally non binding upon the developed countries, could not provide a legal basis for the Agreement between the EEC and Lebanon to include tariff reductions as far as international trade law is concerned.

b-THE AGREEMENT AND THE GSP

The refusal of developed countries to amend Art 1 GATT to render Part IV GATT legally effective resulted in the latter falling short of meeting the developing needs of the international society. Consequently, the developing countries put forward their proposals in another international forum. The U.N called for the first Conference on Trade and Development (hereinafter UNCTAD) in 1964. It resulted in filling the legal lacunae which were left by Part IV GATT. It set out the principle of non-reciprocal preferential treatment by developed countries, provided that preferences accorded to developing countries should not be extended to other developed countries.[35] However, the passive attitude of the participating developed countries toward the conclusion of the principle brought about a lack of legal efficacy.[36] Nonetheless, a special committee was established to further the principle of non-reciprocal non-extended preferences. Consequently, UNCTAD II was held in New Delhi in 1968. It adopted a unanimous resolution which approved the same principle which the developed countries themselves refused to accept in the earlier UNCTAD.[37] In addition, resolution 21 (II) sets forth the objectives of such general preferences and enumerates the means for the achievement of the principles and objectives enunciated in the resolution. Yet the legal implications of the resolution, so far as the MFN clause within GATT is concerned, and, consequently, for the rights of the Contracting parties to GATT to receive similar treatment as regards any tariff reduction, had to wait for the "Agreed Conclusions"[38] and a derogation from the MFN

clause.

The "Agreed Conclusions" confirmed and formulated the principles and objectives of Resolution 21(II) into normative form. The former provides for non-reciprocal and non-discriminatory preferences to be accorded to the developing countries. It further provides that "no country intends to invoke its rights to MFN treatment with a view to obtaining, in whole or in part, the preferential treatment granted to developing countries in accordance with the conference Resolution 21(II)".[39] Moreover, two more interesting points are included in the Agreed Conclusions. Firstly, such preferences are conditional upon the necessary waiver or waivers in respect of existing international obligations, in particular, under GATT".[40] Secondly, that the countries offering preferences would "seek as rapidly as possible the necessary legislative or other sanctions to implement the preferential arrangements".[41] This means that these preferences are to be accorded by each preference giving country on an individual basis. This point seems to overcome, substantially, the verbal non-binding nature of the general system of preferences.

As far the first point is concerned, among different proposals, the developed countries initially sought a general waiver procedure to be utilized for the insertion of preferences into the GATT system.[42] Later, however at the end of the Tokyo Round, a decision was adopted, by consensus, approving a permanent departure from the MFN clause.[43]

As regards the second point, despite the fact that the grant of preferences does not constitute a binding commitment, the intention of the developed countries was tacitly understood to mean that the Agreed Conclusions were to be implemented.[44] As such, this international development had its implications on EEC external trade relations. The EEC was the first to respond to these events. In June 1971, the EEC, upon a proposal of the Commission, adopted the necessary legislation for the implementation of the "Agreed Conclusions" for a General System of

Preferences.[45] The EEC General System of Preferences involved full exemption from customs duties for all industrial products in addition to partial exemption for certain processed agricultural products.[46]

The EEC General System of Preferences raises a question as to what extent the Agreement between the EEC and Lebanon was based on the EEC General System of Preferences accorded developing countries. In other words, could the Agreement be deemed to be part of the EEC General System of Preferences accorded developing countries?

Any thorough analysis of the Agreement between the EEC and Lebanon[47] would reveal that the contracting parties aimed to expand their trade into each others markets. As such, they accorded each other partial reciprocal tariff concessions in accordance with a specific list annexed to the Agreement. By contrast, the General System of Preferences aimed, in addition to expanding the trade of the developing countries into developed markets, to promote industrialisation, and to accelerate their rates of economic growth [Resolution 21 (II)]. Moreover, the EEC preferences accorded developing countries offered full exemption from customs duties concerning industrial products (apart from sensitive products) and partial tariff cuts as regards agricultural products.[48] Above all, the unilateral nature of the Generalised System of Preferences does not entail an agreement between the countries offering and receiving preferences. It is clearly evident that the Agreement falls far short of the advantages which spring from the EEC General System of Preferences accorded the developing countries despite the fact that the Agreement stipulates for further developments. Nonetheless, the GSP could provide two implications. The first is of a legal nature. The GSP which recognises the principle of non-reciprocal non extended (to developed countries) nature of tariff preferences to developing countries, would ease the opposition in offering similar treatment under non-concrete conformity with Article XXIV GATT. The second implication is of an economic nature: the more preferential treatment offered by the EEC to other

countries, the less effective and less feasible such preferences would become. Therefore, the GSP did not provide reference to the preferential trade arrangements between Lebanon and the EEC. One may thus wonder, on what legal basis the two parties accorded each other partial tariff reductions.

c-THE AGREEMENT AND ARTICLE XXIV GATT

According to GATT norms, any Contracting Party to the General Agreement which engages in a trade agreement involving bilateral tariff concessions, has either to seek special waiver or the agreement should be compatible with the recognised departures enunciated in GATT.

The EEC presented the Agreement to GATT in order to have the compatibility of its provision with GATT rules examined.[49] By doing so, the EEC was meeting its obligations under Article XXIV:7(a) GATT.[50] The EEC claimed that the Agreement with Lebanon should be considered an interim agreement leading to the formation of a free trade area.

Indeed, Article XXIV: 8 (b) GATT allows its Contracting Parties to form a free trade area or an interim agreement leading to the formation of a free trade area. It considers such a formation as a derogation from the application of the MFN clause. For this purpose, GATT defines a free trade area as a "group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories". Moreover, an interim agreement leading to the formation of such a free trade area "shall include a plan and schedule for the formation of such a free trade area within a reasonable length of time".[51]

As a matter of content, the Agreement between Lebanon and the EEC affords barely the opportunity to eliminate "many of the obstacles to trade".[52] It merely offers partial tariff cuts on a defined number of

products. This was construed by both Lebanon and the EEC to be a preliminary step towards the formation of a free trade area. However, Article XXIV: 5 (c) GATT refers to a clear plan and schedule by which the envisaged free trade area could be genuinely achieved whereas the future of the Agreement was connected only to wishes for a "progressive elimination of obstacles to the main body of trade"[53] which may be subject to a longer time than the duration of the Agreement itself. Subsequently, such a wish could hardly be met. Moreover, the contracting parties to the Agreement failed to express either in the Preamble or in its detailed provisions that Lebanon and the EEC aim to form a free trade area. They only relied on the political good will of each other, notwithstanding the failure of their political links to be translated into normative means in previous attempts. Moreover, it is evident that the parties had widely differing-levels of economic development, and any reciprocal tariffs cuts, let alone full elimination of customs duties between themselves, would lead to severe injury to the nascent economy of the less developed country. However, one may argue that the Agreement maintains the rights of either of the contracting parties to adopt defined safeguard measures when it faces such difficulties. Be that as it may, the less developed country would find itself resorting permenantly to safeguard measures which contradict the requirements of the formation of a free trade area entailing "the elimination of substantially all trade barriers" between the contracting parties "within a reasonable period of time".[54] Therefore, a sceptical inference could be drawn as to whether such a practice within these circumstances may lead to the eventual formation of a free trade area.[55] Therefore, the compatibility between the requirements of GATT and the Trade Agreement between Lebanon and the EEC could be established in principle. However, in stricto sensu, the Trade Agreement violated Article XXIV on two points: the objectives of Agreement did not refer expressly to the intention of the parties to form a free trade area, and there is an absence of a clear and defined "plan and schedule for the

formation of such a free trade area within a reasonable length of time" (Art XXIV: 5 {c}). The absence of the basis of the interim agreement, plan and schedule and reasonable length of time raises question about the discipline of the contracting parties to form a free trade area, in particular, the developed contracting party as opposed to the developing contracting party. In view of these conditions, the Working Party examining the compatibility of the Agreement with the provisions of GATT failed to support the claim of the contracting parties to the Trade Agreement that their Agreement constituted an interim agreement leading to the formation of a free trade area.[56]

The foregoing discussion reveals that the Trade Agreement between Lebanon and the EEC, notwithstanding its compatibility with the rules and competence of the EEC as regards the norms of the Treaty of Rome, lacks a concrete legal external basis. However, one may argue that the Agreement could be based on the teleological argument of part IV of GATT.

Part IV of GATT provides the principles of providing preferential treatment to developing countries for development purposes. It has been argued earlier that the Part IV GATT has no legal effectiveness so as to bring obligations on the developed countries to offer preferential treatment to developing countries. Nonetheless, there is nothing to prevent developed countries from offering such treatment. However, the basic principle of Part IV GATT is the nature of non-reciprocity which contradicts the reciprocal undertakings of Lebanon and the EEC in the Trade Agreement.

C-THE SUBSTANTIVE LAW OF THE AGREEMENT

The trade provisions of the Agreement were intended to supersede all trade agreements or provisions which were concluded between Lebanon and any of the Member States of the EEC which were

incompatible with, were identical to, or were covered by the provisions of the Agreement.[57] However, there were other fields of cooperation which had not been dealt with in the Agreement and which were in operation between Lebanon and the Member States of the EEC which remained in force. The Agreement was for a duration of five years. It could, however, be denounced by either contracting party provided that six months notice was given. Moreover, the door was left open for further improvements, but not earlier than 18 months before the date of its expiry.

The Agreement opens with a preamble which specifies the general principles and, to a certain extent, the political will of the contracting parties. It is then divided into two titles: Trade and General Provisions. The trade part is headed by the objective of their trade cooperation, and followed by procedural arrangements and details for the partial removal of trade barriers. In addition, certain safeguard measures were included to ensure adequate protection for either party's vital interests. The second part provides for the establishment of common institutions between both parties in order to ensure proper implementation of the Agreement.

i-GENERAL PRINCIPLES

The Trade Agreement opens with a preamble stating the aims and objectives which the contracting parties sought to achieve therefrom. The contracting parties "realised" that the harmonious development of trade between themselves was of vital importance, and consequently concluded the Agreement ultimately to consolidate and expand their economic and trade relations. Thus, Lebanon and the EEC sought the elimination of many of their trade barriers. However, as a preliminary step, reduction of tariff rates should take place first, with the intention of suppressing tariffs further, in accordance with GATT provisions. In addition, Lebanon and the EEC took cognizance of the EEC intention towards the fulfillment of its duties and obligations towards the Mediterranean basin by means of an

overall Mediterranean policy. Finally the contracting parties assumed that expansion of trade in their relations through the removal of obstacles of trade would contribute to the development of international trade. Unlike the first Agreement, the Trade Agreement of 1972 recognised for the first time the intention of the contracting parties to remove trade barriers, albeit on a partial and reciprocal basis. However, the preamble of the Agreement did not recognise the level of the economic development of Lebanon as a prelude to contribute to its endeavour to promote the process of economic development. This leaves the less developed contracting party (Lebanon) on an unjustified identical footing as in the case with the most developed countries. Therefore, one would wonder whether the Trade Agreement is meant, in principle, to serve as a transitional phase towards more favourable treatment.

ii-TRADE ARRANGEMENTS

Regarding trade arrangements, the Agreement provides for reciprocal tariff cuts covering both industrial and agricultural products. In addition, liberalisation of certain quantitative restrictions was taken into consideration.

The EEC was committed to offer to products originating in Lebanon different levels of reductions on tariff rates already in operation under the common customs tariff against third countries. Products originating in Lebanon have to be directly imported into the EEC territories in conformity with the provisions of the relevant protocol on originating products. In fact, according to the Agreement, Lebanese products were divided into different classifications. Consequently, trade concessions, as regards different products, were subject to different forms of treatment. Accordingly, customs duties on industrial products, other than those listed in Annex II of the EEC Treaty and lists A, B and C of the Agreement, were reduced between 35 per cent to 55 per cent of the common customs tariff.[58]

Moreover, tariff rates on some fruit products of particular interest to Lebanon were reduced to about 40 per cent of the CCT. However, products like citrus were confined to special rules which eventually minimised their comparative advantages.[59] In addition, other vegetable products were subject to a special reduction of rates ranging between 30 per cent and 50 per cent, according to a specific timetable of importation. Furthermore, the EEC fixed definite duties on products falling within the heading number 07.04 CCT. However, although the provisions of Annex I laid down the arrangements for a reduction of tariff rates, it failed to mention clearly any removal of quantitative restrictions to trade. It provided only for annual quotas of 70 metric tons concerning products falling under heading number 55.09 CCT. Some other products are subject to special treatment such as olive oil other than refined olive oil falling within sub heading 15.07 CCT. However, since products originating in Lebanon receive tariff cuts, these products may not be treated more favourably than the way the member states treat each other in similar fields.

Lebanon, in return for receiving trade concessions from the EEC, offered products originating in the latter and falling within lists I, II and III of the Agreement, a 70 per cent reduction on customs duties upon importation into Lebanon. Similarly, charges having equivalent effect to duties were reduced to the same level. This reduction applied on duties which were in operation in Lebanon against third countries. It was suggested that this cut take effect from the 1st of January 1974.[60] Moreover, such a percentage of tariff cuts was unchangeable regardless of any potential changes which may take place concerning the duties themselves. Furthermore, products which were included in list I and III of the Agreement, in addition to other products originating in the EEC and imported into Lebanon, should be and remain liberalised as regards quantitative restrictions. To this end, if any of those products which were included in lists I and III were subject to restrictions, Lebanon should lift any such restriction after taking cognizance of its economic development.

On the other hand, the contracting parties to the Agreement were to maintain adequate measures to ensure proper fulfillment of the obligations which arose from the Agreement. In addition, they should refrain from adopting any measures which might endanger the functioning of the Agreement.

The MFN clause was embodied in the trade arrangement. However, despite the fact that the Agreement stipulates that duties levied on imports from either contracting party should not exceed those duties applied on products of the most favoured third country, it only committed Lebanon to treat the EEC products not less favourably than other most favoured nation. The incorporation of word "treatment" in Article 3 invokes a general application to all issues relating to importation other than duties. Nonetheless, the most favoured nation clause was accompanied by general exceptions. As such, the most favoured nation clause would not effect special treatment offered to frontier zone trade, customs unions, free trade areas and regional economic integration. However, these exceptions operated without prejudice to the trade arrangements, particularly the rules of origin.

iii-SAFEGUARD MEASURES

Mutual trade concessions were embodied in the Agreement by the contracting parties to serve the declared general principles set out in the preamble of the Agreement, i.e to facilitate and expand trade between Lebanon and the EEC. However any abuse, by either party, of these concessions might cause a threat to the economy of the other party. Therefore, both parties concomitantly sought to protect their domestic markets as much as possible from any potential damage to their economy. To this end, despite the principle of good faith, the incorporation of safeguard measures was essential to ensure the proper functioning of the Agreement.

The Agreement prohibited any internal practice in any of the contracting parties which may intend to discriminate between the imported product and those of national origin. However, the Agreement does not preclude restrictions or even prohibitions of imports or exports justified by the public interest. Other safeguard measures against dumping practices were provided in the Agreement. According to these provisions, the right of either party is reserved to adopt appropriate measures against such practices provided that prior consultation in the Joint Committee is held and the measures taken are in accordance with Art VI GATT. The Agreement preserved further safeguard measures to be taken against any disturbances which might occur in a sector of the economy of either contracting party, or in any region of the territories where the Agreement was applied and against any prejudice to the external financial stability of either contracting party. In this event, the concerned party may take appropriate protective measures, provided that the Joint Committee was notified once such measures were adopted. However, in selecting such protective or safeguard measures, the concerned party should take into consideration that the measures chosen should cause the least disturbance to the operation of the Agreement.

iv-RULES OF ORIGIN

The determination of the rules of origin is a decisive factor whenever preferences to trade are offered from one party to another. The principal purpose of setting up certain rules of origin is to prevent a third country from seeking advantages from trade concessions designed to serve the contracting parties to a specific agreement. However, this may discourage cooperation between different countries other than those adhering to the agreement. As such, the Agreement is accompanied by a protocol designing specific rules of origin to define products originating in either of the contracting parties

The protocol defines products as originating in either of the contracting parties if they are wholly obtained in either of the contracting parties. Moreover as to compounded products, where materials other than materials from the contracting parties are used, they must undergo sufficient working processes to be recognised as originating products, provided that they are classified under a different tariff heading.

Finally, the protocol sets out specific provisions on the organisation of methods of administrative cooperation.

v-INSTITUTIONAL CONTENT

The Joint Committee referred to in the earlier discussion was set up by the contracting parties to supervise the proper implementation of the Agreement. To this end, it was empowered to take binding decisions in accordance with the Agreement and make recommendations. It was authorised to set out its rules of procedures and to act by mutual agreement. The Joint Committee consisted of representatives of Lebanon and the EEC, represented by the Commission. Its chairmanship was to be taken alternately by each of the contracting parties and it was to be convened once a year or at an extraordinary session at the request of either of the contracting parties, in accordance with its rules of procedures. Finally, the Joint Committee is empowered to set up different working parties to help it in performing its tasks.

V-THE LEGAL IMPLICATIONS OF THE FIRST ENLARGEMENT ON THE AGREEMENT BETWEEN THE EEC AND LEBANON

In the preceding chapter, the implications of the first enlargement on Lebanon as regards the Trade and Technical Cooperation Agreement were discussed. It was of vital importance, as a prelude, to examine the trade

relations between the new member states of the EEC and Lebanon prior to their accession to the Trade Agreement. However, as the accession of the new member states to the EEC, and, consequently, their accession to the Trade Agreement and the Agreement of 1972 occurred during the same period of time, there is no need to tread the same path of analysing the trade relations between Lebanon and the acceding European states. However, it is worth mentioning that the implications of the first enlargement on the Trade and Technical Cooperation Agreement between the EEC and Lebanon was marginal.

Once a European country joins the EEC, it becomes bound by acts adopted by the institutions of the EEC.[61] As such, the acceding country should become bound by the Agreement concluded between the EEC and Lebanon since the Agreement constitutes an act of the Community. Additionally , the accession to the Agreement concluded with Lebanon is subject to the EEC Treaty and the Act of Accession, which particularly regulates the transitional relations between the new member states and the EEC on one the hand, and between the new member states and third countries on the other.

Article 108 of the Act of Accession of 1972 stipulates that, from the date of accession, the new member states shall apply the provisions of the agreements concluded with third countries in general, and in the Mediterranean region in particular, before the entry into force of the Act of Accession. To this end, a handful of protocols should be concluded between the EEC and the third countries concerned, taking cognizance of the necessary transitional measures.

The EEC and Lebanon exclusively concluded in 1973 a Protocol laying down provisions regulating trade relations between Lebanon and the acceding countries.[62] Legally, the Protocol was based on Article 113 of the Treaty of Rome dealing with issues falling within the area of the common commercial policy. This was similar to the approach undertaken by the EEC as regards the original Agreement. Consequently, the new member

states were left with no right to undertake, individually or collectively, any obligations as to this matter.

The purpose of the Protocol was to "determine by mutual agreement the transitional measures and the adaptation. to the Agreement". It consisted of three titles and a final act as well as the annexed declarations. The Protocol adopted measures by which trade concessions concerning tariff cuts granted to Lebanon by the EEC were to receive similar treatment by the new member states, though subject to transitional measures. The reduction in customs duties made to Lebanon were on those duties applied by the acceding countries against third parties. Furthermore, the tariff cuts should not be more than the new member states made to the original member states of the EEC as a requisite to compliance with the EEC common customs tariff. However, as a temporary measure, the U K imposed a tariff quota on total Lebanese imports of 100 and 125 tons in 1973 and 1974 respectively, concerning products listed in Annex I to the Protocol relating to the Agreement between the EEC and Lebanon consequent on the accession of UK, Ireland and Denmark.[63] Moreover, the tariff quotas allocated to Lebanon concerning other woven fabric of cotton increased from 70 tons to 100 tons. The increase in the quota was distributed evenly between the new member states.

In return, Lebanon's trade concessions offered to the EEC as a result of those made by the latter to the former, were extended to the new member states. However, such tariff cuts were in accordance with a special schedule set out for this purpose and was to be completed by 1975.

VI-CONCLUSIONS

The second phase of trade relations between the EEC and Lebanon was crowned by partial reciprocal trade preferences (tariff cuts) claimed to be leading to the establishment of a free trade area. Indeed, international developments in the sphere of world trade law, mainly the introduction

of the generalised system of preferences, which led to the adoption by the EEC of a special generalised system of preferences paved the way to offer non-reciprocal trade concessions from the developed countries to developing countries. By contrast, the EEC offered Lebanon a reciprocal partial trade preferential agreement. From a legal perspective, the "interim agreement" was concluded without providing it with the necessary elements which support its conformity with international trade norms (Article XXIV:5 (c) GATT).

It is clear that the Trade Agreement fell short of achieving the advantages of the development in international trade norms, in particular the advantages arising from the notion of non-reciprocal preferences between developed and developing contracting parties. The notion of non-reciprocity was first introduced via part IV GATT. However, the lack of commitments as regards developed countries towards the notion of non-reciprocity led to ineffectiveness concerning the legal nature of Part IV GATT. This lack of commitment was manifested in the refusal of the developed countries to undertake measures countering the MFN clause to support the effectiveness of Part IV GATT. By the same token, the EEC had shown its lack of enthusiasm for offering Lebanon preferential treatment in 1965. However, the GSP provided the needed legal instrument to fill the legal lacunae in Part IV GATT by reaffirming the notion of non-reciprocity as supported by the resignation of the developed countries to invoke the MFN clause should any developed country offer preferential treatment to a developing country. Moreover, the notion of non-reciprocal and non-extendible nature of trade preferences was introduced in an endeavour to recognise the problem of development in developing countries. As a consequence, this notion identified or perceived in principle that the gap in the level of economic development in trade relations between developed and developing countries entitles the less developed party to receive non-reciprocal preferential treatment. The existing wide gap in the level of economic development between

Lebanon and the EEC, should therefore, entitle Lebanon to receive non-reciprocal preferential treatment. Denying that, taking the huge trade deficit between Lebanon and the EEC, in addition to the gap in the level of economic development, into consideration, would lead only to the dominance of the most developed partner and add more burdens on the Lebanese market. This would leave the Lebanese market vulnerable to EEC exports to Lebanon, in particular as regards nascent industries.

On the other hand, if either of the contracting parties (Lebanon or the EEC) considers or conceives that reciprocal trade preferences would satisfy their mutual interest best, then this rasies questions as to the reasons behind the failure to conclude similar reciprocal preferential trade agreements in the earlier stage (the Trade and Technical and Cooperation Agreement of 1965) on the same international legal grounds as would be valid for a "quasi" interim agreement leading to the formation of a free trade area. During the negotiations of the Trade and Technical and Cooperation Agreement the EEC claimed to adhere to the norms of international trade law to provide no preferential treatment to Lebanon. In the Trade Agreement of 1972, the international trade norms did not prevent the EEC from offering non-reciprocal trade preferences to Lebanon. Nonetheless, the EEC chose a different method; an interim agreement leading to the formation of a free trade area, in spite of the fact that the proposed international legal basis for the Agreement was insufficient. Accordingly, taking the EEC practice into consideration, one could come to the conclusion that the EEC conceals itself behind the rules of international trade norms when these rules suit its interests, and does not take the same rules into account if advantages arising from them are in the best interest of its trading partners. This practice can hardly be conceived of as consolidating economic and trade relations between Lebanon and the EEC as the preamble of the Agreement argues and intends.

Moreover, the circumstances which surrounded the negotiations of

the Agreement, in particular the dispute between the member states of the EEC as to whether Israel should be granted preferential treatment, point to the fact that Lebanon was not an object of particular interest for the EEC. The arrangement with Lebanon was proposed by France as a part of quid pro quo in an endeavour to counter the "imbalance" of EEC external relations in the region of the Middle East. Therefore, possibly the raison d'etre of the Agreement was not to achieve a more balanced contractual trade relationship between the EEC and Lebanon, but to prepare the ground and thereafter to allow the EEC to conclude a preferential trade arrangement with Israel. As such, one could look sceptically to the seriousness of the EEC relationship policy with Lebanon, particularly as the Agreement did not come into force.

The Agreement never came into operation as it "did not obtain the necessary ratifications".[64] The denial of the ratification of the Agreement was never explained by either of the contracting parties and was not explainable by reference to any available document. Therefore, there are only two possible explanations for this. Either Lebanon or the EEC refused to ratify the Agreement. Lebanon could refuse to ratify the Agreement if she felt that the Agreement would operate only to the advantage of the EEC. Although there is no available data from the Lebanese side confirming whether Lebanon did or did not ratify the Agreement, Lebanon, defended the Agreement before the working party which examined the compatibility of the Agreement with GATT provisions, using arguments similar to that of the EEC. This means that we can assume Lebanon was in favour of the Agreement. The other assumption is that the EEC did not ratify the Agreement. Strictly speaking, legally the Agreement falls within the exclusive power of the EEC. As such, the EEC solely should conclude the Agreement and its acts would be directly binding on the member states. In fact, the EEC Council concluded and adopted and confirmed the Agreement on behalf of the Community.[65]

Therefore one may safely assume that there should or would be no legal barriers toward the entry into force of the Agreement.

The foregoing discussion could conclude with a view that the contractual trade relationship did not, once again, take into consideration the historical, cultural, political links and the geographical proximity not pointing to any form of special relationship between Lebanon and the EEC. It is, moreover, clear that the Agreement did not digest the advantages arising from the development of the rules of international trade. Consequently, one may safely assume that there was no genuine development in the second phase of the contractual trade relationship between the EEC and Lebanon. Furthermore, being an agreement offering reciprocal tariff preferences, it would involve more disadvantages than advantages for Lebanon. In this way, the Agreement does not contribute to the economic development of Lebanon through the expansion of Lebanese exports to the EEC markets. Above all, the Agreement never came into operation.

FOOTNOTES

1- For further details see Henig S., External Relations of the European Community : Association and Trade Agreemetns, (1971), p 91-126.

2- Ibid.

3- Ibid, p 118; Feld W., The European Community in World Affairs, (1983), p 141&148.

4- Feld W., supra note 3, p 147; Al Afandi N, "The Legal Frame work of Relations Between the Common Market and Israel, Algeria, and Lebanon", (Arabic language) *Almustagbal Al-Arabi*, "The Arabic Future", V.6, issue.57, (Nov 1983), P 67-83.

5- Feld w., supra note 3, p 148; 3rd Gen.Rep.EC, (1965), p 347, sec 393; Bull.EC, No.12, (1969), Sec.83, p 65.

6- Bull.EC, No.4, (1970), p 63, Sec.75.

7- Bull.EC, No.6, (1970), p 82, Sec.69.

8- Bull.EC, No.7, (1970), p 75, Sec.85.

9- Bull.EC, No.9/10, (1970), p 80, Sec.80; 5th Gen.Rep.EC, (1971), Sec 413, p 315.

10-Bull.EC, No.11, (1970), p 63 Sec.59; Bull.EC, No.12, (1970), P 70, Sec.92; 6th Gen.Rep.EC, (1972), p 265.

11-5 Bull.EC, No.12, (1972), p 90, Sec.96; 6th Gen.Rep.EC, p 265.

12-7th Gen.Rep.EC, (1973), p 410, Sec.506; Bull.EC, No.11, (1973), p 70, pt.2311; O.J No L 18, 22.1.74, P 2.

13-Case 22/70, Commission v. Council, ERTA 1971, ECR 263, para 14.

14-Spandidos-Krempenios p., "The External Trade Policy and the European Community in the Context of the GATT Framework", Thesis, Glasgow University, (1984), p77-78.

15-Judge Pescatore, found in George Le Tallec, "The CCP of the EEC", 20 I.C.L.Q, (1971), pp 732-745, at p 738.

16-Steenbergen.J, "The CCP", 17 C. M. L. Rev, (1980), p 229-249.

17-Spandidos-Krempenios p., supra note 14, p 78.

18-Art 228 EEC.

19-Opinion 1/78, Natural Rubber Agreement, 3 C. M. L. R., (1979), P 639. Each time the Community, with a view to implementing a common

policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form they may take, the member states no longer have the right, acting individually or collectively, to undertake obligations with third countries which affect those rules {Case 22/70, supra note 13}.

20-Art 5 EEC reads that the member states "shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty".

21- O.J No L 18/1, 22.1.74.

22- GATT, BISD, 12 S/48.

23-The Protocol for amendment was opened for signature on 8th February 1965, BISD, 15 S/10; It came into force for those countries that had accepted it. GATT Press Release 1966, 962, in Jackson J., p 646.

24-This includes, the reduction or elimination of barriers to trade including customs duties, and other restrictions, the delegation to introducing or increasing customs duties, non-tariff barriers, or new fiscal measures, Art XXXVI(1) GATT.

25-Gross-Espiell. H., "GATT : Accommodating Generalised Preferences", 8 JWTL, (1974), p 353; Gross Espiell conditioned his argument by calling upon all developed contracting Parties to declare their resignation of their rights of reciprocity accorded to them under Article 1(1) GATT.

26-Art XXXVI(8) says that "the developed contracting Parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less developed Contracting Parties".

27-The ICJ in its decision in the Reparation Case decided that the existence of the U.N and the achievements of its objectives requires the recognition of the legal personality of the U.N. By the same token, the ECJ in its decision in the ERTA Case held that in order for the EEC to implement its objectives a recognition of progressive power which goes beyond its explicit power is needed. In fact, both decisions were based on the raison d'être of both organisations and thereupon the recognition of the legal personality of the U.N and the implied power of the EEC became complementary and indispensable. Therefore, by treading a similar teleological line, the mere existence of part IV GATT was exclusively established to benefit the developing countries, and to extend such advantages arising from part IV to other categories of states would violate the spirit and the raison d'être of part IV of the General

Agreement.

28-Yusuf A., Legal Aspects of the General System of Preferences, (1982), p 61.

29-See Proposals of India, Chile, Brazil and the United Arab Republic, "proposed chapter on trade and development", GATT documents L/2147, 24 February 1964.

30-Harry.J, Economic Policies Towards Less-Developed countries, (1967), p 215-53, found in Jackson.J,World Trade and GATT Law, (1969), p 645, Fn 16; the member states of the EEC; abstained that Session, see UNCTAD I, proceedings, Final Act & Report, V.I, 1964, p 20.

31-GATT , BISD, 13 S/10, (1965).

32-Hudec R., Developing Countries in the GATT Legal System, (1987) p 56.

33-McGovern.E, International Trade Regulations, (1986), p 274; BISD 24 S/48, (1978), at p 53. This does not mean that Part IV GATT has no significance.

34- Jackson.J, World Trade and GATT, (1969), P 646.

35-Yusuf.A, Supra note 28, p 79; UNCTAD I principle 8.

36- Yusuf A., ibid, p 80

37-Resolution 21 (II), UNCTAD II, proceedings, Second Session, V.I, Report & Annexes, (1968), p38.

38-For the full text of the "Agreed Conclusions" see UNCTAD Document TD/B/AC.5/36.

39-The Agreed Conclusions pt IX, p 6.

40-The Agreed Conclusions of the Special Committee on Preferences, UNCTAD, Doc.TD/B/33O, p 6.

41-The Agreed Conclusions, p 3.

42-Yusuf A., supra note 28, p 88; for the full text of the Decision concerning the waiver is found in GATT, BISD, 18 S/24-25.

43-The Enabling Clause, GATT, Document, L/4903. December,1979.

44-"Preferences for Developing Countries", 5 JTWL, (1971), p 712; Para 2 (b) of Pt IX of the Agreed Conclusions.

45-O.J No L 142, June 1972, p 28; O.J C 63,June 1971.

46-European Information, External Relations, 18/79, p 1-6; for details see Yusuf, p120; 5 JWTL, (1971), p 712-714.

47-See the section on the general scope of the Agreement.

48-Supra note 38.

49-GATT, BISD, 22 Supplement, 1/4131, 1976, p 43.

50-Art XXIV:5(A) GATT.

51-Art XXIV:5 (c) GATT.

52-The Preamble to the Agreement, Para 4

53- Ibid.

54- Art XXIV:5 (c) & XXIV: 8 (b) GATT.

55-Lebanon and the EEC formally took the view that the Agreement is fully in conformity with Art XXIV:5 to 9, see GATT, BISD, 22 Supplement, 1972.

56-Report (L/4131) of the Working Party, adopted on 3 /feb. 1975; BISD 22 S/76, P 47.

57-Joint Declaration, O.J No. L 18, 22.1.74, p 88, 89 & 94.

58-Articles 1 and 2 of Annex I on the implementation of Art 2 (1) of the Agreement, O.J No L 18, 22.1.74, P 15.

59-Ibid Article 5.

60-It could have taken effect at the suggested date if the Agreement had been ratified and entered into force as planned.

61-Article 2 Act of Accession 1972.

62-Reg No 153/74 EEC, 17 Dec 1973, O.J No L.18, 22.1.74, P3

63-Art 7 of the Protocol, O.J No L.18, 22.1.74.

64-Europe Information Development, 25 Years of European Community Relations, April (1979), p 32.

65- Reg. (EEC) No 152/74, O.J N0 L 18/1, 22.01.74.

CHAPTER FOUR

NON-RECIPROCAL PREFERENTIAL TRADE: PREFERENCES PHASE SINCE 1977.

I- INTRODUCTION

The first phase of the relations between the EEC and Lebanon witnessed the adoption of a non-preferential trade arrangement. In the second phase, an attempt was made to develop these relations further towards an interim free trade area, as an attempt to eradicate the dramatic deficit in Lebanese trade with the EEC, through promoting better access for Lebanon's exports to the EEC. However, the Agreement of 1972 never came into effect as it did not obtain the necessary ratifications. The earlier Trade Agreement remained in operation through subsequent annual renewal until it was replaced by non-reciprocal trade preferential arrangements in 1977.

Parallel to this, international society continued to witness a rapid development as regards international trade law towards reorganising the interests of the developing countries. It culminated in the emergence of a so to speak New International Economic Order. Needless to say, the emergence of the quasi New International Economic Order necessitated a profound development in the norms and the rules of the international economic legal order.

Developments in the legal international economic order made it incumbent upon the developed countries, and subsequently the EEC, to further additional commitments towards promoting solutions to international economic problems. The developed countries were to contribute to the establishment of a new model for relations between the developed and developing countries compatible with the aspirations of the world community towards a more just and more balanced economic

order.

In response to these international obligations, the EEC adopted a new cooperation and development policy on a worldwide scale. This new policy encompasses a global Mediterranean approach, by which the EEC moved from an incoherent to a more determined and consistent policy towards the Mediterranean basin. The Mediterranean policy aimed to provide free access to exports of the relevant countries, to enable them to offset their trade balance and to contribute to bringing about conditions for successful economic development in these countries. Within the context of the Mediterranean policy, the EEC and Lebanon concluded a Cooperation Agreement in 1977 alongside other Mashreq and Maghreb countries.

The purpose of this chapter is to examine the legal framework of the Cooperation Agreement concluded between the EEC and Lebanon within the context of the EEC's global Mediterranean policy and in the light of EEC and international trade norms. However, before such an examination can be made, attention must be drawn to the evolution of trade flows between the EEC and Lebanon since their last non-ratified Agreement.

II-EVOLUTION OF TRADE RELATIONS BETWEEN THE EEC AND LEBANON (1974-1978).

The non-preferential phase of trade relations between Lebanon and the EEC witnessed a series of continuous deficits in trade unfavourable to the interests of Lebanon. Despite the improvement in Lebanon's productive capacity and subsequent increase in its exports, the share of Lebanese exports in the EEC market did not show any substantial improvement. Later, the two parties concluded a reciprocal preferential trade agreement by which Lebanon could find better access to the EEC market. However, since the Agreement of 1972 did not go into effect ,

Lebanon's trade with the EEC remained to be regulated by the most favoured nation treatment clause.

Moreover, since the second half of 1975 , Lebanon experienced a civil war which caused considerable damage to its economic strategies in general, and to its economic infrastructure in particular. This damage contributed severely to the deterioration of its productive capacity, disabled its exports policy and hit its foreign trade. The economic consequences of the civil war were clearly manifested in the year 1976 as far as its trade flows is concerned. The following year, however, Lebanon recovered steadily from its economic and trade difficulties.

Against this legal and environmental background, one would wonder whether Lebanon- EEC trade relations in general, and Lebanon's exports to the EEC in particular showed any improvement.

A-IMPORTS

It is a well known fact that, in 1974, Lebanon experienced an economic boom when Lebanese trade reached its peak. As such, Lebanese total imports doubled in one year amounting to $ 2.5 bn in 1974. Despite the civil war, Lebanese total imports did not fall dramatically. Apart from 1976, these imports slightly decreased over the years, totalling over $ 2.2 bn in 1978. EEC supplies to Lebanon improved rapidly, doubling in 1974, and were worth slightly below 42 per cent of the total Lebanese imports. This share decreased gradually over the years in proportion to the decrease in Lebanese total imports, until it reached 37 per cent of the Lebanese market in 1978.

The performance of EEC exports to Lebanon raises a further question as to whether the member states witnessed a relative decrease in their exports to Lebanon, and whether there was any diversion of trade between Lebanon and different member states. This will be examined through the table below.

Figure 4.1

Lebanese impports froom the member states of the EEC (1974-1978)

Value in m US $ (C.I.F)

	1974	1975	1976	1977	1978
BEL-LUX	63.6	55.2	9.9	62.5	62.7
DNMRK	21.2	12.7	5.6	9.1	11.6
FRANCE	242.3	179.5	56.4	186.6	204.2
GRMNY	228.8	178	38.2	127	135.3
IRELAND	1.4	1.7	0.3	1.8	2.4
ITALY	252	204.4	35.7	218.8	255.3
NTHRLND	61.6	43.2	14	49.4	52.2
U.K	156.6	173	20.1	93.9	123.5
EEC (9)	1027.5	847.7	180.2	749.1	847.2
TOTAL	2455.1	2252	899	1925.4	2245.3

Source: International Monetary Fund, Direction of Trade Yearbook (1980)

The above table shows that the dominant group, including the U.K after its accession, continued to occupy a major share in the Lebanese market. However, Italy replaced Germany as the principal supplier to Lebanon among the member states of the EEC. Contrary to the general trends of Lebanese total imports and subsequent EEC share in the Lebanese market, Italian exports to Lebanon showed a continuous improvement since the conclusion of the Trade Agreement. They counted for 24 per cent of total EEC imports to Lebanon in 1974. Later, they increased steadily over the years until they were worth over 30 per cent of the EEC share in 1978. The Italian share in the Lebanese markets equivalent to 10 per cent

of total Lebanese imports in 1974, was enhanced and claimed over 11 per cent in 1978.

The significance of French exports to Lebanon was second to Italian supplies to Lebanon. Following their initial increase to 9.8 per cent of total Lebanese imports in 1974, French exports to Lebanon declined to 9 per cent where they remained constantly until 1978. However, its share amongst the EEC countries declined since the earlier phase, from 29 per cent in 1973 to 24 per cent in 1978 of total Lebanese imports from the EEC.

Germany, earlier the major supplier to Lebanon, as far as the member states of the EEC are concerned, experienced a shift in its position in favour of Italy. German exports to Lebanon did not show any improvement after 1973. On the contrary, they showed a gradual decrease over the years from 11 per cent of total Lebanese imports in 1973 to 9.8 per cent and 9 per cent in 1974 and 1978 respectively. Likewise, its share of EEC supplies to Lebanon showed substantial deterioration. German exports to Lebanon declined dramatically from 32 per cent in 1973 to 22 per cent and 15 per cent in 1974 and 1978 respectively, of the EEC share in the Lebanese market.

The gradual decline in EEC exports to Lebanon continued to effect British exports to Lebanon. The latter's imports from the U.K experienced a decline similar to that from Germany, decreasing steadily from 7.5 per cent in 1973 to 6.3 in 1974, and continued to show a further decrease until they reached 5.5 per cent of total Lebanese imports in 1978. Such a decrease in Lebanon's imports from the U.K affected the British position as regards EEC share in the Lebanese market. As such, they decreased over years from 15 per cent in 1974 to 14 per cent in 1978 of total Lebanese imports from the EEC.

The Benelux countries, occupying a marginal segment in the Lebanese market, preserved their position. They, alongside Denmark, had always a marginal place in Lebanese trade, though at times their trade with Lebanon experienced some expansion. This group, together, did not

occupy more than 12 per cent of the EEC share in the Lebanese market in 1974. As a percentage, this share increased slightly, particularly as regards the Benelux countries, to 14.8 per cent in 1978. However, Denmark's share declined from 2 per cent in 1974 to 1.3 in 1978. This expansion of the group in the share was at the expense of Germany and the U.K.

Nonetheless, exports from Benelux countries to Lebanon nearly doubled in value in 1974. Lebanon's imports from Benelux countries , as a group, represented 4 per cent of total Lebanese imports . It increased in 1974 to 5 per cent of total Lebanese imports. These imports were at the same level in the Lebanese market in 1978 when they amounted to 5.1 per cent. However, Denmark's share in Lebanon's total imports remained, similar to the Irish share, negligible. In 1978, this share amounted to less than 0.05 per cent.

B-EXPORTS

Alongside the increase in its imports, Lebanon's exports improved dramatically, when they nearly trebled in 1974 compared with the previous year, with a value of $ 1.5 bn. However, in the following two years, and owing to special circumstances, Lebanese exports deteriorated sharply to nearly a third of this original value. After 1976, Lebanese exports started to recover steadily from their difficulties. They developed from $ 500 m in 1976 to over $800m in 1978. Lebanese exports to the EEC market doubled in 1974 when they reached a value worth $ 248 m. However they declined sharply in the following years until in 1978 they accounted for only $ 44 m. It is worth mentioning that the particular increase in Lebanese exports to the EEC in 1974 was mainly attributable to a sharp increase in Lebanese exports to France. As such, the Lebanese share in the EEC market as a proportion of Lebanese total exports amounted to 17 per cent in 1974, declining to 5 per cent in 1978. The table below illustrates these points.

Figure 4.2

Lebanese exports to the member states of the EEC (1974-1978)

Value in m US $ (F.O.B)

	1974	1975	1976	1977	1978
BEL-LUX	7.1	3.3	2.2	3.1	2.8
DNMRK	4	2.5	2	1	1.1
FRANCE	132.6	19.8	2.6	5.4	5.2
GRMNY	20.6	18.6	9.7	8.3	8.5
IRELAND	2	2	3	_	3
ITALY	37.8	10.2	4.1	4.9	7.3
NTHRLND	4.1	2.9	17.6	7.6	2.2
U.K	61.2	17.6	10.4	13.3	14
EEC (9)	248.8	76.9*	51.6	43.6	41.4
TOTAL	1454.6	1162	555.4	741	814

Source: International Monetary Fund, Direction of Trade Yearbook (1980).

The above table indicates that Lebanese exports to the EEC could be summarised in two words : incoherence and collapse.

In 1974, Lebanese exports to France increased sharply and unexpectedly, contributing to an increase in Lebanon's share in the EEC markets. They accounted for 17 per cent of total Lebanese exports in that year including Lebanon's share in the French market where they amounted to more than 50 per cent of EEC imports from Lebanon. This increase, though relatively marginal, corresponded to the huge expansion

in Lebanon's trade in 1974. However, in the wake of events in Lebanon, Lebanese exports to the EEC nearly collapsed in both volume and value. The deterioration of Lebanon's exports to the EEC was reflected in Lebanon's exports to every market of the member states with 1973 or 1974 taken as a reference year.

Since Lebanon's exports to the EEC increased unexpectedly (with no simple explanation for the increase) the year 1974 should not be taken as a benchmark in analyzing the trends of Lebanese exports to the EEC, because results would be otherwise. It would be instead wise to take 1973 for reference because it is in line with the general trends of Lebanon's exports to the EEC.

The U.K remained the principal target for Lebanon's exports among the EEC member states, but U.K imports from Lebanon declined sharply from over 4 per cent of total Lebanese exports in 1973 to less than 2 per cent in 1978. German imports from Lebanon decreased as well from 1.4 per cent in 1973 to 1 per cent for the same period. Similarly, Lebanon's exports to Italy and France fell from 1.7 to 0.89 per cent as regards France and from 1.4 to 0.63 per cent as regards Italy between 1973 and 1978 respectively.

Lebanon's exports to the Benelux countries, Denmark, and Ireland also deteriorated. They did not account altogether for more than 1 per cent of total Lebanese exports in 1978. As individual markets , Lebanese exports in both value and volume were negligible as compared with total Lebanese exports. The substantial deterioration in Lebanese exports to the EEC as compared to total Lebanese exports gives rise to the question whether such a decline brought about a diversion in exports between Lebanon and individual member states.

As to Lebanese exports in relation to individual member states and their share in the EEC, a question may emerge concerning which year should be as a reference point. Unlike the importance of Lebanon's

exports to the member states as compared to Lebanese total exports, 1973 could not be used as reference because the new member states joined the EEC that year. Moreover, Lebanese exports to the EEC in 1974 included an odd figure relating to Lebanese exports to France, making difficult an analysis of the importance of other member states to Lebanese exporters. Therefore, if any of these years were taken as a reference point, it would not be easy to know the real trends of trade. Instead an attempt should be made to provide, with a combination of figures of both years, as clear a picture as possible.

If 1974 were taken as a reference, then the above table would show that French imports from Lebanon collapsed sharply from 53 per cent of total EEC imports from Lebanon in 1974 to 11.7 per cent in 1978. A similar decrease may be noted if 1973 is taken as a reference, though the decrease is one per cent only. Consequently, the collapse of Lebanese exports to France in 1978 resulted in diversion in the destination of Lebanese exports between the member states of the EEC, leading to an increase in Lebanese exports within the EEC share to all other member states at the expense of the share of Lebanese exports to France.

However, if 1973 is taken as a reference year, then despite the confusion which may surround the real value of the exports to the acceding countries , Lebanese exports to individual member states as compared to EEC imports from Lebanon show a similar diversion in exports, though in lesser proportions.

Lebanese exports to the U.K, Germany, Italy, and France used to absorb the major share of EEC imports from Lebanon. However, in 1973 these imports decreased sharply from 43 to 32 per cent , 24 to 19 per cent , 26 to 16 per cent and from 12.5 to 11.7 per cent respectively between 1973 and 1978. The decline in Lebanese exports to these countries improved the shares of the other member states of the EEC. However, whatever improvements took place in Lebanese exports to the Benelux countries, Denmark, and Ireland, exports to them remained marginal.

C-BALANCE OF TRADE

It is thus evident that trade relations between Lebanon and the EEC witnessed a further deterioration. The Lebanese balance of trade with the EEC showed a big deficit which increased gradually from 1974 onwards. Despite the improvement in Lebanese exports to the EEC in that year, the deficit in trade between Lebanon and the EEC was $778m in 1974, contributing to 98 per cent of the total Lebanese trade deficit in the same year. Lebanese foreign trade suffered in the years following 1974, the deficit with the EEC remaining the principal burden affecting Lebanese foreign trade. As the table below shows, the deficit in trade with the EEC counted for 70 per cent in 1975 and 56 per cent in 1978 of the total deficit in Lebanese foreign trade. This improvement in the deficit in trade with the EEC was not due to the enhancing Lebanon's exports to the EEC. It was, in fact, due to the deterioration of Lebanese total exports.

Figure 4.3

Balancce of trade between the EEC and Lebanon

Value in m US $

	1974	1975	1976	1977	1978
IMPORTS	1027.5	847.7	180.2	749.1	847.2
EXPORTS	248.8	76.9*	51.6	43.6	41.4
DEFICIT	778.7	770.8	728.6	705.5	805.8
TOTAL DEFICIT	790.5	1090	343.6	1184.4	1431.3

Source: International Monetary Fund, Direction of Trade Yearbook (1980).

Further evidence relating to the trade deficit may be found by examining the ratio between exports to the EEC and imports from it to Lebanon. A comparison of this result with the ratio of total Lebanese exports to total Lebanese imports would reveal the size of the damage which Lebanon's trade relations with the EEC meant for Lebanese foreign trade. The earlier table shows that, Lebanese exports to the EEC covered in 1974, 24 per cent of Lebanese imports from the latter, whereas Lebanon's total exports covered over 61 per cent of Lebanese total imports in the same year. Thereafter, the contribution of Lebanon's exports to the EEC in its trade balance with the latter decreased steadily and sharply over the years until it did not cover more than 5 per cent in 1978 in comparison with the total which was 36 per cent.

Therefore, it may be concluded that Lebanese trade relations with the EEC continued to suffer a huge deficit both when Lebanon witnessed an economic boom as well as when it experienced economic difficulties.

It was, therefore, clear that for the Agreement to mean any help for Lebanon there was need to replace the Trade Agreement with another agreement to provide Lebanon with a better treaty framework for substantial opportunities to expand the share of Lebanese exports to the EEC market.

III-The Cooperation Agreement (1977).

A-General background

The emergence of the so to speak New International Economic Order on the one hand, which imposes on the Community international commitments towards the developing countries, and the stress for the need for a more coherent and constructive policy towards the Mediterranean basin on the other, put the Mediterranean global policy on

the agenda of the European Parliament. The latter, on the 9th of February 1971, discussed relations between the EEC and the Mediterranean countries. The Parliament stressed the need for a harmonious relationship between the EEC and the Mediterranean countries. It emphasised, in particular, the "prime necessity of going beyond the purely commercial aspects of the question (relations with the Mediterranean countries) and of the contribution to the economic development of the region" taking into account the special characteristics and level of economic development of each country.[1] In its resolution, the European Parliament insisted on the necessity for the EEC "to adopt a policy of development by more appropriate means than commercial measure alone". To this end, the European Parliament asked the Foreign Ministers of the member states "to continue the efforts directed toward the definitions of a common policy vis a vis the countries of the Mediterranean basis".[2]

Although the resolution of the European Parliament is not legally binding either on the EEC or on its member states, it has nonetheless a vital political significance towards the preparation of the Mediterranean policy. In a series of preparatory sessions for the EC Paris summit held from 6 November 1971 until 12 December 1972, the foreign ministers of the member states of the EEC, directed by the European Parliament resolution, discussed the topics for the Summit's agenda. Among the principal topics was "foreign relations and the community" and its responsibilities in the world.[3]

A communique´ was issued as regards EEC's external relations. It stressed the need for the member states to act together within the Community "to cope with growing world responsibilities incumbent on Europe". Moreover, as a response to the expectations of all the developing countries, the Communique´ "attached essential importance to the fulfillment of *the EEC* commitments to the countries of the Mediterranean basin with which agreements have been or will be

concluded, which should be the subject of an overall and balanced approach".[4]

This Communique´ carries a weighty political and legal significance. Firstly, from a political perspective, it demonstrates the political will of the member states to provide the EEC with a wide mandate in the cooperation and development fields. The authoritative organ of the EEC to take action (conclude agreements) at the external level is the Council, deciding by a qualified majority (Art 113 EEC) or unanimous approval (Art 238 EEC). In the latter case, all member states may use a veto. The political will of the member states gives the EEC a green light, provided that such action is deemed necessary, to act in an area where no power is vested in it. Such action should be based, however on Article 235 of the Treaty of Rome. Thus, the political intention of the member states is a prerequisite as a step to push aside the legal barriers which may impede the EEC at an earlier stage from acting on the issue of cooperation and development at both the regional and world levels.[5]

The political effectiveness of the Communique´ was translated into EEC norms by the Council at its session in June 1972. The Council reexamined a proposal for an overall approach to solve the problems facing EEC relations with the Mediterranean countries.[6] The proposal suggested the gradual achievement of a free trade area in industrial and semi-manufactured goods over a transitional period of five years embracing all Mediterranean countries, similar to the agreement which was then under negotiation with Portugal.[7] The principles of the proposal were approved at the Council's session of October 1972. In addition, the Commission of the EEC lent its help and submitted on 27 and 29 November 1972 a number of recommendations to the Council[8] which adopted a common position on a global Mediterranean policy, though two member states had different views towards the degree of reciprocity.[9] The United Kingdom and Germany echoed the traditional strong opposition of the United States to special preferential arrangements between the EEC

and non-European Mediterranean countries, particularly when these countries were to be granted free access to EEC markets in terms of non-reciprocal preferential treatment.[10] Against this background, it was suggested by the EEC Commission that fresh negotiations be launched between Lebanon and the EEC for the conclusion of a new agreement in conformity with the principles of the "Paris Summit" and the global Mediterranean policy, alongside its alignment with the New International Economic Order. Such negotiations were to involve close technical and economic cooperation as a Lebanese goal in its relations with the EEC.[11]

In January 1975, the Commission of the EEC, influenced by the overall Mediterranean approach which emerged after the Paris summit, and in conformity with Article 228 EEC, proposed to the Council that negotiations be opened with the Mashreq countries, including Lebanon, seeking agreements similar to those concluded in the same year with the Maghreb countries.[12] The Council authorized the Commission at its session on 9-10 December 1975 to open the negotiations with these countries, with a view to concluding a trade and economic cooperation agreement.[13] However, while the EEC, represented by the Commission, was launching the negotiations with most of the Mashreq countries, Lebanon was unfortunately, dragged from January 1976 into a severe and devastating civil war which made the negotiations between both parties impossible.[14]

It was not until the end of 1976, when the Lebanese civil war was somewhat "frozen", that the Lebanese Government took the initiative by sending its Minister for Social Affairs to pay a visit to the Commission of the EEC. He told his hosts of his government's desire to open negotiations with the EEC as soon as possible, with a view to concluding an overall cooperation agreement similar to those of other Mashreq and Maghreb countries. The Commission in return confirmed its desire and readiness to hold negotiations with Lebanon.[15]

At an earlier stage, the Council at its session of 20 September 1976 had

issued to the Commission a supplementary directive on financial and economic cooperation to enable it to hold further negotiations with Lebanon.[16]

Preliminary discussions took place on 19 January 1977 between representatives of both parties for the preparation of the formal negotiations to take place on 15 and 16 February 1977.[17] The formal negotiations needed merely one session to be completed, and the text of the Agreement was initialled in Brussels on 16 February 1977.[18] However, at the end of the negotiations, the Lebanese delegation expressed its disappointment at the outcome stating that the agreement had fallen short of meeting Lebanese needs and desires, are in particular, the urgent needs arising in the wake of the devastation caused by the civil war.[19] While from a legal perspective, the Lebanese official statement has no legal effect or implications it indicates, the imbalance of negotiating positions between the Lebanese and the EEC. In fact, the negotiations were short and lasted only one session in comparison to earlier negotiations between Lebanon and the EEC on the one hand, and between the EEC and other Mediterranean countries on the other. In addition, the Cooperation Agreement is identical to all the other cooperation agreements concluded between the EEC and the Mashreq countries, and as such contradicts the EEC claim of taking into consideration the special characteristics and the level of economic development of each country. The practice as regards the negotiations, gives the impression that the Agreement is a "contrat d'adhesion". This would indicate that the Lebanese delegation attended the negotiations to sign the Cooperation Agreement rather than to negotiate trade, technical, economic and financial arrangements by which the Cooperation Agreement could best respond to Lebanon's needs for future economic development. The Council approved the agreement as initialled by the Commission on 8 March 1977. Later, the EEC and its Member states acting jointly, and Lebanon formally signed the

Cooperation Agreement together with all the annexed documents, in Brussels on the 3 May 1977.

The participation of the EEC member states in the conclusion of the Cooperation Agreement meant that the latter had to effect ratification in a manner consistent with their individual domestic procedures in order to bring the Agreement into force.[20] Such a process of parallel ratifications takes a long time and may delay the operation of the preferences which arise from the Agreement. Such delay then contradicts the desire of the EEC to seek immediate implementation of the trade provisions of the Cooperation Agreement. Therefore, the EEC Council, (similar to the case of all other agreements with Mashreq and Maghreb countries), on 3rd March 1977, authorised the Commission to negotiate with Lebanon for an interim agreement seeking the early implementation of the trade measures of the Cooperation Agreement.[21] The intended Interim Agreement was concluded and entered into force immediately, on the first of July 1977,[22] for a duration of one year if the Cooperation Agreement was not ratified by all the parties at an earlier date.[23]

As the Cooperation Agreement did not enter into force at the suggested date, the Council on 22nd May 1978, authorised the Commission to open negotiations with Lebanon to extend the Interim Agreement. The need for the extension arose from the fact that the procedures for ratification of the Cooperation Agreement by the respective national Parliaments could not be completed soon enough for the Cooperation Agreement to come into effect on the intended day.[24] On 26 June, the Council extended until December 1978 the Interim Agreement pending entry into force of the Cooperation Agreement.[25]

The Interim Agreement was justified by the desire to accelerate the implementation as early as possible of trade preferences, exclusively, concerning certain goods mentioned in the cooperation Agreement. However, as the Interim Agreement was of a provisional nature, several Articles, including Articles 25, 39, 44, 46 of the Cooperation Agreement

were not included in the Interim Agreement.

As the Interim Agreement was commercial in its nature, it was juridically speaking, based on Article 113 EEC which expressly confers upon the EEC the power to conclude exclusively tariff and trade agreements. It was negotiated by the Commission, as authorised by the Council. The Council Regulation referred to the Commission's recommendation in the reasoning cited in the said regulation.[26] Thus, the EEC exclusively concluded the Interim Agreement and cited Art 113 as a legal basis for such a conclusion.

By concluding the Interim Agreement, and later approving the Cooperation Agreement between Lebanon and the EEC, the European Parliament, in its consent to the Agreement, considered that the global Mediterranean policy had been rounded off towards the southern and eastern Mediterranean regions.

B-THE LEGAL BASIS OF THE COOPERATION AGREEMENT

The EEC possesses a host of relations with third countries covering areas and activities falling within its competence. Amongst such areas within the competence of the EEC is the common commercial policy considered to be the main pillar of EEC external relations. When the EEC acts within this field, it is bound by its treaty-making powers, in particular by Articles 111, 113 EEC. However, beyond this scope, as the EEC also acts varyingly at an international level, by concluding agreements with third countries and/or international organisations, the EEC together with its member states becomes bound by commitments adhered to so to speak collectively, in particular, towards different international organisations and conferences. The best example of such an EEC international commitment is the General Agreement on Tariffs and Trade and UNCTAD. Therefore, when the EEC concludes an envisaged agreement with third countries, it is not only confined to its internal competences (its

treaty making power), but also by its external international aspects. An agreement undertaken by the EEC should not contradict or violate international law or international practice. In other words, the EEC must respect international law, especially when it itself is a *de facto* contracting party to a particular agreement, as in the case with GATT as far as the EEC's commercial policy is concerned. One could ask whether the Cooperation Agreement between Lebanon and the EEC is in accord with EEC commitments at both the internal and external levels. In other words, on what legal basis does the EEC justify the Cooperation Agreement as far as both its treaty making competence and international trade norms are concerned.

i-INTERNAL OR COMMUNITY LEVEL

The treaty making power of the EEC is governed by the rules[27] of the Community's constitutional documents and its recognised practice.[28] The Treaty of Rome defines the areas where the EEC is capable of concluding agreements with third countries, and the nature of such agreements. Where such agreements are provided for in the Treaty, the EEC possesses an exclusive power to conclude that agreement.[29]

The Cooperation Agreement, which falls within the area of commercial policy of the EEC, within the context of Chapter Ten of the Treaty of Rome, was concluded, however, on the basis of the mixed procedure, that is to say, concluded jointly by the EEC and its member states. This gives rise to the question whether resort to the mixed agreement formula may bring into question the EEC treaty making competence to conclude the Cooperation Agreement exclusively; or whether the action of the EEC and its member states (mixed agreement approach) was based on a recognised legal practice to conclude such an agreement jointly.

In fact, the Treaty of Rome provides no provisions for the mixed

agreement procedure. Nevertheless, this method has been frequently used by the EEC and its member states whenever deemed necessary, with implicit or otherwise approval by the ECJ.[30]

Resort to the mixed agreement approach has been justified on both external and internal grounds. The external reasons legally justifying the adoption of mixed agreements have been examined in an earlier chapter.[31] There is no need to deal with the same issue, particularly when no reason, as far as the case with Lebanon is concerned, was found to support the conclusion of a mixed agreement.

Internally, however, the conclusion of a mixed agreement is legally required whenever the subject matter of an agreement involves certain arrangements or specific provisions which exceed the exclusive explicit or implicit powers of the EEC.

Similar to the Trade and Technical Cooperation Agreement of 1965, the Cooperation Agreement clearly goes beyond both the express and the implied powers of the EEC. It includes, besides trade measures, economic and technical cooperation, and financial arrangements.

The Treaty of Rome expressly empowers the EEC to conclude trade and tariff agreements in accordance with Article 113 EEC, but financial, economic and technical issues are not covered by any provision of the EEC Treaty, as far as EEC external relations is concerned. As a precedent, the ECJ did not object to agreements involving financial matters, concluded jointly by the EEC and its member states, provided that the member states take the burden of the financial measures.[32] However, in the case of the Cooperation Agreement, the financial measures were to be committed from either the European Investment Bank's own resources or from the EEC's own budgetary resources.[33] Therefore, the member states could not have joined the Cooperation Agreement on financial grounds.

On the other hand, the treaty making competence of the EEC does not allow the EEC, either expressly or implicitly, to conclude agreements with a third country encompassing economic or technical cooperation.

Whenever an agreement has involved the economic and technical cooperation fields, the EEC has used exclusively Article 235 EEC as a legal basis for the conclusion of a given agreement.[34] The use of Article 235 EEC may be taken as a clear indication of the lack of the EEC competence to act in such areas. Moreover, the member states of the EEC usually make clear through specific provisions that the involvement in such an arrangement does not prejudice their hitherto existing competence in a given field. The Cooperation Agreement with Lebanon accompanied the birth (1975) of the EEC Mediterranean global policy which emerged from the Paris summit.

At the Paris summit, a political statement was issued calling for ever closer cooperation between the EEC and the Mediterranean countries, based on an overall and balanced approach. Despite the political significance of that statement,[35] it did not have legal implications for the EEC treaty making competences, since it did not modify the Treaty of Rome to provide the EEC with treaty-making competences to conclude agreements with third countries covering economic and technical issues. In other words, economic and technical fields have remained within the jurisdiction of the member states. Legally, however, the Council is empowered to act on these issues whenever such action is deemed necessary to attain one of the objectives of the EEC Treaty, despite a lack of express powers.[36] Moreover, given the political will of the member states to develop an ever closer cooperation with the Mediterranean countries, the Council, especially as it represents the will of the member states, may reflect such a will by translating it into legal standards, such as by concluding the Cooperation Agreement exclusively on the basis of Article 235 EEC and thereby possibly pre-empting independent action by individual member states. However, the significance of the political presence of the member states at the international scene may lead them to avert the conclusion of such an agreement exclusively by the EEC, that is, on the basis of Article 235 EEC, by joining the conclusion of the given agreements involving matters beyond EEC treaty-making competence.

The Cooperation Agreement was concluded in a mixed form, also involving Article 238 EEC as a basis.[37] This gives rise to the question whether Article 238 EEC is not sufficient to provide the necessary legal basis for concluding the Cooperation Agreement exclusively by the EEC.

Article 238 EEC provides only for association agreements rather than cooperation agreements. Nevertheless, some writers on European law see no difference between association agreements and cooperation agreements when they recognise similarities between both kinds of agreements.[38] However, the two types of agreements may not necessarily be similar either in their purposes or subject-matter.

Art 238 EEC empowers the EEC expressly to conclude "agreements establishing an association involving reciprocal rights and obligations, common action and special procedures". The Article adds that such agreements should be concluded by the Council acting unanimously after receiving the assent of the European Parliament. Where any such agreement calls for an amendment to the Treaty, such amendment would then be in accordance with Art 236 EEC. Thus Art 238 EEC concentrates on four points:

1-The establishment of an association agreement providing for reciprocal rights and obligations;

2-Conclusion of the "association" agreement by the Council, by unanimous approval.

3- Compulsory approval by the European Parliament.

4- The possibility that an "association" agreement may go beyond the EEC treaty making-competences, however, with due regard to Article 236 EEC.

Association agreements are regarded as being preliminary to future membership in the Communities as was the case with Greece and is the case with Turkey. It may be said to be a transitional substitute for membership. Such is the case with EFTA countries.[39] Moreover, association agreements have been used for other purposes such as to

retain firm links and ties between the relevant EEC member states and their former colonies territories. The main feature of association agreements under Art 238 EEC is the fact, that they are concluded on an equal footing involving reciprocal rights and obligations.

The Cooperation Agreement with Lebanon, similar to all cooperation agreements with the Mashreq and Maghreb countries, aims neither to pave the way for membership nor provide for substitution for membership. The Cooperation Agreement aims to strengthen existing relationships and to promote the economic and trade cooperation of both parties. Moreover, the Cooperation Agreement provides for non-reciprocal tariff preferences in the interest of Lebanon, looking forward to a later stage involving the possible formation of a free trade area. Therefore, the purposes and the features of the association agreements may be different than those of cooperation agreements. Consequently, the Cooperation Agreement with Lebanon cannot be said to be an association Agreement.

Throughout its practice, the EEC has concluded, a handful of cooperation agreements with third countries. The agreements may be categorised into two groups: agreements concluded under the umbrella of the Community's Mediterranean policy and those concluded with non-Mediterranean third countries.

The Cooperation Agreement between the EEC and Lebanon represents the first category of cooperation agreements. The most recent cooperation agreements concluded between the EEC and non-Mediterranean third countries are the cooperation agreements with Yemen[40] and Hungary[41] in 1985 and 1988 respectively. Both agreements were concluded by the EEC exclusively, with Articles 113 and 235 of the Rome Treaty being cited as their legal bases. In both agreements express provisions can be found referring to the fact that certain measures involved in the agreements are beyond EEC treaty making-competence. Nonetheless, it was concluded by the EEC exclusively. The two

agreements encompass trade, economic and technical cooperation but exclude financial cooperation. Therefore, would the inclusion of financial cooperation in the Mediterranean Cooperation Agreements require resort to Article 238 EEC as a legal basis and, consequently, require the form of a mixed agreement, as compared with the cooperation agreements with non-Mediterranean countries, based on Articles 113 and 235 EEC?

Article 238 EEC does not expressly provide for financial cooperation. It empowers the EEC to conclude association agreements involving common action and special procedures. Moreover, not all association agreements concluded between the EEC and different categories of third countries have involved financial cooperation. This underpins the interpretation that the terms "common action" and "special procedures" do not, explicitly, cover financial issues. Nonetheless, assuming that financial cooperation is implicitly covered by Article 238 EEC, the EEC has also exclusively concluded a handful of separate financial protocols with third countries.

Article 235 EEC empowers the EEC to take action on all necessary matters to attain the objectives of the Rome Treaty, despite its lack of express power to do so in specific fields. This provides the EEC with more concrete power to conclude agreements covering financial provisions, as long as the EEC takes the burden of the financial issues. This gives rise to the question of whether Articles 113 and 235 EEC would be legally sufficient to permit the conclusion of the Cooperation Agreement by the EEC exclusively.

The Cooperation Agreement with Lebanon goes in fact beyond the EEC treaty making-competences. Its conclusion, based on Article 238 EEC required the parallel participation of the EEC member states. Otherwise, the resort to an amendment of EEC treaty making-competences would have been inevitable. However, such an amendment of the EEC treaty making-competences under Article 236 EEC has to be proposed by either

the Commission or one of the member states. Moreover, following the European Parliament's approval of such a proposal, a conference addressing such amendments would have to be convened and reach a conclusion by common accord. The entry into force of the amendments could then be possibly delayed for such a long time as to undermine the advantages sought from the implementation of the amendments, since such amendments would not have any legal effect until they are ratified by all member states in accordance with their own national legal procedures. Therefore, following these steps to provide the EEC with an expansion in its treaty making-competences to cover other areas not provided for in the treaty, is extremely cumbersome.

Furthermore, the assent of the European Parliament under Article 238 EEC is obligatory. However, under Article 235 EEC, though the consultation of the European Parliament is required, it is often to question whether disapproval by the European Parliament would not be an obstacle to the conclusion of the Agreement. The European Parliament approved the Cooperation Agreement with Lebanon. The European Parliament delivered an opinion of consent to the Council.[42] In its opinion, the European Parliament applauded the Agreement with Lebanon and drew attention to the close economic and cultural links between the European countries and Lebanon. By recommending the Agreement, the Parliament considered that the overall approach to the relations with the Mediterranean countries had been rounded off in accordance with the findings of the Paris Summit Conference of 19th October 1972.[43]

The unanimous approval of the Cooperation Agreement by the Council, under Article 238 EEC, expressed the political will of the member states to adopt the agreement. Such a political will may be assumed to be necessary under Article 235 EEC which requires unanimous approval by the Council for the concluded Agreement. Therefore, the conclusion of the Cooperation Agreement between Lebanon and the EEC, covering also financial cooperation, based on Article 113 and 235 EEC would not require

the participation of the member states, nor an amendment of the EEC treaty making-powers and, consequently, would provide a sufficient legal basis for a conclusion by the EEC exclusively.

ii-EXTERNAL OR INTERNATIONAL LEVEL

The EEC was established by an international treaty between sovereign states. It thereby became a subject of international law and consequently became bound by its rules and principles. Therefore, when it acts externally, though within its treaty making-competence, it has to do so without prejudice to international legal rules and principles. Otherwise, any violation or breach of these rules, or principles, as well as EEC's international engagements, would entail an obligation to make reparation in accordance with the contents of the treaties to which the EEC is a contracting party, and the international rules on dispute settlement.[44] As such, the conformity of the Cooperation Agreement between the EEC and Lebanon with international rules and practice is considered necessary. In other words, the Cooperation Agreement should not contradict or violate the international obligations of its contracting parties.

However, the Cooperation Agreement relates predominantly to trade. Thus it should be in alignment with the principles and norms of UNCTAD and the General Agreement on Tariff and Trade.

1-THE COOPERATION AGREEMENT AND THE GSP

The enormous substantive documents of UNCTAD activities have been translated into international commitments by developed countries to developing countries. A General Scheme of Preferences emerged and was soon adopted with respect to different individual developed customs territories. The EEC was the first to adopt in 1970 its own scheme of preferences and renewed it in 1980,[45] followed by later modifications and

liberalisation as a prelude to further renewal in the 1990s.[46]

However, trade preferences offered to developing countries would at first look to be inconsistent with the principle of non-discrimination in trade which was embodied in GATT (MFN). Therefore, the need has arisen for a formula that would make the Generalised System of Preferences compatible with Article 1(1) GATT. Otherwise, the Generalised System of Preferences, unanimously adopted by the UNCTAD, would remain legally ineffective, and any offer of tariff preferences to any developing countries without proper waiver from the MFN clause would consequently involve a violation of that Article. Among different proposals,[47] the contracting parties to the General Agreement adopted a fixed term waiver for a ten year period, by which the developed contracting parties to GATT agreed to grant non-reciprocal, non-extendible preferential treatment to the developing countries.[48] Following the Tokyo Round, the Enabling Clause emerged, providing a permanent legal recognition of trade preferences under GATT. The Enabling Clause met a "fundamental concern of developing countries by legitimizing (*the Generalised System of Preferences permanently*) at the international level as one of their long standing aspirations".[49]

The preferences for development referred to in the Enabling Clause are to be accorded not on grounds of political, cultural or even geographical ties, but on grounds of the differences that exist in levels of economic development.[50] In fact, Para 2(a) of the Enabling Clause specifies that the preferences accorded to developing countries should be in accordance with the Generalised System of Preferences providing for the establishment of "generalised non-reciprocal non-discriminatory preferences beneficial to the developing countries".[51] The GSP was conditioned so as "not to constitute a binding commitment", that is to say, it does not impose a legal obligation upon the developed contracting parties.[52] Consequently, should they not meet their obligations under the GSP, they would not be liable to provide remedies or compensation.

Therefore, the contracting parties may withdraw their preferences in part or in whole.[53] However, if a developed contracting party chooses to adopt a scheme of tariff preferences, it should meet the characteristics specified *ad hoc* in the Decision of June 1971 as well as in the Agreed Conclusions. The main characteristic of the GSP is that a country offering preferences should not discriminate between developing countries i.e. there should be one scheme for all developing countries. Therefore, tariff preferences stipulated in the context of the Lome' Conventions, as well as the cooperation agreements between the EEC and Mediterranean countries, designed for different purposes, are excluded from these waivers. In the light of the latter case, such preferences should be considered under the GATT provisions for joint action.

The EEC, in turn, adopted different policies of preferences towards different categories of states and regions. The GSP, which sprang from the persistent demand of the developing countries for special treatment in international trade, was designed for developing countries not engaged in trade with the EEC through either bilateral or multilateral agreements. The EEC's GSP applies to manufactured and semi manufactured goods for developing countries, and no particular treaty or agreement between the EEC and any beneficiary developing country is needed, for making use of that GSP. The Mediterranean countries, on the other hand, for different reasons, *inter alia*, geographical proximity to the European Communities,[54] were approached specifically by the global Mediterranean policy, encompassing in addition to trade preferences, financial, technical and economic cooperation.

The global Mediterranean policy is based on a pluralist style of relations, such as customs unions, free trade areas and non-reciprocal trade agreements. The main feature of the cooperation agreements which were designed for the Mashreq and Maghreb countries is that they involve non-reciprocal trade preferences offered by the EEC to these countries.

Therefore, since the Cooperation Agreement is not covered by the

EEC's GSP and, consequently, the Enabling Clause cannot be invoked for departure from the principle of non-discrimination in world trade, would it fall within the GATT provisions for a joint action for the departure from Article 1 (1) GATT ?

2-THE AGREEMENT AND GATT: PROVISIONS FOR WAIVER FROM MFN CLAUSE

The major obstacle to the promotion of world trade involving the developing countries was the universal application of the non-discriminatory principle of trade enshrined in GATT Article 1. This obstacle was moderated through progressive improvement in GATT rules and its application, by embodying in the General Agreement vital derogations, waivers and discriminatory rules.

From the outset, the GATT recognised departures from the MFN clause for historical reasons.[55] Additional derogations may be applicable through special waiver to be recommended for exceptional reasons in accordance with the provisions of Article XXV GATT. Furthermore, the introduction of Part IV GATT marked a significant legal step towards the recognition of the concept of non-reciprocity within the GATT sphere. Finally, general exceptions are possible under Article XXIV GATT permitting the creation of customs unions and free trade areas, or the conclusion of interim agreements leading to the formation of either a customs union or a free trade area.

(A)-HISTORICAL REASONS

As far as historical reasons for a departure from the application of the MFN clause are concerned, there were no provisions for preferential treatment between the EEC and Lebanon in force at the time the GATT came into effect. Thus Lebanon's EEC trade relations have not been

subject to tariff preferences for historical reasons.[56]

(B)-TRADE AND DEVELOPMENT UNDER GATT PROVISIONS

In principle, the notion of non-reciprocity, translated into trade rules in Part IV GATT, considers that export earnings "play a vital part in the economic development of the developing countries", provided that their exports find "more favourable and acceptable conditions of access to world markets". Accordingly, a developed country may offer non-reciprocal tariff concessions to a developing country for the purpose of promoting the latter's trade and contributing to the economic and social advancement of the developing country.[57]

The purposes and the objectives of the Cooperation Agreement with Lebanon reflected those principles embodied in part IV GATT. The objectives of the Cooperation Agreement are to "establish a broad cooperation in order to contribute to the economic and social development of Lebanon".[58] Moreover, as far as trade cooperation is concerned, it aimed to promote trade between the contracting parties for a better balance in their trade with a view to accelerating the rate of growth of the export trade of Lebanon and improving conditions of access of its products to the EEC's market.[59]

However, part IV GATT does not constitute a waiver from the application of the MFN clause . In other words, it does not preclude other developed contracting parties from invoking their rights under that clause. Moreover, the fixed term waiver and the Enabling Clause have been specifically designed to meet the requirement of non discrimination of tariff preferences offered to all developing countries agreed upon and prescribed by the GSP under the auspices of UNCTAD.

If the Decision of June 1971 and the Enabling Clause are read in conjunction with part IV GATT, provided that such preferences are based on non-discrimination between all developing countries, and were

designed to close the gap between the level of development of developed and developing countries, they may provide a legal basis for non extendible preferences between developed and developing countries.

Therefore, since the Cooperation Agreement offers preferences which discriminate between developing countries, and are designed to meet the EEC's own, mainly political, purposes , they would have to find a legal basis under different GATT provisions. Is it possible to justify the Cooperation Agreement under Article XXIV GATT?.

(C)-ARTICLE XXIV GATT

Article XXIV GATT appears on first impression to set forth precise rules for regional arrangements which permit a departure from the application of the MFN clause. It recognises that the provisions of the General Agreement "shall not prevent, as between the territories of the Contracting Parties, the formation of a customs union or of a free trade area, or the adoption of an interim agreement necessary for the formation of a customs union or of a free trade area",[60] However, the formation of a free trade area , to qualify for a waiver from the application of the MFN clause, should be in accordance with the precise rules set forth in that Article. Accordingly, in order to qualify under Article XXIV GATT as a free trade area, a regional grouping, or an interim agreement leading to the formation of a free trade area, would have to satisfy certain elements and characteristics.

1-The purpose of the formation a free trade area should be to facilitate trade between the constituent territories.[61]

2- The duties and other restrictive regulations of commerce would be eliminated, substantially on all the trade between the constituent territories on products originating in such territories.[62]

3- Any interim agreement leading to the formation of a free trade

area "shall include a plan and schedule for the formation of such a free trade area within a reasonable length of time".[63]

The Cooperation Agreement between Lebanon and the EEC aimed to strengthen trade relations. To this end, the parties established a wide range of cooperation with a view to making a contribution to the economic development of Lebanon.[64] The Agreement asserts the intention of promoting trade in conformity with the international obligations of the contracting parties. Promoting of trade to ensure a better balance of trade, and improving the conditions of access of Lebanon's goods to the EEC market, would facilitate trade between the contracting parties. To equip these objectives with a certain degree of certainty, the Cooperation Agreement was concluded for an indefinite duration.

With the Cooperation Agreement coming into effect, the EEC undertook to eliminate all customs duties and charges having equivalent effect to customs duties, besides eliminating all other restrictive measures of commerce substantially with respect to all trade with Lebanon.[65] However, Lebanon did not undertake any obligations corresponding to those undertaken by the EEC. Therefore, the nature of Lebanon's commitments may be said to be contrary to Article XXIV: 8 (b) GATT, which entails that all contracting parties to a free trade area agreement should suppress, substantially, all duties and restrictions to trade. The EEC, however, has argued that, since Lebanon is a developing country, it is to be treated as initially exempted from reciprocal commitments; the EEC underpins its argument by making reference to Article XXXVI: 8 GATT.[66] In fact Lebanon, neither during the first stage, nor at any definite stage, has been committed to undertake measures corresponding to those of the EEC. On the contrary, Lebanon has been privileged to maintain or even increase its customs duties or other restrictive measures to trade if such measures have been deemed necessary for its economic development.[67] This leads to the conclusion that, since the gap of development between the EEC and Lebanon is wide and even, becomes wider, over time,

Lebanon may maintain its rights under the Cooperation Agreement to use exceptional measures to ensure a better balance in its trade, growth in its economic development and a better balance of payments. Therewith, Lebanon would not be able to fulfil the conditions for the establishment of a free trade area which entails, *inter alia*, the elimination of all tariff barriers between its customs territories. Thus, would the Cooperation Agreement, since it does not meet the conditions for the formation of a free trade area, hold as an interim agreement leading to the formation of a free trade area?

To be considered as an interim agreement leading to the formation of a free trade area, a regional arrangement should include a plan and schedule for such formation within a reasonable length of time. Such a plan and schedule would be examined and monitored by an ad hoc established working party. Should such a plan prove not be likely to promote progress towards the formation of a free trade area, or should the schedule not be limited to a reasonable length of time, the contracting parties to such arrangements would be, provided they are contracting parties to GATT, under an obligation either to modify their agreement or not to put it into force.[68]

The Cooperation Agreement does not expressly provide for a plan or a schedule for the formation of a free trade area, nor does it itself expressly provide that the Agreement is an interim agreement leading to the formation of a free trade area. When the Cooperation Agreement was presented for scrutiny under GATT, the EEC considered that, *inter alia*, these aspects may not avert the conclusion of the Cooperation Agreement.[69] Moreover, the Cooperation Agreement refers to review sessions with Lebanon, to be held every five years, for seeking opportunities towards the removal of obstacles to trade.[70] Do these review clauses constitute a necessary plan or substitute the necessary plan and schedule to be within a reasonable length of time?[71]

There is no interpretation of "reasonable length of time", either in

the practice of the General Agreement, or in the views of the EEC.[72] There are many regional integration agreements which do not include "a plan and schedule for the formation of such a free trade area within a reasonable length of time" as prescribed in the relevant article.[73] When these agreements were examined, the GATT showed tolerance towards the legal question, and sought a political approach to the conclusion of these agreements. This laxity in a legal approach has led the contracting parties to pay little regard to the legal issue regarding the formation of a free trade area.

Therefore, one may rightly back the view of the GATT working party, which considers that the objectives of the Cooperation Agreement reflect those of Part IV and Article XXIV GATT. However, the Agreement does not fully comply with the rules applicable to the establishment of a free trade area, or with any other individual article. Consequently, the Cooperation Agreement stands somewhere between the GSP and an interim agreement leading to the formation of a free trade area. It is rather a preferential trade agreement.

C-THE SUBSTANTIVE CONTENT OF THE AGREEMENT.

The Cooperation Agreement was concluded between the EEC and its member states on the one hand and Lebanon on the other in 1977.[74] It replaced the earlier Trade and Technical Cooperation Agreement of 1965 and all previous trade arrangements, for an unlimited duration. The body of the Cooperation Agreement is headed by a preamble. It is then divided into titles, each headed by one of the covered fields of cooperation. In the preamble, the contracting parties refer to their political ideology, their aims and objectives, in accordance with a model normally used for every cooperation agreement concluded between the EEC and all Mashreq and Maghreb countries. The preamble is thus identical to all other preambles incorporated in the cooperation agreements within the context of the

Mediterranean policy, with similar political, historical and even cultural reasons being given as reasons underlying EEC relations with Lebanon.

The preamble provides the basis on which specific objectives may be achieved and cooperation may take place. The ultimate aims contain the elements that then develop in each considered field of cooperation. In the preamble, the level of cooperation is expressed; an order of priorities is thus adopted by providing a framework through which expectations may be generated and fulfilled. The Preamble may be said to be effective since it forms an integral part of the agreement. As such, it may be resorted to for guidance in the absence of express details in any field of cooperation, it may orient the contracting parties and underpin the teleological interpretation of the relevant provisions.

i-AIMS AND OBJECTIVES

The preamble has four paragraphs, setting out broadly and in concise and plain language the general objectives of the contracting parties. Compared with the Trade and Technical Cooperation Agreement, the objectives of the Cooperation Agreement reflect certain developments which took place in relations between the EEC and Lebanon consequent to developments in economic and trade law at the international level and their effect on EEC policies towards the developing countries in general and the Mediterranean countries in particular.

In the Cooperation Agreement, the contracting parties stressed their mutual desire to maintain and strengthen their friendly relations in accordance with the principles of the U.N charter. The latter expressed with respect to its general purposes, the desire "to develop friendly relations among nations", beside its attempts to achieve "international cooperation in solving international problems of an economic character".[75] It is noticeable that the United Nations Charter devotes one chapter to international economic and social problems, reflecting an

international emphasis on promoting economic development between nations.[76] The chapter provides the foundation for some legal obligations for U N member states to act[77] and cooperate with a view to achieving and promoting "higher progress and development to promote solutions of international economic problems".[78]

From the United Nations forum an adequate response to the problem of development in developing countries has emerged through UNCTAD activities. The latter has been a strong advocate for the adoption of more preferential treatment towards developing countries. In this respect, the EEC has been since the Paris Summit in 1972, a major actor on the international trade scene, and as such it accepts its international responsibilities

In the Cooperation Agreement these new developments have been taken into consideration within the framework and development of EEC external relations policies. The Cooperation Agreement is meant to contribute therewith to the establishment of a "new model for relations between developed and developing states, compatible with the aspirations of the international community toward a more just and more balanced economic order"[79] which is so to speak the New International Economic Order.[80]

Corresponding to these developments, the contracting parties intended to establish a wide range of cooperation between themselves with a view to contributing to the economic and social development of Lebanon. To this end, they declared their resolve to promote economic and trade cooperation taking into consideration the level of development of each party. The basic objectives of the contracting parties are repeated in detail. The Cooperation Agreement enumerates the means to meet them in the field of economic, technical, financial and trade cooperation. The achievement of the given objectives is not, however, isolated from the efforts to be made by the Lebanese authorities as regards Lebanon's own development policy. The Agreement works as a complement to such

envisaged efforts. To this end the objectives and the priorities of the development plans of Lebanon involve the importance of promoting regional cooperation between Lebanon and other states (the Members of Arab League).

In the field of technical cooperation, the EEC and its member states have defined their objectives in more specific and diversified terms, aimed at promoting the participation of the EEC in the effort made by Lebanon to develop its production and economic infrastructure in industrial and agricultural fields. Lebanon is to welcome and encourage participation of the EEC in implementing such development programmes. Moreover, the objectives of technical cooperation cover fields of science, technology and the protection of the environment. The contracting parties seek to promote the participation of the EEC operator in programmes for exploring, enhancing and processing Lebanon's resources.

In the economic field, Art 4 of the Cooperation Agreement sets a few specific objectives which the contracting parties shall make efforts to promote. For the first time, the marketing and promotion of Lebanese products exported directly to the EEC market has attracted particular attention.

The contracting parties undertook to promote cooperation in the fisheries sector, to encourage private investment in Lebanon and to exchange information on economic and financial developments connected to areas related to in the Cooperation Agreement. Other measures defined in the Agreement aimed at boosting Lebanon's industrial production through the acquisition of patents and other industrial property rights. The Cooperation Agreement left the door open for further areas of cooperation to be taken into consideration during the implementation of the Agreement.

A standard problem for most of the developing countries in meeting the challenge of economic develoment is the lack of technology and financial resources for the acquisition of technology. Financial

cooperation is in this respect necessary as much as technical and economic cooperation itself and complementary to it. As such, the financial sector received in the Agreement the same attention as economic and technical cooperation. The Cooperation Agreement stipulates, in its financial protocol, the participation by the Community in financing measures which would contribute to Lebanon's economic development in accordance with the framework of the financial and technical cooperation protocol.

Trade was the most important issue in the relations between both parties. Its purpose and objectives have been considered throughout the Agreement. The contracting parties aimed at harmonising and promoting trade between themselves, taking into consideration their respective levels of development. They intended to ensure a "better balance in trade" with a view to developing the growth of Lebanon's trade. The promotion of Lebanon's trade was thus treated as a cornerstone in the process of Lebanon's economic development, for raising the standard of living. The Cooperation Agreement thus offers non-reciprocal free access to all industrial products to the EEC, in addition to a wide margin in tariff cuts concerning agricultural products.

ii-FIELDS OF COOPERATION

The aims and objectives of in the preamble of the Cooperation Agreement were "in principle" met through an attempt at cooperation between the EEC and Lebanon covering economic, technical, financial and trade sectors. Common institutions and working parties were set up to provide proper administrative support for the Cooperation Agreement. However, as the Cooperation Agreement offers more non-reciprocal favourable treatment to Lebanon, an EEC (traditional) fear of an abuse of such preferential treatment or disruption therefrom in EEC markets,

motivated the EEC to maintain safeguard measures to ensure safe consequences in the operation of the Cooperation Agreement.

1-ECONOMIC AND TECHNICAL COOPERATION.

Third world countries usually suffer from a lack of advanced technology; this lack hinders their process of economic development. Lebanon is one of the "technologically" poor countries, and its technical cooperation with the EEC is more than vital for Lebanon to develop its economy progressively.

The first EEC-Lebanon technical cooperation took place in 1965. However, through the Cooperation Agreement of 1977, technical cooperation between them took the form of EEC participation in efforts made by Lebanon. Such participation sought to develop Lebanese production, productivity and improvement of its economic infrastructure with emphasis on industrialization and also modernization in agriculture. EEC participation covered, under the Cooperation Agreement, the following areas of cooperation:

(A)-MARKETING.

Marketing technique and know-how may make an important contribution to economic growth and development at both the macro and micro levels of a country.[81] The Cooperation Agreement deals with marketing, though in general terms. It provides for marketing and promoting sales of products originating in Lebanon and exported to the EEC. The Cooperation Agreement does not express more than that on marketing, but the contracting parties may decide on further cooperation in that respect. The Cooperation Council is empowered to make binding decisions and may elaborate further on cooperation in marketing, in particular with respect to international marketing research. As far as

exports of Lebanese products are concerned, marketing research involves statistical information about the European market, an understanding of the market environment, studies of needs in markets and a methodology for an optimal expansion on penetrating foreign markets.

(B)-INDUSTRIAL COOPERATION.

The contracting parties undertook to promote their industrial cooperation with a view to boosting Lebanese industrial production through EEC participation in the implementation of Lebanese industrial development programmes. For the same purpose, the contracting parties undertook to organise and develop contacts between Lebanese and EEC industrial policy-makers, presumably through conferences or seminars or other arrangements. The acquisition of patents and other industrial property of help in boosting Lebanon's industrial production is to be facilitated on favourable terms, particularly by mean of financing such acquisition, in conformity with the conditions set out in the financial Protocol.[82] The financial aspects of such acquisitions in the form of a transfer of patents or industrial property rights are, while being a private matter, controlled by market forces and may need governmental assistance and guidance.

(C)-ECONOMIC COOPERATION

Concerning the economic sector, the contracting parties shall "encourage private investments which are of mutual interest to both parties to operate in Lebanon and the EEC";[83] and they shall promote the exchange of information regarding economic development and the financial situation of each contracting party, to the extent necessary for the proper functioning of the Cooperation Agreement. The exchange of information is of vital importance to Lebanon, with reference to

undertaking research and secure an access to their results, exchange of skills and expertise. Research, development and requirements related thereto are very costly for a small country like Lebanon. In marketing and promotion, for example, exchange of information may take the form of examining the chances of penetrating the EEC market by Lebanese exporters as a prerequisite to securing successful attempts towards deploying an outward looking policy.

The EEC undertook to cooperate technically as a preliminary or complementary step for promoting capital projects drawn up by Lebanon. The preliminary form of cooperation may involve research on the feasibility of any proposed capital project, necessary complementary cooperation and expertise required for supervising or operating research projects. Lebanese staff involved in the scheme of cooperation are to be trained through scholarships offered either by the EEC or by individual member states.

The contracting parties have undertaken to facilitate the proper functioning of technical cooperation, ranging from possible special privileges offered in a particular case to modifying regulations which contradict cooperation.

A comparison between the Trade Agreement of 1965 and the Cooperation Agreement of 1977 shows clearly that progress has been made in the field of technical cooperation regarding cooperation objectives, levels of cooperation, range or area of cooperation. However, the economic question cannot be answered clearly as to the extent to which the evolution of technical and economic cooperation between Lebanon and the EEC has been commensurate to the developments needs of Lebanon.

(D)-MISCELLANEOUS

The Cooperation Agreement stipulates that the contracting parties

shall promote cooperation in the fisheries sector, science, technology, and protection of the environment. It sets forth the guidelines and framework for economic and technical cooperation.[84] The details and procedures are left to the Cooperation Council, which may also deal with other areas of cooperation and periodically define guidelines therefore as well as formulate practical steps or methods for the actual establishment and implementation of cooperation.

As regards cooperation on scientific and technological matters and the protection of the environment, the EEC has expressed its readiness to examine on a case by case basis "whether and on what terms Lebanon may have access to the results of the programmes which might be undertaken either jointly by the member states of the EEC or by any of the Member states in collaboration with other countries.[85]

2-TRADE COOPERATION.

As already indicated earlier, the Cooperation Agreement is a part of the EEC Mediterranean policy developed parallel to developments in international trade regulation. Under the terms of this policy, a pluralist style of relations was adopted with a view to bringing about conditions for better access of products, particularly industrial products, of special interest to the Mediterranean countries, to the EEC markets. The EEC has offered preferential tariffs irrespective of reciprocity to its Mediterranean trade partners. In its relations with Lebanon, the EEC has organized its trade preferences on a non-reciprocal basis. Lebanon has in return undertaken to offer the EEC most favoured nation treatment.

(A)-EEC's PREFERENCES AS COMMITMENTS.

EEC non-reciprocal trade preferences extended to Lebanon encompass industrial and agricultural goods . For industrial goods, complete

suppression of customs duties is provided , beside lifting any restrictions affecting the movement of Lebanese industrial products to EEC markets. Customs duties applied to agricultural products are reduced relatively. Traditional exceptions to the preferential treatment are valid as regards military and other industrial products justified on grounds of public interest.

a)-INDUSTRIAL PRODUCTS.

When the EEC and Lebanon set out the objectives of their trade cooperation, they aimed to promote trade between themselves "with a view to increasing the rate of growth of Lebanon's trade and improving the conditions of access for its products to the *EEC* markets". Accordingly, the EEC undertook to no longer apply customs duties and charges having equivalent effects on industrial products originating in Lebanon and imported directly into the territories of the EEC.[86] However, while eliminating customs duties, other protectionist elements may continue to exist in the form of various measures.

Tariff preferences enjoyed by Lebanon are not applicable to all industrial products. Corresponding exceptions exist, of which the first is now of historic interest. The other exception of a permanent nature, concerns trade with repercussions on the functioning of the common market. In addition, products which are considered dangerous or of vital importance to the public interest or public security, beside military goods, are excluded from the application of the rules of the Cooperation Agreement.

As for the historical exceptions, they had been adopted consequent to the transitional period applicable to the countries acceding to the EEC. The national tariff system of Ireland, rather than the common external tariff of the EEC, was applied for some products such as motor vehicles exported to that country.[87] Similarly, preferences concerning other groups

of products specified in Article 13 of the Cooperation Agreement, were subject to an annual ceiling until 1979. Beyond that ceiling, ordinary tariff duties applicable to third countries became applicable for products originating in Lebanon. These measure were of a temporary nature hence their historic importance.[88]

With regard to the other kind of exceptions, they took cognizance of the functioning of the common market. The EEC recently, altered its classification of industrial products into sensitive and non-sensitive products only. Sensitive products, comprising products listed in Annex II of the EEC Treaty, beside other products listed in Annex A of the Cooperation Agreement, do not enjoy tariff exemption. In the case of the U K, as customs duties consist of protective and fiscal elements, the U.K may replace its fiscal duties by internal taxes.[89] Furthermore, processed agricultural products enumerated in Annex B of the Cooperation Agreement may enjoy tariff concession only, in conjunction with "the fixed component of those charges levied on imports of these products into the Community".[90]

Products of public interest are exempted from the application of the rules of the Cooperation Agreement. As such, the Cooperation Agreement does not preclude prohibitions, or restrictions on trade with products justifiable on grounds of public interest. However, such exceptions are to be applied on a non-discriminatory basis, not disguising restrictions on trade between the contracting parties. Accordingly, exports, imports or goods justified on ground of public morality, policy or security; protection of health; life of humans, animals and plants; national treasures of artistic, historical or archaeological value do not enjoy preferences which are provided for in the Cooperation Agreement by the EEC to Lebanon. Similarly, the protection of industrial and commercial property or rules relating to gold and silver follow the same line.[91] Furthermore, either of the contracting parties may adopt any necessary measures to ban the disclosure of information running against security

interests, especially when such measures are essential to national security in time of war or international tension. Accordingly, such measures would include trade in arms, ammunition or war material or research in development of products indispensable for defence.[92]

Improving conditions of access of Lebanese products into the EEC market entails however, in addition to the removal of all custom duties and charges having equivalent effect, also the elimination of all other restrictions which may constitute an obstacle to trade between the contracting parties. In this respect, the EEC abolished , on the entry into force of trade measures, all quantitative restrictions and measures having equivalent effect to quantitative restrictions on industrial products falling within the jurisdiction of the EEC Treaty, save products listed in Annex II of the EEC Treaty exempted from such treatment.[93]

b)- AGRICULTURAL PRODUCTS.

Agricultural products in the EEC, are governed by the controversial common agricultural policy. Before the last enlargement, the EEC enjoyed autarchy, or even surpluses, in different areas of agricultural products.[94] Desirous not to disturb the EEC common agricultural policy, the EEC resorts to various protective measures. Agricultural products imported to the EEC are not treated like industrial products, but the EEC was not self-sufficient, or did not produce, many agricultural products, particularly those with special interest to and characteristic of the Mediterranean climate. Such agricultural products originating in Lebanon and imported into the EEC enjoy various tariff cuts varying from product to product depending on the date of importation.

Concerning customs duties on agricultural products , Article 16 of the Cooperation Agreement provides a list of products which are subject to tariff reductions. The tariff cuts vary from 40 per cent to 80 per cent of the rate applicable to third countries under the common external tariff.

Moreover, agricultural products other than those provided in the said Article, enjoy specific and individual treatment. For example, tariff cuts are applicable on some products like onions, in accordance with a specific import calendar. Other products enjoy tariff cuts, provided that, after customs clearance and deduction of import charges other than custom duties applicable to imports from third countries, their price is not less than a set reference price.[95] Some other agricultural products e.g garlic falling under CCT heading 07.04 are governed by a fixed rate of duties. A product like unrefined olive oil may be treated carefully so as not to disturb EEC, particularly, Italian production. Art 18 of the Cooperation Agreement, with four paragraphs, is devoted to olive oil.[96] Until the first of January 1987, now a date of history, the North European new member states which had acceded the EEC, were authorised to apply their own duties on defined agricultural products, provided that such duties were not lower (could be longer) than those already set out in Annex C of the Cooperation Agreement.[97] The controversy on the EEC common agricultural policy and the proliferation of the preferential agreements encompassing agricultural products, concluded between the EEC and third countries, has made the CAP subject to modifications. Accordingly, the EEC maintained its right to modify the agricultural provisions of the Cooperation Agreement, however, when doing so the EEC shall take into consideration advantages arising from the Cooperation Agreement as regards Lebanon's imports.[98]

As regards quantitative restrictions, the Cooperation Agreement does not make direct reference to them in the provisions relating to trade cooperation. However, as the joint declarations, the protocols and the Annexes to the Cooperation Agreement, form an integral part of the Agreement,[99] the contracting parties have agreed that agricultural products originating in Lebanon and imported directly into the EEC, subject to the restrictions provided in the provisions of the Agreement,

that is quotas and import calendar, shall be free from any other quantitative restrictions, or any measures having equivalent effect.[100] In addition, both parties have declared their readiness to develop their trade concerning agricultural products other than those dealt with in the Cooperation Agreement, in accordance with CAP provisions. However, it looks at first sight as it agricultural products are treated more favourably with respect to the interests of the preferences-receiving country, that is Lebanon. A thorough analysis, particularly by economists, reveals that quotas and import calendars minimise the possibility of obtaining the optimal benefit of these tariff cuts. In fact, the calendar for tariff reductions does not correspond with Lebanon's export seasons.[101]

(B)- LEBANESE PRIVILEGES.

Unlike association agreements which are, in principle, based on reciprocal rights and duties, trade agreements between the EEC and the developing countries following recent international developments in international trade regulation, are not subject to reciprocity between the contracting parties.[102] A developing country like Lebanon, in its relations with a developed customs territory such as the EEC, is privileged with rights to increase its existing customs duties or any charges having equivalent effect or to introduce new customs duties, in addition to any other charges having equivalent effects. Similarly, quantitative restrictions and measures having equivalent may be introduced or increased in Lebanon's trade arrangements with the EEC. Such measures may be applied on products either imported from the EEC into Lebanon, or exported from Lebanon to the EEC, provided that industrialization and development in Lebanon requires so.[103] Once any of these measures is adopted by Lebanon, the EEC should be notified of such a measure and treated as a single market without any discrimination between its member states. Particularly, if quantitative restrictions were adopted in the form of

quotas or currency allocation to a given product in accordance with Lebanese legislation, the Cooperation Council should be consulted at the request of the EEC or any of its member states.

(C)-LEBANON'S COMMITMENTS.

Irrespective of the notion of non-reciprocity in trade relations, first introduced by UNCTAD and codified in Part IV GATT, and despite the codification of the notion of non-reciprocity, the contracting parties to GATT have not ruled out the possibility that the developing contracting parties may enter into trade negotiations aimed at a reduction in tariffs rates in accordance with the MFN clause. In this respect, the level of economic development of the developing country may be an indicator affecting the possibility of its contribution to such trade negotiations. Given the huge gap between the level of economic development between the contracting parties to the Cooperation Agreement, i.e the EEC and Lebanon, it would be pointless and contradictory to the spirit and the letter of recent developments in international trade regulations if Lebanon reciprocated with trade preferences or even tariff cuts to the EEC. Such action would be inconsistent with its level of economic development and trade needs. This does not preclude Lebanon from offering proposals to the EEC in return for receiving trade preferences. Lebanon offered to treat the EEC as a single entity, no less favourably than a most favoured nation. In addition, it declared itself bound by certain measures aimed to ensure the proper achievement of the objectives of the Cooperation Agreement. It has pledged to pursue a non-discrimination policy between different member states of the EEC or different firms or nationals of the EEC. Furthermore, in order to guarantee proper implementation, in particular of the trade provisions of the Cooperation Agreement, Lebanon undertook to adopt any general or specific (legal) measures necessary to ensure the fulfillment of its obligations undertaken by the Agreement.

Lebanon would be otherwise liable and the EEC would apply safeguard measures affecting the preferences offered by the EEC.[104] Lebanese commitments towards the EEC raise a pertinent question as to their compatibility with Lebanon's national, regional and international legal engagements, which are considered below.

a)-THE MFN CLAUSE

Lebanon ceased to apply GATT provisions since its withdrawal as a contracting party in 1951, but embodied most of the GATT's rules in its trade agreements with nearly all of its trade partners. In particular, the most favoured nation treatment was the most important provision to be incorporated in all its trade agreements. However, when Lebanon reciprocates MFN treatment with its trade partners, it does so without prejudice to the process of its economic development or its fundamental economic interests. A few exceptions to the application of MFN treatment are always attached thereto resulting in a different form of application of the MFN clause between different countries according to their level of economic development. The GATT itself provides for some exceptions from the application of the MFN clause. Article 1 (2) GATT authorises concessions made on historical grounds to be waived from the MFN clause. Article XXIV GATT exempts two types of "regionalism" from the application of the MFN clause. Firstly, Article XXIV:3 GATT does not prevent "advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic". The other type concerns the formation of a customs union, a free trade area and an interim agreement leading to the formation of either a customs union or a free trade area. In the case of Lebanon, bound by the charter of the Arab League, such regional arrangement is construed to encompass regional economic integration entailing reciprocal tariffs and concessions between the member states of the Arab League. Such traditional exceptions to MFN

obligations are taken into consideration in the Cooperation Agreement.[105]

When reciprocal concessions and advantages in tariffs are exchanged within the framework of GATT, they are made on a non-discriminatory basis.

Following the insertion of Part IV in the GATT, the introduction of the GSP and the adoption of the Enabling Clause, the GATT has come to apply a pluralist system of trade regulations.[106] In an action aimed at balancing the disadvantages of the position of the developing countries , the developed countries renounced their rights of reciprocity vis-a-vis the developing countries.[107] The principle of reciprocity has remained applicable only between developed countries. Article XXXVII par 4 GATT "exhorts" developing contracting parties to enter into preferential arrangements.[108] However, this provision has been contested by the developed contracting parties so as not to override the advantages arising from Article 1(1) GATT.[109] The problem of extending advantages arising from Article 37 GATT to other Contracting Parties (whether developed or developing countries) may block the operation of that Article. Relating to GATT, a decision has been adopted authorising the developing contracting parties to accord each other "preferential treatment as provided in the protocol[110] with respect to products originating in other parties to the protocol, without being required to extend the same treatment to like products when imported from other developed countries".[111] The Enabling Clause came to reaffirm this position in its Article 2 (c) which stipulates preferential arrangements amongst developing countries as being non-extendible to other developed contracting countries.[112] Therefore, measures which Lebanon may adopt for the benefit of the developing countries are waived from the application of the MFN obligations.[113] Hence, the most favoured nation treatment which is accorded by Lebanon to the EEC applies merely to advantages and concessions made by Lebanon to other developed countries.

b)-NON-DISCRIMINATION POLICY.

The principle of non-discrimination, fundamental in trade relations between states, is associated with the concept of reciprocity as a pillar of the MFN clause embodied in GATT. Despite the renunciation of the concept of reciprocity between the developed and the developing countries, the notion of non-discrimination has remained applicable. It safeguards the contracting parties' interests against misuse of these concessions or waivers when these are offered in trade by one party to another within as well as outside the GATT framework, such as the GSP which provides for non-discrimination between developing countries when they are accorded such preferential treatment by a developed country.

Lebanon, in its trade relations with the EEC, is pledged to uphold this principle in order to provide equal opportunities and fair competition to EEC firms when they export their products to Lebanon. The Cooperation Agreement confers upon Lebanon, as a developing country, the right to introduce or even increase its duties or quantitative restrictions or charges having equivalent effect to duties or quantitative restrictions against imports from the EEC. However, having offered the EEC MFN treatment, Lebanon cannot apply such rights against EEC products unless it applies the same measures to all similar products imported from other developed countries. Similarly, once products originating in the EEC are imported into Lebanon, they are to be treated, particularly as regards internal taxes, on an identical basis to any other like product, be it indigenous or imported from a third country.

Lebanon has agreed not to differentiate between the member states of the EEC, their institutions or nationals. However, in 1951, Lebanon, under the auspices of the Arab League, banned trade (and suspended other relations) with all firms or individuals with investments or connections with Israel. It seems that there is a *prima facie* contradiction between

Lebanon's commitments vis-a-vis the EEC and its regional pledges undertaken through the Arab League, particularly when the Cooperation Agreement committed Lebanon to undertake "any general or specific (legal) measures required to fulfill its obligations under the Agreement", failing which it would be itself subject to safeguard measures.[114] Lebanon tried to construe these obligations so as not to constitute a derogation from its laws and regulations in force so far as they remain necessary for the protection of its essential security.[115] In other words, it refers implicitly to the boycott regulations of goods and firms in connection with Israel so that European firms would have fair competition and would not face discrimination on political grounds as long as they were bound by these rules. The EEC dissociated itself from accepting such an interpretation expressly. In an answer to the Lebanese Government's letter, it only took "note" of the Lebanese declaration. Further, it expected the "principles set out in the Agreement, including the non-discrimination principle, to be put into full application", and particularly considered that the "application of the principle of non-discrimination should ensure the correct and smooth application of the Agreement".[116] Against this backdrop, a question would arise as to whether the execution of the rules of boycott of *inter alia* European firms with business connection with Israel would be deemed to run counter to the principle of non-discrimination against the EEC's firms or nationals.

To show that the Lebanese interpretation is not contrary to the principle of non-discrimination would entail, firstly, the elucidation of the point of Arab legitimacy of an Arab boycott policy against Israel and all foreign firms doing business with Israel as a country in a state of war with the Arab countries (including Lebanon) and continuing to be in a situation of hostility. Consequently, the Lebanese attitude towards European firms having connections with Israel should be approached from an angle of security interest grounds.

The practice of implementation of economic measures, including a

boycott against foreign products and firms, has long been exercised by peoples of different states and by states themselves, individually and collectively.[117] It has been frequently used as an acceptable instrument for advancing foreign policy and the notion of security interest objectives of the boycotting states, or to influence the foreign or domestic policy of the boycotted states whether they are at peace or at war.[118] The traditional perspective of international law viewed the situation as being one in which it is difficult "to contest the exercise by a state of a right that is a normal incidence of its sovereignty".[119]

Contemporary practice in international law has shown no change in the legitimacy of imposing such sanctions or boycott measures against different states whether in peace or in war. However, since the legality of a boycott in international law is not a main topic in the present study, it will be here only noted that the legality of boycott in international practice is claimed by states and international organisations in their practice on the grounds of security interests.[120]

Despite the Declaration of the General Assembly on "Friendly Relations and Cooperation Among States"[121] which outlaws the use of economic coercion against each other, the U.N Charter confers upon the Security Council the power to impose *inter alia* sanctions against states for actions deemed a threat to peace. In fact, the General Assembly and the Security Council have eloquently exercised this power on different occasions. A series of resolutions calling for economic measures including sanctions and a boycott have been adopted, for example, against Rhodesia[122] and South Africa.[123] Most recently, a similar series of resolutions were adopted against Iraq pursuant to Article 41 of the U.N Charter.[124]

The practice of boycott or sanctions in the international sphere is not confined to the General Assembly of the U.N or its Security Council. Other international groupings and organisations have trodden the same

path. The USA, on an individual basis, and collectively with other Western European countries, has been a pioneer in establishing such a practice outside the U.N. A detailed multilateral exports programme was developed by fifteen Western European countries with a "permanent organisation and agreed list continually updated in accordance with criteria for adding, deleting, upgrading and downgrading the items involved". The participant countries were not in a state of war and had no conflicts about occupied territories when the programme was designed against certain states.[125] The EEC has adopted a similar approach on different occasions, for example particularly against Argentina during the British-Argentine conflict in 1982.[126]

The right of a belligerent country or states to resort to economic measures against its adversary and any third party which supports an aggressor state and violates obligations of neutrality is manifest in international law. There is, however, a serious doubt whether an international organisation may enjoy a broader right than individual states to "penalise" a particular state or third party for constituting a threat to the collective security interest.

Some may argue that the Arab boycott against Israel and its friends and allies is categorised as economic warfare rather than sanctions.[127] It is difficult nonetheless, to contest the legitimacy of adopting economic measures (boycott) against a state which is in a state of war with a single country or a group of countries, let alone occupying territories, particularly if a boycott is deemed to be a reprisal action.

In 1951 the Council of the Arab League adopted a resolution[128] imposing a total ban, as a primary boycott, on all Arab states and Arabs dealing with Israel on a commercial or personal basis. In addition as a secondary boycott, a ban was imposed on all foreign firms who had connections with Israel in the form of subsidiary companies, factories or plants and thereto related activities constituting assistance to Israeli economic or military strength, because they were considered to be

rendering Israel or respectively being a threat to Arab security interest.[129] The extent and the definition of the threat remained a matter of discretionary power vested in the individual member state of the Arab League. The Arab programme for boycotting Israel was given a specialised organ. A system of blacklisting those firms which failed to comply with Arab terms of trade was designed. Affected firms were given three months warning to sever their links with Israel and accept the Arab terms of trade boycott.[130] Different Arab states did not necessarily have identical blacklists covering the same firms.

The USA Administration runs a boycott system designed against "formerly Communist countries" similar to the Arab boycott system.[131] It has also adopted an anti-boycott legislation in an effort to neutralise the Arab boycott of Israel, in particular the secondary type of boycott. In 1977 the U.S Export Administration Amendment Act prohibited any U.S national from complying with a "boycott fostered or imposed by any foreign country against other countries friendly to the U.S" and not itself under boycott by the U.S.A.[132] Canada showed a similar attitude and adopted anti-boycott measures by means of withdrawing governmental financing assistance from companies complying with the Arab boycott programme of Israel and its allies.[133] However, unlike the above two positions, other Western governments, including the member states of the EEC, took no official move in cognizance of the Arab boycott program. Consequently, European firms were left with an option between a market with a population of more than one hundred fifty million of inhabitants and another market of only three million inhabitants.

In respect of Lebanon's pledge to adopt a non-discrimination policy vis-a-vis the EEC firms and nationals, while individual member states of the Arab League were empowered to make their own blacklists, the application of a boycott policy by Lebanon was based on defined criteria, similar to those of other Arab countries, and extended to all foreign firms whose practice violated Lebanese domestic law therewith constituting a

threat to Lebanon's security interests. The criterion for the boycott did not aim at particular European firms on national, religious or racial grounds.

In 1954, like all other Arab countries, Lebanon adopted laws unifying boycott measures and procedures, and standardised penalties for any breach or violation of its trade laws. These rules, as Lebanese domestic law, were to be observed by all firms wishing to engage in business with Lebanon. If they violated the domestic laws of Lebanon, they would be banned from having any relations, including trade with Lebanon, its companies or nationals. In 1971, 1400 American firms not complying with Lebanese domestic laws were blacklisted by Lebanon.[134]

The EEC member states have not restrained their firms or nationals in order to observe Lebanese laws and regulations relating to the boycott of Israel. The Arab boycott system, on the one hand, and the enforcement of Lebanese law on the other have made it difficult to contest the non-discriminatory nature of Lebanese policy. Lebanese rules on boycott do not collide with the non-discrimination policy since they apply to all undertakings without discrimination. Lebanese practice cannot be deemed as being discriminatory between European firms and others, because it applies against all firms or persons regardless of their race, nationality or religious status, whose actions are deemed to violate Lebanese law and to constitute a threat to Lebanon's security interests.

(D)-SAFEGUARD MEASURES

The GATT advocates the principle of liberalisation of international trade. To underpin this notion, it calls for subsequent trade negotiations with a view to eliminating or reducing tariff and non-tariff barriers to trade. Liberalisation of trade requires, however, the latter to operate fairly, otherwise different countries may be vulnerable to an adverse effect on their economy and the process of their economic development. With this point in mind, GATT has been provided with different safeguard

provisions to ensure the proper operation of the process of liberalisation of international trade;[135] but, not all states are contracting parties to the GATT. This creates loopholes in ensuring fair trade between different states as subjects of international law involved in international trade. Countries which are not bound as contracting parties by the provisions of GATT, include in their trade agreements their own safeguard measures. These mostly correspond to the GATT provisions in this field. The Cooperation Agreement between Lebanon and the EEC similarly included some safeguard measures to protect the operation of the Cooperation Agreement from unfair trade between its contracting parties so as not to jeopardise the economic situation or the process of economic development of either of the contracting parties.

a)-ANTI-DUMPING PRACTICE

The Cooperation Agreement provided for safeguard measures against dumping, bounties and subsidies practices,[136] against serious difficulties in the balance of payments,[137] and against disturbance or difficulties in the economic situation[138] in either of the contracting parties. The inclusion of these safeguard measures raises the question of their legal basis, and whether they are of any practical significance.

Anti-dumping measures are actions aimed at setting up a minimum import price, or adding special duties or levies to the price of a product which is "introduced into commerce of either of the contracting parties at less than its normal value in the imported country, in which it causes or threatens to cause injuries to an established domestic industry" in the exported country.[139] Article VI of GATT forms the umbrella legislation for national anti-dumping laws.[140] It authorises its contracting parties to adopt such measures as are necessary to protect their industries from dumping practices generating economic injuries.[141] In 1968, Article VI GATT was supplemented with an interpretation code applicable on its

implementation, following the Kennedy Round to bring the national laws promptly into uniform application of Article VI GATT.[142] The Kennedy Round's Anti-Dumping Code has been replaced by a new Code negotiated during the Tokyo Round in 1979.[143] The new Code aimed to control the abusive application of national anti-dumping laws to situations which allegedly seriously caused or threatened to cause injuries justifying the use of anti-dumping measures.

The EEC anti-dumping approach vis-a-vis third countries is part of its common commercial policy. Article 113 EEC confers upon the EEC an express power to adopt measures, "to protect trade such as those taken in case of dumping or subsidies" practiced by a third party. The EEC first adopted its own legislation against dumping practices by third countries, based on the first GATT Anti-dumping Code, which came into force on the first of July 1968.[144] It has been revised regularly. In accordance with the new GATT Code of 1979, the EEC adopted new rules replacing its earlier anti-dumping rules, and brought EEC law into conformity with GATT rules.[145] The 1979 rules have again been subject to a series of amendments and were last reshaped by EEC Regulation 2423/88 at present in force.[146] The Regulation covers both agricultural and industrial products[147] and applies vis-a-vis third countries as contracting parties to GATT, or otherwise. It does not, as such, preclude the application of special rules laid down in the Cooperation Agreement between Lebanon and the EEC, especially concerning consultation procedures in the Cooperation Council. The Cooperation Agreement provides for measures against dumping practices "in accordance with the Agreement on the Implementation of Art VI of GATT". However, these are to be adopted under specific conditions and procedures laid down in the Cooperation Agreement.[148] Consequently, before taking any anti-dumping measures, the Cooperation Council has to be supplied with all the relevant information for the examination of a relevant claim with a view to seeking a satisfactory solution. If a mutual solution is not reached,

consultations have to be initiated in the Cooperation Council prior to any measures being taken. Such measures "must not exceed the limits of what is strictly necessary to counteract the difficulties which have arisen".[149] It is worth noting that the draftsmen of the Cooperation Agreement referred to the fact that any measures likely to be taken must be in conformity with the Kennedy Round's Anti-Dumping Code. Consequently, the EEC adopted a Regulation[150] for the purpose of implementing the safeguard clauses provided for in the Cooperation Agreement.[151] This Regulation confers upon the Commission the power to take decisions, after examining the case either on its own initiative or at the request of any of its member states, whether the practice in question is compatible with the rules embodied in the Cooperation Agreement. Should dumping be shown to exist on the part of Lebanon, the necessary action would be introduced in accordance with the procedures laid down in Regulation 459/68.

This would suggest that while the anti-dumping measures to be introduced by the EEC against Lebanon would have to be in accordance with EEC's own regulations and in conformity with GATT rules, the counter measures introduced by Lebanon against the EEC or any of its member states would be based on international rules relevant in this field.[152] This signifies that Lebanon does not have independent anti-dumping rules. However, since the Kennedy Round Code and the EEC Regulation of 1968 have been replaced by a subsequent Code and Regulations respectively, the anti-dumping measures to be introduced by Lebanon against the EEC or any of its member states would have to be based on the Tokyo Round Code, while EEC anti-dumping measures against Lebanon would have to be introduced in accordance with the EEC Regulation of 1988.

Countervailing duties are privileged under Article VI para (3) GATT to offset bounties and subsidies practices, provided that such practices cause injuries or threaten to cause injuries justifying the imposition of

such duties, regardless of whether such a product is being dumped or not.[153] However, in compliance with Article VI para (5) GATT, the injured contracting party cannot impose both duties (countervailing and anti-dumping) at the same time and for the same situation.[154] Anti-dumping measures and countervailing duties resemble each other in their nature and features. They are always introduced together in one article or regulation in the GATT system or in EEC regulations. As such, they have undergone the same developments in GATT and EEC rules.[155] Similarly, in the Cooperation Agreement, countervailing measures are included in the same provision as that on anti-dumping, operate under similar conditions and procedures.[156]

b)-DISTURBANCE OF THE ECONOMY

A second type of safeguard measures is designed for the purpose of adjustment to counter certain difficulties which emerge despite the normal application of international rules on trade. The Cooperation Agreement is equipped with safeguard measures to counter any serious disturbance in any sector of the economy of either of the contracting parties or to offset any "serious deterioration in the economic situation of a region" of the contracting parties. Unlike reference to anti-dumping measures, the Cooperation Agreement does not refer to any international rules when dealing with the issue of safeguard measures, despite the resemblance between safeguard provisions in the Cooperation Agreement and Article XIX GATT. Instead, Articles 32 and 33 of the Cooperation Agreement specify the grounds on which the rights to adopt safeguard measures can be invoked to counter the specified difficulties, beside the conditions which have to be taken into consideration. Moreover, the extent to which such safeguard measures may go, should not exceed the limit necessary to counteract the difficulties (principle of proportionality).

Furthermore, prior to the adoption of specific measures, the Cooperation Council is to be provided with all the relevant information required for a thorough examination with a view to seeking an acceptable solution to the problem. Otherwise, failing to reach a satisfactory outcome, the parties may adopted such measures, provided they cause the least possible disturbance to the functioning of the Cooperation Agreement. The Cooperation Council is to be furnished with details of such measures.

As regards the EEC, appropriate safeguard measures may be adopted by the EEC Council acting by qualified majority on a proposal from the Commission, in accordance with EEC common rules on imports.[157] However, if such difficulties give rise to urgent action, the concerned party may adopt the appropriate action promptly within the limits strictly needed to remedy the situation.[158]

c)-BALANCE OF PAYMENTS

The third type of safeguard action which may be considered as an escape clause from the application of the rules of the Cooperation Agreement is related to the balance of payments. The Cooperation Agreement provides for taking necessary safeguard measures to counter "serious difficulties or serious threats of difficulties" to the balance of payments which any of the contracting parties to the Cooperation Agreement may face. In this respect, the structure of GATT has been incorporated with a series of exceptions, so that measures otherwise prohibited by GATT, can be taken in defined situations of balance of payments difficulties.[159] However, the Cooperation Agreement does not refer to any international rules or procedures to be followed in dealing with the balance of payments difficulties. The grounds and conditions to invoke related escape clauses is left to be dealt with within the discretionary power of the contracting parties. Obviously, once such a right is invoked, measures would have to be adopted against all

outsiders.[160] The Cooperation Agreement has limited the condition of the use of safeguard measures in connection with the balance of payments to serious difficulties or serious threat of difficulties of balance of payments in Lebanon or any of the member states of the EEC, provided that the selected measures do not cause more than the least possible disturbance to the functioning of the Cooperation Agreement (principle of proportionality). Moreover, other contracting parties to the Cooperation Agreement should be informed immediately of the adopted measures. The Cooperation Council is to subject such adopted measures to periodic consultations with a view to their abolition as soon as circumstances permit.

The history of trade relations between Lebanon and the EEC does not record, unlike the case of the rules of origin, any claim brought in connection with anti-dumping or countervailing measures against either of the contracting parties.[161] While, Lebanon's trade relations with the EEC have, since their inception, run rather counter to the economic interests of Lebanon, Lebanon's imports from the EEC have formed the major part of its total imports. These imports may threaten or cause a threat if they (dumped or not dumped) compete with nascent domestic industry, but, considering the fact that Lebanon is a developing country, it should not be forgotten that it is entitled under international rules, in addition to the rules of the Cooperation Agreement, to increase or adjust its customs duties or quantitative restrictions or even introduce new customs duties or quantitative restrictions against imports from the EEC. However, as imports may threaten or cause a threat only if they compete (particularly unfairly when due to the difference in the level of economic development), a threat may come not only from imports of EEC products but from all outsiders, particularly from developed countries. Consequently, in conformity with its MFN treatment pledged to the EEC, such measures would have to be extended by Lebanon against all developed countries. Therefore, if imports threaten the nascent domestic

industry, and the threat comes from all outsiders, it would be, for Lebanon, easier to invoke its rights to increase existing or introduce new custom duties or quantitative restrictions provided for in the Cooperation Agreement, rather than invoke its rights under safeguard measures. Hence, from Lebanon's angles, safeguard measures are good in principle, but lack any serious or practical significance.

Lebanon's exports to the EEC have always formed a marginal share of Lebanon's total exports. From an EEC perspective on EEC imports, this share of Lebanese exports to the EEC does not even form a marginal share and as such are also hardly perceptible. Consequently, in the light of a diversification of exports and imports, it is hard to see Lebanon's exports to the EEC forming a threat or injury to the EEC domestic industries. Therefore, it may be suggested that the safeguard measures provided for in the Cooperation Agreement are of rather theoretical value aimed at bringing the Cooperation Agreement into conformity with all EEC trade agreements with third countries. They lack any serious significance as regards obstacles to trade flows between Lebanon and the EEC. As long as Lebanon remains a developing country its exports are not capable of competing and threatening EEC domestic industries.

3-Rules of Origin

The determination of the origin of a product is a basic element in ensuring fair trade, particularly when preferential and more favourable treatment is involved in international trade. Such a determination should afford the country offering the preference adequate protection against third country suppliers. Otherwise, trade relations between different countries will turn into anarchy as a result of a potential practice by a third party, taking advantage of such preferences and infiltrating its products not entitled to preferential treatment into the preference offering market. The infiltrated goods would therewith circumvent the proper

rates of duties and may cause a serious threat to a sector of the economy or to the economic situation of the preference offering country. The system adopted with respect to rules of origin should enhance the opportunity to the beneficiary country of enjoying the trade preferences and not disguise non-tariff barriers to trade which may devalue preferential treatment accorded to the preference receiving country.

The adoption of specific rules of origin reflects the economic policy of the party imposing them. This discloses the reason for the lack of internationally agreed rules on certain basic principles for adopting common rules of origin. The GATT is silent on a definition of an originating product or on the adoption of the rules of origin. It deals only with the use of marks of origin for protecting the consumer in the country of consumption, and with the value or level of tariff concessions made by the contracting parties to GATT with respect to becoming significant protective non-tariff barriers.[162] However, the GATT does not exclude its contracting parties from adopting their own rules of origin. On the contrary, it authorises them to include their national provisions, concerning marks of origin, as an obligation to indicate the origin of the imported product and to protect the authenticity of that origin.[163] An attempt has been made by the working group of the Special Committee of the UNCTAD and it has been able to arrive at certain agreed conclusions regarding rules of origin which the preference offering countries (as far as the GSP is concerned) may agree to take into consideration when adopting their own rules in this field.[164]

As far as the EEC is concerned, the definition of a product as "originating" in a given country is of vital importance for applying its common custom tariffs, since the enforcement of the proper rates of duties and other quantitative restrictions or anti-dumping measures depend heavily on the origin of the product. The EEC has adopted its own concept of rules of origin as fundamental for the successful implementation of the common commercial policy.[165] This concept applies vis-a-vis third

countries, *mutatis mutandis*, to all relevant agreements concluded by the Community.[166] The Cooperation Agreement is amongst these agreements.

The Cooperation Agreement includes a Protocol concerning the definition of the concept of "originating product" and the method of its administration, for the purpose of providing evidence as to the origin of products exported from Lebanon to the EEC. The Protocol is similar to other protocols in cooperation agreements concluded between the EEC and the Mashreq and Maghreb countries. The Protocol has been adopted in conformity with the EEC Council Regulation 802/68.[167]

According to the Protocol, a product is recognised as originating in any of the contracting parties if it is either wholly produced in one of them or has undergone "sufficient working or processing" operation from materials or components other than those wholly produced either in Lebanon or the EEC and used in the production.[168] For the purpose of implementing this working or processing criterion, the concept "sufficient working or processing" would be considered as being fulfilled if the new product receives a new tariff heading in the Brussels Tariff Nomenclature other than that covering the processed or worked material. However, this method is too blunt to produce the correct result in such a working or processing operation. Consequently, a simple working or processing operation featuring some products is considered inadequate enough to confer upon them the concept of originating product irrespective of the question whether there has been a change of the tariff heading classification in accordance with the Brussels Tariff Nomenclature.[169] Nonetheless, certain working or processing operations which may not result in a change of tariff heading are recognised as "originating products".[170] Therefore a product resulting from compound materials and undergoing working or processing operations must have its own purposes, properties and composition which it did not possess before the relevant processes or operations.[171] Consequently, the value added

criterion was taken into account to avoid any abuse in the rules of origin if the non-originating material had undergone certain working or processing operations. Save the exceptions listed in Art 3 (3) of the Protocol, the value of the materials worked or processed should not exceed 15 per cent of the total value of the goods obtained.[172]

The idea behind the determination of the rules of origin is to ascertain that only the beneficiary state would be able to enjoy such tariff concessions. The rules of origin system, therefore, should facilitate the achievements of this task, and accordingly also the objectives and the goals of the Cooperation Agreement.

The Cooperation Agreement aimed at promoting trade between its contracting parties with a view to accelerating growth rates in trade with Lebanon and to improving the conditions of access of Lebanese products into EEC markets. This gives rise to the question as to what contribution these rules, as they are involved in trade between Lebanon and the EEC, can make in achieving the objectives of the Cooperation Agreement. In other words, how far are these specific rules of origin useful in serving their purpose without damaging or devaluing the preferences which are accorded to Lebanon?

The rules of origin applied to Lebanon feature two main characteristics. A rigidity and complexity of the rules on the one hand, and the absence of cumulative treatment of materials used in Lebanese products on the other.

The EEC rules of origin are criticised as being generally very rigid irrespective of their application to Lebanon or to any other developing country as a beneficiary of the GSP. This has led the UNCTAD to adopt a resolution calling for the "simplification, harmonisation and improvement of the rules of origin" with respect to the GSP.[173] It should be noted that the rules of origin applied against Lebanon are more severe. The working group of GATT, examining the compatibility of the Cooperation Agreement with the provisions of GATT, criticised the EEC

for adopting such a rigid system. The EEC justified these rules as the outcome of a choice between "the desire to further the economic development of Lebanon and the need to avoid the customs tariff from being circumvented".[174] Rules of origin are usually based, economically, on either process criteria or value added criteria. The former require a substantial transformation in the non-originating material used in the final product ready for consumption under a new tariff classification. The latter require that the percentage of the non-originating material worked or processed must not exceed a given percentage of the value of the product ready for consumption.

The system applicable to Lebanon has adopted a combination of both groups of criteria. It first states that the non-originating material worked or processed must undergo sufficient operations combined with the change in the tariff heading. To the further disadvantage of Lebanon, the Cooperation Council has required that the value of the worked or processed material should not exceed 15 per cent of the value of the produced goods obtained in Lebanon. This system would make it harder for Lebanon to enjoy such trade concessions to the fullest possible limit. The assumption of the EEC could hold true if Lebanon possessed raw materials or natural resources to be processed in its manufacturing activities. However, given the fact that Lebanon is deprived of such raw materials, it cannot invest in manufactured activities unless the most economical and rational raw materials are imported. Such imports have to undergo substantial transformation to produce manufacturing goods in Lebanon. Therefore, the given system may deflect trade between Lebanon and its trade partners, favouring the interests of the EEC rather than furthering the economic development of Lebanon. As a result, trade relations between Lebanon and its trade partners other than the EEC may be harmed. Eventually, Lebanon may find no alternative than to import materials needed for manufacturing activities from the EEC for fear of using non-originating materials which break the rules of origin and

consequently neutralises the accorded preferences.

The EEC has always claimed that the "extension of the rules of origin is aimed at encouraging regional integration through the adoption of the concept of a cumulative system of origin".[175] Any potential regional cooperation, in a region that has a great interest to trade with the EEC more than within the region, will depend on the degree of embodying the concept of cumulative origin in the system. In the absence of a cumulative origin system, the complete qualifying process will have to take place in the exporting country such as Lebanon claiming tariff preferences.[176] Consequently, an exporting country like Lebanon receiving favourable treatment would not import (or export) from its neighbouring countries, materials necessary to attract manufacturing activities to enable it to produce goods with competitive features in the EEC market. This holds true for Lebanon as a country deprived of regional cooperation suitable to its economic development. The EEC rules of origin applied to Lebanon leave the only possibility that worked or processed materials will have to be imported from the EEC only to satisfy the EEC system of origin. Otherwise non-originating materials undergoing working or processing operations, are as already mentioned not to exceed by more than 15 per cent the total value of the product.[177]

As far as potential regional cooperation for Lebanon is concerned, such cooperation is likely to be with the Mashreq countries (Egypt, Jordan and Syria) which have with the EEC similar trade interests as Lebanon. These countries involved with the EEC in the same type of Cooperation Agreement that Lebanon has, are bound by identical rules of origin. Consequently, non-qualifying goods may not benefit from trade preferences nor can they circumvent customs tariffs. In the absence of a cumulative criterion, concerned countries may be discouraged from becoming involved in manufacturing activities between them in order to satisfy the EEC criteria for the rules of origin. As a result, the

manufacturing activities of these countries, including Lebanon, may be directed towards the EEC as an ultimate beneficiary. Hence, these rules of origin may serve to promote EEC trade with Lebanon, but not with a view to improving growth of Lebanese exports to the EEC. These rules constitute, in addition, an obstacle to attempts for promoting regional cooperation as using materials from regionally closer countries in manufacturing operations may be a burden to Lebanon's exports to the EEC. This raises the question whether such a situation, with preferences offered to Lebanon by one hand, does not involve the factual withdrawal of preferences by the other. Therefore, the need for the liberalisation of the origin system may exist, beside the adoption of a concept of cumulative origin system. Otherwise, Lebanon would continue to face tremendous difficulties in its manufacturing activities.

D-INSTITUTIONAL CONTENTS

The Cooperation Agreement calls for the establishment of common institutions between Lebanon and the EEC. This is similar to the situation relating to all agreements concluded by the EEC with third countries. The common institutions act as a forum for consultation and discussion of cooperation between the contracting parties of the Cooperation Agreement, particularly when reviewing experiences gained from the implementation of the provisions of the Agreement. They are given the task of administrating the proper functioning of the Agreement. The common institutions consist of the Cooperation Council as the main institution, and other bodies or committees which may in turn establish to assist it in carrying out its duties.[178]

i-THE COOPERATION COUNCIL

The Cooperation Council was established for the purpose of attaining

the objectives of the Cooperation Agreement, to ensure a smooth functioning of the Agreement and to promote political cooperation between the European and the Lebanese Parliaments. It is empowered to take binding decisions, formulate resolutions, make recommendations or deliver opinions in connection with the attainment of the common objectives of the Cooperation Agreement. In addition, it may hold consultations for the purpose of taking any appropriate measures for promoting political cooperation between the European and the Lebanese Parliaments.[179]

The Cooperation Council consisting of representatives of the EEC, its member states and Lebanon, acts by mutual agreement between the EEC and Lebanese representatives who may be assisted by other officials. Whenever financial issues are involved, particularly those of specific concern to the European Investment Bank, a representative of the EIB may attend a relevant meeting.[180] The members of the Cooperation Council may be represented by other delegates with full powers.[181]

The Cooperation Council meets once a year in private or in extraordinary sessions whenever required by any concerned party. Such a meeting may be summoned by the president of the Cooperation Council who determines the date and the place of the meeting.[181]

The presidency of the Cooperation Council is held alternately, from the first of April to 30th of September by the Lebanese representative and from the first of October to 31th of March by a member of EEC Council.

The Cooperation Council has held, as a discussion platform, many sessions to review improvements in trade in implementation of the Cooperation Agreement. In addition, it serves the purpose of extending and developing cooperation to meet potential developments that may arise at the national, European and international level. As such, the Cooperation Council has held four review meetings in 1979, 1980, 1984 and 1985. The meetings in 1974 and 1984 reviewed the results of cooperation whereas the other discussed the experience gained from the

functioning of the Cooperation Agreement.[183] Another new review session has been agreed to be held in 1995 for appraising the level of the improvement of trade, and the future development of relations in the light of the objectives of the Cooperation Agreement.

ii-THE COOPERATION COMMITTEE

The Cooperation Agreement has empowered the Cooperation Council to set up any committee[184] which may be needed to assist it in carrying out its duties. The Council accordingly established two bodies: a Cooperation Committee and a Customs Cooperation Committee. Later, a Trade and Economic Cooperation Committee was formed.

The Cooperation Committee is responsible for assisting the Cooperation Council "in the performance of its duties, preparing its deliberations, studying any matter which the Cooperation Council has entrusted to it to examine and for ensuring the required continuity of cooperation for the sake of the proper functioning of the Cooperation Agreement".[185] It is composed of representatives of the members of the Cooperation Council. The chairmanship of the Committee is held under the same conditions and procedures as those for the presidency of the Cooperation Council.

iii-THE CUSTOMS COOPERATION COMMITTEE

The Custom Cooperation Committee is responsible for the task of ensuring administrative cooperation in the uniform application of the customs provisions of the Cooperation Agreement, as well as any other customs tasks entrusted to it. It consists of customs experts of the member states of the EEC, officials of the Commission and Lebanon. It meets alternately under the chairmanship of a representative of the EEC Commission and Lebanon in accordance with the same rules of

procedures as those of the Cooperation Council.

iv-THE TRADE AND ECONOMIC COOPERATION COMMITTEE

The Additional Protocol, concluded between the EEC and Lebanon following the last enlargement, set up a further "Trade and Economic Cooperation Committee" improving the operation of the institutional mechanism of the Cooperation Agreement.

The new Committee was given the task of facilitating the regular exchange of information on trade and production data and forecast, beside possibilities for cooperation in different areas covered by the Cooperation Agreement.[186]

The Trade and Economic Committee is subject to the Cooperation Council which determines its composition and rules of procedures. It is chaired alternately by a representative of the Commission and a representative of Lebanon.

IV-THE IMPACT OF THE EEC'S SOUTHWARD ENLARGEMENT ON LEBANON

Similar to the first enlargement, the accession of the Southern Mediterranean European countries, Greece, Portugal and Spain, to the EEC has had considerable negative as well as positive political, economic and legal consequences both internally and externally.[187] Internally, the enlargement has entailed changes in the EEC treaty to accommodate the consequences of the new enlargement. The enlargement has required the acceding countries to adopt the necessary measures to transfer the exercise of powers to the EEC and to adopt its policies in the fields of its competences.[188] Externally, the enlargement affected the EEC relations with third parties, and has had an impact on relations between the acceding countries and countries parties to agreements falling within the

sphere of the Treaty of Rome. The new member states have had to accede to all EEC bilateral and multilateral agreements be it under GATT or other international organisations, beside the adoption of the EEC general scheme of preferences. The new member states have been under an obligation to terminate the application of any bilateral, whether preferential or non-preferential, trade agreement with its trade partners. The acceding countries have had to withdraw or adjust their commitments concerning other multilateral agreements falling within EEC competences to bring them into line with the common policies of the Communities. Transitional or temporary exemptions have been in this respect permitted in agreement with defined criteria to enable the operation of certain arrangements of vital interest to the new member state.[189]

As far as Lebanon is concerned, the impact of the second enlargement, depends on the level of existing relations with the EEC on the one hand, and on its relations with the acceding states on the other. The legal implications have resulted from either discontinuing the application of trade agreements, if any, between the acceding countries and Lebanon, or the adoption by the new member states of the agreement concluded between the EEC and Lebanon -that is, the Cooperation Agreement between Lebanon and the EEC designed to promote Lebanon's exports to the EEC. Had such exports been threatened by the new enlargement, adequate measures between the EEC and Lebanon would have been taken to counter negative consequences and enable the parties to pursue the objectives of the Cooperation Agreement after the enlargement of the EEC. Legal implications might arise consequent to a potential deterioration after accession, of trade flows between the EEC or its acceding countries and Lebanon. Has the second enlargement threatened Lebanese trade flows to the EEC or to its new member states?

A-THE LEGAL IMPLICATIONS ARISING FROM THE IMPACT OF THE SECOND ENLARGEMENT ON LEBANESE TRADE RELATIONS BETWEEN LEBANON THE EEC AND ITS NEW MEMBER STATES.[190]

Unlike the first, the second enlargement generated major fears among non-member Mediterranean countries that preferential treatment accorded to them by the EEC could be eroded by the accession of their rival Mediterranean countries' exports.[191] The fears derived from the existence of high levels of similar production and subsequently exports from these countries to the EEC markets. This could lead to imperfect competition conditions in trade between the acceding states and their rival Mediterranean countries, lowering the capacity of the EEC markets to absorb their exports and eventually creating dire problems in their balance of trade and the process of their economic development.[192]

The impact of accession of new member states on trade flows between Lebanon and the EEC rested on the fact that the capacity of the market of the EEC to absorb Lebanese exports would be lowered in view of the resemblance in exports from Lebanon and sale of corresponding competing products from the new member states on the EEC markets. Similarities in primary products exported to the EEC, between products of the acceding countries and Lebanon was measured as being 23.6 per cent, as regards Greece, 11.3 per cent as regards Portugal and 29.4 per cent as regards Spain. Therefore, Spanish and then Greek exports were more likely to cause a threat to Lebanese exports to the EEC in the light of a substantial similarity between their exports.[193] The enlargement of the EEC entailed the suppression of barriers to trade applied earlier by the acceding countries to trade with the EEC. Similar barriers could face Lebanese exports to the new member states with serious consequences for Lebanon if the preferential treatment accorded to Lebanon had an earlier

impact on the latter's exports to the EEC, or if Lebanon's exports to the new member states were themselves substantially significant.

By the terms of the Cooperation Agreement, Lebanese exports to the EEC are classified into industrial and agricultural goods. Since the entry into force of the Interim Agreement, industrial goods have enjoyed, in principle, perfect competition conditions with comparable exports of the acceding countries as all enjoy free access into the EEC markets. Therefore, it may be concluded that Lebanese exports of industrial goods may have secured their share in the EEC markets and would not be seriously threatened by the EEC southward enlargement; but agricultural products are subject to tariff cuts only and sometimes to specific quotas. Such products will thus be in imperfect competition conditions with comparable exports from the acceding countries as the latter will enjoy, unlike Lebanon, free access to the EEC market. Consequently, the erosion of value of the preferential treatment is more likely to be against exports of agricultural products. It is clear, however, that trade in goods not produced by the acceding countries would be least affected.[194]

Lebanon's trade relations with the acceding countries varies between one county and another. However, a common feature in trade relations with them is that Lebanon's trade balance suffers a big deficit. In a larger Community, the deficit is expected to be further accentuated. The five year period prior to the accession of each country shows that Lebanese imports from Greece were increasing gradually, nearly trebling between 1976 and 1980. However, as a percentage of EEC exports to Lebanon, this increase has been parallel to the increase in EEC exports to Lebanon, which nearly doubled for the same period of time. The share of Greek exports to Lebanon amounted to 1.6 per cent of total Lebanese imports in 1976 and increased slightly in 1980 and was valued as being 1.8 per cent of Lebanese total imports.

Lebanese exports to Greece claimed a modest share in the Greek

market. In the years preceding Greek accession, Lebanese exports to Greece decreased sharply from nearly 9 per cent of the EEC total imports from Lebanon in 1976 to 2.4 and 0.1 per cent in 1979 and 1980 respectively. These exports, decreasing dramatically, were equivalent only to 0.06 per cent of Lebanese total exports.

The corresponding figures to the EEC as a group show a similar decline from 10 per cent of total Lebanese exports in 1976 to less than 7 per cent in 1980. This conflicts with the general rate of growth of Lebanese exports which nearly doubled between 1976 and 1980.

Lebanon's trade relations with Portugal does not show a better outcome, though it did not have the same opportunities as far as trade with Greece and Spain. Lebanon's trade deficit with Portugal fell from $ 6 m in 1981 to $ 2.4 m in 1986. This was not due to an increase of exports to Portugal, but to a decrease in Lebanon's imports from Portugal. Lebanon exported virtually nothing to Portugal during the five year period before its accession to the EEC. As far as supplies from the EEC to Lebanon and total Lebanese imports are concerned, the share of Lebanese imports from Portugal had not been of any substantial significance.

Trade flows with Spain were more important to Lebanon than trade with the other two acceding countries. Lebanese imports from Spain have been gradually improving in value and volume, increasing from 4.8 per cent to 9.5 per cent of Lebanon's imports from the EEC in 1981 and 1985 respectively. The corresponding percentage of Lebanon's total imports shows similar improvements, doubling from 2 to 4.6 per cent for the same period. The improvement of Lebanon's imports from Spain has not been attributed to a traditional increase in imports only, but is due to a decrease of EEC exports to Lebanon by 34 per cent compared with than they were in 1981. EEC exports maintained a major share in Lebanon's total imports equivalent to 48 per cent of Lebanese total imports in 1985. Lebanese total exports were declining over that period, being lower by 40 per cent in 1985 than they were in 1981.

In contrast to Lebanese imports from Spain, exports to Spain showed a gradual decrease during the same period of time, declining in value and share of EEC imports from Lebanon, from 2.2 per cent in 1981 to 1.3 per cent in 1985. Lebanese exports to the EEC had shown an increase from 6 per cent in 1981 to 16.7 per cent in 1985 of total Lebanese exports. The share of Spanish imports as regards Lebanon's total exports had doubled. The contradiction between the decrease in Lebanon's exports to Spain and the increase in their share in total exports is explained by the fact that Lebanon's total exports declined nearly to half the level of exports in 1981.

The outcome was a huge deficit in Lebanon's balance of trade with these countries, contributing to a wider gap in its trade relations with the EEC following the enlargement. This has been particularly true as Lebanese exports to the acceding countries and the EEC of nine member states were not sufficiently significant to eradicate Lebanon's trade deficit with them. This suggests that the preferential treatment accorded to Lebanon by the EEC with nine member states had no impact on promoting and providing better access to Lebanese exports to the EEC markets. Would the accession of new member states lead to serious repercussions for Lebanon's exports to the EEC or to the new member states and would it contribute to a wider trade deficit?

Lebanese imports from Greece, following its accession to the EEC, decreased in value by 23 per cent in 1985 compared with the situation on the eve of enlargement in 1980. Lebanon's total imports and particularly its imports from the EEC had decreased by 42 per cent and 37 per cent respectively for the same period of time. Greek and EEC exports to Lebanon maintained their share with little improvement in the Lebanese market as a whole.

Lebanon's imports from Spain decreased by nearly 40 per cent in 1989 compared with the situation in 1986, despite an improvement in Lebanese total imports. The corresponding figures for Portuguese and EEC exports to Lebanon showed that they nearly remained constant. This indicates

that Lebanese imports from Spain were falling as to their share in EEC trade flow, with twelve members to Lebanon. Portuguese, Spanish and overall EEC exports to the Lebanese market declined gradually after 1986.

Lebanese exports to Greece declined by 27 per cent between 1981 and 1985. Moreover, the value of these exports was marginal. However, Lebanese total exports to the EEC of ten member states improved by 26 per cent during the same period of time, representing an increase of exports to the EEC by 11 per cent of total Lebanese exports. These exports declined in 1985 by nearly half of their value in 1981.

Corresponding figures for Portuguese and Spanish imports from Lebanon remained insufficient as far as Portugal is concerned, whereas as regards Spain, they increased only slightly in terms of value. However, Lebanese exports to the EEC markets improved rapidly and nearly doubled between 1986 and 1989. This improvement represented an increase of only 6 per cent of the share of Lebanese exports to the markets of the EEC of twelve member states, despite an increase in Lebanese total exports by 21 per cent in 1989 compared with the 1986 figures.

Therefore, the assumption that a similarity of primary goods, exported to the EEC, from Lebanon on the one hand and Greece and Spain on the other, could threaten Lebanese exports by 23 per cent from Greece and 29 per cent from Spain respectively cannot be valid. Lebanese exports to the EEC of twelve member states, and to its traditional markets in the EEC in particular, improved dramatically following the enlargement, despite a decline in Lebanese exports to the acceding countries.

This outcome raises a question as to the factors which contributed to an improvement in Lebanese exports to the EEC markets. Three explanations may be submitted:

Firstly, Lebanese manufactured goods exported to the EEC enjoy free access to the EEC markets on an equal footing with the acceding member state. This means that exports of relevant goods are less likely to be threatened by the enlargement. Agricultural products are supposed to be

more vulnerable to a threat by the southward extension of the EEC. However, Lebanon orients its exports of agricultural goods to Arab markets, particularly in the Gulf countries, and the importance of the EEC as an alternative opportunity for Lebanon's exports is likely to emerge only if the traditional Arab markets are threatened for different reasons such as instability or security.[195]

Secondly, following the last round of civil war in 1986-1990, the Lebanese currency devalued sharply,[196] giving Lebanese producers further comparative advantages to compete in the EEC market. In addition, the rules of origin and the application of the concept of "originating product" to Lebanese exports were widely abused by Lebanese producers. This led the Commission to threaten Lebanon, that unless Lebanon took the necessary measures to control such abuse, the EEC would prevent any access of Lebanese products to the EEC markets or at least withdraw the tariff preferences accorded to Lebanon.[197] Such abuse against very rigid rules of origin enabled Lebanese producers to compete with similar products in the EEC market, consequently improving the Lebanese share of exports in the EEC markets.

Thirdly, as a precautionary step, the Lebanese government negotiated "in principle" with the EEC, on the impact of the second enlargement on Lebanese trade flows to EEC markets. Following a series of sessions starting on 28th of November 1983, the EEC and Lebanon, in a situation similar to that of all non-member Mediterranean countries, were able to conclude on 9th of July 1987 a Protocol additional to the Cooperation Agreement, adapting the latter by taking into account the possible consequences of the enlargement. The Protocol entered into force on 1st of February 1988.[198]

Article 44 of the Cooperation Agreement provides for the possibility of reviewing any improvement in trade relations between Lebanon and the EEC as a result of the operation of the Agreement. The additional Protocol was intended to protect Lebanon's "traditional exports" to the

EEC against any possible damage consequent on the accession of Spain and Portugal. It provided the opportunity to phase out customs duties applicable to certain non-liberalised EEC imports of Lebanese origin over the same transitional period applicable to Portugal and Spain, however, without leading to a treatment of Lebanon more favourable than that applicable to the EEC of the twelve member states between themselves. An alteration to the set quotas as applicable to dried leguminous vegetables was effected. Furthermore, quotas could be established whenever the imports of newly liberalised products threatened to cause difficulties on the EEC markets. Most of these products involved similarities between Lebanese and Spanish primary products. A further suppression of customs duties on primary products of special interest to Lebanon would have contributed to improve Lebanese exports to the EEC. To find if one of the above assumptions or all three are valid a thorough examination on a commodity by commodity basis by economists would be necessary. The flow of Lebanese exports to the EEC in the coming years should be monitored.

B-THE LEGAL IMPACT OF THE ENLARGEMENT ON THE FRAMEWORK OF EEC TRADE RELATIONS WITH LEBANON

Lebanon had not been involved in trade agreements with the Mediterranean acceding countries. Lebanon and the acceding states had been mutually applying against the other, their own set of rules applicable to third countries. Therefore, the second enlargement did not generate any negative legal implications on relations on historical grounds, between Lebanon and the new member states. However, as Lebanon had since 1965, a bilateral trade agreement with the EEC, and currently a Cooperation Agreement as a part of the EEC Mediterranean policy, the accession of Greece, Portugal and Spain would create a new legal

framework for their trade relations with Lebanon.

The establishment of the new legal framework of trade relations between the acceding countries and Lebanon consequent to the EEC enlargements were not derived from any earlier links of the acceding countries with Lebanon, but from the requirements of EEC law (rules and procedures). The EEC Treaty stipulates that a new member state shall adopt on membership all EEC agreements and discontinue the application of their own agreements conflicting with the competence of the EEC. Consequently, the EEC and its member states, including the acceding countries concluded with Lebanon on 12th of December 1980,[199] and on the 9th of July 1987,[200] in a mixed form, two Protocols to the Cooperation Agreement, whereby the acceding countries joined the Cooperation Agreement. The Protocols laid down the adjustments to the formalities and operation of the Cooperation Agreement, as well as the transitional measures to bring about conditions that enable the new member states to apply the Cooperation Agreement.

From a juridical point of view the Protocols are based on Article 238 EEC. As such, they were negotiated and later proposed by the Commission to the Council,[201] and the consent of the European Parliament was sought. However, the Protocols could not enter into operation unless approved by the EEC, all its member states and Lebanon in accordance with their relevant legislative and constitutional provisions and procedures. This means that the implementation of the Protocols may be delayed and consequently the new member states may not apply the Cooperation Agreement from the first day of membership.

In view of the time needed for the Protocols to be ratified, and in order to advance the implementation of the trade provisions of the Protocols, the EEC and Lebanon laid down (unilateral or bilateral) arrangements for trade between Lebanon and Greece on the one hand,[202] and Portugal and Spain and Lebanon on the other.[203] The arrangement entered into force soon after their conclusion, seeking to advance the

implementation of the trade provisions of the Protocols.

i-TRADE ARRANGEMENTS WITH GREECE

The arrangements, mostly identical to the transitional measures of the Protocol of accession to the Cooperation Agreement, aim to provide to Greece with free access to products originating in Lebanon. As such, the transitional measures for the arrangements concerning Greece provide for a progressive dismantling of the customs duties and charges having equivalent effect applied by Greece against Lebanon prior to its accession. An interval or transitional period lasted until the end of 1985. Lebanon was not be treated by Greece less favourably than the member states of the EEC. This treatment would extend to cover provisional quantitative restrictions and imports including import licensing. However, the Greeks maintained against Lebanon exemptions to impose provisional quantitative restrictions and measures having equivalent effect to quantitative restrictions, lasting until the end of 1985. On the other hand, conditions for imports deposits and cash in payments were dismantled over a period of three years ending by the first of January of 1984.

ii-TRADE ARRANGEMENTS WITH SPAIN

Trade arrangements between Lebanon and Portugal and Spain provided for the gradual elimination of customs duties and charges having equivalent effect to duties, beside applying tariff preferences[204] offered by the EEC to Lebanese exports, over an eight year period of time ending on the first of 1993. Moreover, the elimination of customs duties and charges having equivalent effect would operate according to a method by which the acceding countries would liberalise their markets for EEC products. Lebanon expects to be treated by Spain no less favourably than

the Nine member states of the EEC. However, products originating in Lebanon and defined in Annex II, III, V of the Protocol may be subject to quotas for a transitional period of time, provided Spain applies against Lebanon, rules and administrative practices similar to those applied against the EEC as constituted on 31 December 1985.

The Canary Islands, Ceuta and Melilla are considered to be integral parts of EEC territory. Hence, the same arrangements applied by Spain against imports from Lebanon are to apply to them. However, these territories may grant more favourable treatment than that granted by the EEC to Lebanon to products referred to in Annex II of the EEC Treaty and originating in Lebanon.

iii-TRADE ARRANGEMENTS WITH PORTUGAL

Arrangements for Portugal provide for a suppression of customs duties on imports of products of Lebanese origin on the date of entry into force of the relevant EEC Regulation concerning trade arrangements, save some specific products which are subject to a progressive elimination of duties applicable against Lebanon on the first of January 1980, or application of duties defined in the relevant Annex.[205]

In addition, charges having equivalent to duties are to be progressively eliminated, quantitative restrictions are to be liberalised by the end of 1992, save with respect to oranges until the end of 1995. Portugal retains the power to apply quantitative restrictions on imports of motor vehicles in accordance with Protocol 18 of the Act of Accession. These restrictions are now of historical interest since they were only applied until the first of January 1988.

On the other hand, tariff preferences as regards products defined in Annex II of the EEC Treaty may be gradually granted to Lebanon over a period of time ending by the first of January 1996.[205] Lebanon is to be treated no less favourably than the way Portugal treats (in these fields) pre-

accession the nine member states of the EEC..

V-CONCLUSIONS

The collapse of Lebanese export trade with the EEC created the need to replace the Trade Agreement of 1965 by another agreement to enable Lebanese exports to have better access to the EEC markets. The Cooperation Agreement was concluded, from Lebanon's perspective, to provide such an opportunity by means of a non-reciprocal preferential trade arrangement.

The Cooperation Agreement provides for free access for industrial products and tariff cuts for agricultural products of goods originating in Lebanon and directly exported into the EEC market, with a view to guaranteeing a better trade balance for Lebanon. In return, Lebanon has offered to treat the EEC and its member states not less favourably than it treats other developed countries. The Cooperation Agreement includes safeguard measures to ensure better implementation and operation of the Agreement, Lebanon has expressly agreed while not repealing its laws specifically relating to its security interests (rules of boycott against Israel), to apply them on a non-discriminatory basis.

For the EEC, the Cooperation Agreement is part of its Mediterranean policy, as a new model of relations between developed and developing states, compatible with the aspirations of the international community towards a more just and more balanced economic order (Para 4 of the preamble). The EEC Mediterranean policy has recognised the special relationship between the EEC and the relevant countries in the region and has aimed at responding "even more than the past to the expectations of all the developing countries".[207] As such the EEC attatches "essential importance to fulfill its commitments to the countries of the Mediterranean with which agreements have been concluded".[208] However, it would be a blunder to consider that all the Mediterranean

countries, particularly non-European Mediterranean countries, have between themselves similar historic, political, cultural economic relations with the EEC. The EEC, in designing the Mediterranean policy, has undertaken to take into consideration the different characteristics and levels of economic development of the Mediterranean countries. Lebanon possesses the very core of the characteristics justifying the special relationship between the EEC and the Mediterranean countries. The European Parliament has reaffirmed this argument in a resolution providing its consent for the conclusion of the Cooperation Agreement. The Parliament drew attention of the EEC to the close economic and cultural links which exist between the European countries and Lebanon.[209]

The EEC has responded to the special relations between the EEC and the Mediterranean countries in general and in Lebanon in particular, by offering ever present preferential trade arrangements, and complete suppression of customs duties for products originating in Lebanon. However, the advantages arising from this policy offered by one hand has then neutralised by the other. This has been due to different reasons, inter alia, the rigidity of the rules of origin which, instead of facilitating the use of such accorded preferences, are disguised non-tariff barriers and eventually form a major obstacle to the promotion of Lebanese exports. It seems that whenever the EEC finds itself under no strict international legal obligations to provides facilities in trade for developing countries, it imposes very rigid rules against them. The developing countries are, in principle, entitled to expect a favourable treatment from the developed countries. Within this context, the EEC has adopted its rules of origin against Mashreq countries in general, and Lebanon in particular, exacerbating the conditions of access of Lebanese products to the EEC and devaluing or even neutralising the preferences accorded to Lebanon.

The negotiations leading the conclusion of the Cooperation Agreement needed one session only. This suggests that Lebanon did not

have a chance to negotiate and present its special and urgent needs as different than those of other countries in the region. Therewith the conclusion of the Agreement has resembled the conclusion of any "contrat d'adhesion". This is evidenced by the Lebanese statement which refers to the disappointment of Lebanon with the result of the negotiations. The great resemblance between the Cooperation Agreement between Lebanon and the EEC, on the one hand, and between the EEC and other Mediterranean countries on the other underpins it and refutes the EEC declaration that the EEC has taken into account each country's characteristics and level of economic development. Therefore, although it seems that the EEC has developed its political will to respond to the needs of special relations between the EEC and the countries of the Mediterranean area, this policy has not taken into consideration their special needs despite the fact that a country like Lebanon has most of the elements which would entitle her to receive more favourable treatment. Consequently, Lebanon's exports to the EEC has never recovered, let alone developed.

The conclusion of a preferential trade agreement which includes economic, financial and technical cooperation, questions the powers of the EEC to engage in such an agreement in these fields, beside the compatibility of such a practice with international trade rules. The Cooperation Agreement expressly goes beyound the treaty making power of the EEC. It has been concluded in a mixed form based on Art 238 EEC, but the possibility to conclude the Cooperation Agreement exclusively by the EEC was not exhausted. It was the prevailing political will of the EEC member states that entailed their presence in the international sphere and consequently their participation in the conclusion of the Cooperation Agreement.

The Cooperation Agreement has witnessed developments in the contractual relationship between the EEC and Lebanon and its compatibility with developments in international trade rules. The notion

of non-reciprocal preferential trade arrangements emerged from UNCTAD I and was eventually formulated into trade rules in Part IV GATT. This has led to the introduction of the GSP legitimised by the Enabling Clause. However, the Cooperation Agreement with Lebanon goes beyound the commitments of the EEC under the GSP. The objectives of the Cooperation Agreement respond to those of Part IV GATT in particular and the GATT itself in general. However, the latter does not provide a legal basis for the conclusion of the Cooperation Agreement. Therefore, the Cooperation Agreement has to meet the requirements of other waivers from the application of the MFN clause. Similarly, technically speaking, the Cooperation Agreement was short of fully complying with Article XXIV GATT.

The Contracting Parties to GATT used to tolerate the application of the rules of Article XXIV as regards relations between developing countries, the EEC, in its Mediterranean approach, set a precedent in international trade rules for relations between developed and developing countries. The laxity of the legal approach to the formation of a free trade area or an interim agreement leading to the formation of a free trade area, has led the contracting parties to GATT to pay little regard to the vital legal question. As such, this precedent in the practice of the EEC has been implicitly recognised by the contracting parties to GATT, despite some criticism. This precedent may become a customary standard, notwithstanding opposition by the USA.

Although the preferences accorded to Lebanon have shown no impact in promoting and providing better access for Lebanese exports to the EEC markets, the southward enlargement of the EEC has had little, if any, impact on its trade in general and Lebanon's exports to the EEC in particular. On the contrary, its exports have increased. However, the increase in Lebanese exports to the EEC, following its enlargement, has not been based on a healthy improvement in the conditions of these exports. The primary products in Lebanese trade, with high similarity to those of

the acceding countries, are oriented to different markets. It is, in addition, suggested that the massive abuse of the rules of origin in Lebanon led to a rapid increase in Lebanese exports to the EEC. The question remains unanswered as to what the share of Lebanese exports in the EEC markets would have been, had the civil war not destroyed Lebanese production capacity, consequently damaging Lebanese exports, or if Lebanese exporters had not abused the rules of origin? The enlargement of the EEC has gradually required the new member states to join the Cooperation Agreement and subsequently join the established legal framework.

FOOTNOTES

1- A speech made by the head of the Commission to the Parliament on 9th, February 1971, 5th Gen. Rep. EC, (1971), pt 400, p 307.

2- 5th Gen. Rep. EC, P 307, Sec 400-401; A resolution adopted by the Parliament on the same day, emphasises the "responsibilities and particular obligations which give the Community its economic importance in the Mediterranean basin, its institution in relation to this region and the need to develop a spirit of true solidarity ", Keesings Contemporary Archive, p 25713; See O.J No C19, 1 March (1971), p 15.

3- Keesings Contemporary Archives, October 28-November 4 , (1972), p 25537.

4- Ibid p25542; Declaration Summit Conference, (1972), C. M. L. Rev , V.10, (1973), p 111-112; 6th Gen Rep EC, p 259, Sec 380.

5- Bull EC , 7/8, (1974), p 9, pt 1204.

6- The proposal was made by the French Foreign Minister; See Keesings Contemporary Archives, , (1973), p 25713.

7- Ibid p 25320 and 25446.

8- For details concerning the text of the proposal, see: Bull EC, No 1, (1975), p 63, Sec 2318; 6th Gen Rep EC , p259, Sec 380.

9- Keesings Contemporary Archives, p 25713; Al Afandi Nazirah, "The Legal Framework of Relations between the Common Market and Israel, Algeria and Lebanon", Al Mustaqbal al Arabi, V.6, Issue 57, Nov 83, p 67-83, (Arabic language).

10- The United States asserted that such arrangements are in contravention of GATT, in particular when the case is between a developed and developing countries, Keesings, p 25320; Feld W., The European Community in World Affairs, (1983), p 150.

11- 7th Gen Rep .EC, (1973) , p 410 , No 506.

12- Bull EC, No 1 , (1975), pt 2318.

13- 9th Gen Rep EC, (1975), p 260, Sec 469.

14- Ibid .

15- Bull EC, No 4,(1976), p 60, pt 2338 .

16-Bull EC, No 9, (1976), pt 2324 .

17-Bull EC, No 1 , (1977),p 50, pt 2.2.35.

18-Bull EC, No 2, p 63, pt 2.2.38.

19-Ibid.

20-Art 49 of the Cooperation Agreement; O.J L.267, (1978), P 12.

21-Bull EC, No 3, (1977), P 64, pt 2.2.45.

22-Council regulation (EEC) of 26 May 1977, O.J No L 133, 27.05.1977, p 1.

23-The Cooperation Agreement went into effect in November 1978, See Bul EC, No 5, (1977), pts 1.5.1-1.5.4; Bull EC No 6, (1977), pt 2.2.55; 11th Gen Rep EC, (1977), p 252, Sec 533; O.J No L 267, 27.9.78, p 13.

24-It was suggested to enter into force on the first of July 1978, see Bull EC No 5, (1978), pt. 2.2.55.

25- Bull EC No 6, (1978), pt. 2.2.61.

26-Supra note 22.

27-Article 6 of the Vienna Convention on the Law of Treaties Between States and International Organisations or International Organisations provides that "The capacity of an international organisation to conclude treaties is governed by the rules of that organisation".

28-Art 2 (1) (j) of the Vienna Convention on the Law of Treaties Between States and International Organisations or International Organisations defines the rules of the organisation as "the constituent documents, decisions and resolutions adopted in accordance with them, and established practice of the organisation".

29-See chapter two"Treaty making power of the EEC".

30-See Opinion 1/76, Laying Up Fund For Inland Waterway Vessels, (1977), ECR 741; and Opinion 1/78, Natural Rubber Agreement, (1979) 3 C. M. L.R, 639.

31-See chapter two of the Thesis, sub-section "Legal basis of the Trade and Technical Cooperation Agreement", p 67 et seq.

32-Opinion 1/76, supra note 30.

33-Article 2 of the Protocol on technical and financial cooperation, O.J No L 267, 27.09.78, p 21.

34- See the Cooperation Agreement with Yemen, O.J No L.26 / 85, p1.

35- See supra note 4.

36- Article 235 EEC.

37- Council Regulation EEC No 2214/78, 26.09.1978; O.J L 267, 27. 09. 1978, p 1.

38- Volker , Leading Cases and Materials on the External Relations Law of the EEC, (1985), p 382.

39- For details concerning the legal structure of the association agreements see: K. Lipstein, "The Legal Structure of Association Agreements with the EEC", The British Yearbook of International Law, V.47, (74-75), p 201

40- O.J No L.26 /1, 31.01.85.

41- O.J No L 321/1, 30.11.88.

42- O.J No C 226/18, 7.11.77.

43- Keesings Contemporary Archives, October 28-November, (1972), p 25540-4.

44- Chowzow Factory Case PICJ (1928) No 17, p 29.

45- European Commission, External relations, 41/81, (1981); Burrmam C., The EC's Generalised System of Preferences, (1981), p 142.

46- EIU European Trends, External relations, No 3, (1991), p 41.

47- Gross Espiell. H, "GATT : "Accommodating Generalised Preferences", 8 JWTL, (1974), p 341-363.-

48- Decision L / 3545, 25 June 1971, BISD 18 S, 1970-71,P 25. It is worth noting that the developing countries expressed their dissatisfaction with the decision since it was not be inserted in the legal structure of the GATT, and does not provide long term certainty.

49- Yusuf .A, "Differential and More Favourable Treatment : The GATT Enabling Clause", 14 JWTL, (1980), p.488 at 507.

50- Ibid, p 492.

51- Decision of the Contracting Parties of 25 June 1971, concerning the waiver of the GSP from the application of MFN clasue, BISD 18 S/25.

52- Ibid, para 4 of the preamble of the Decision of 25 June 1971.

53- Ibid.

54- P.S.Mathijsen, A Guide to European Community Law, 4th ed, p 244.

55- Article 1(2) GATT.

56- For further details on waiver for historical reasons see, Curzon G., Multilateral Commercial Policy, (1965); Jackson J., World Trade and the Law of GATT, (1969), p 264; Pomfret p., Mediterranean Policy of the European Community, (1986), p 5-6.

57- Article XXXVI GATT.

58- Para 2 of the preamble and Art 1 of the Cooperation Agreement, O.J No l 267, 27.09.78, p 4.

59- Ibid, Art 8 of the Cooperation Agreement.

60- Art XXIV:5 GATT.

61- Art XXIV:4 GATT.

62- Art XXIV:8 (b) GATT.

63- Art XXIV: 5 (c) GATT.

64- Para 2 of the preamble of the Cooperation Agreement.

65- First of all by virtue of the Interim Agreement, then through the Cooperation Agreement itself. O.J No L 133, 27.05.1977, p1 and No L 267, 27.09.1978, p1 respectively.

66- The Commission's comments on the compatibility of the Cooperation Agreement with GATT, W.Q 291/78, 30.05.78, O.J No C 251, (1978), P 6.

67- Art 23 para 2 of the Cooperation Agreement.

68- Art XXIV :7 (b) GATT.

69- BISD 25 S/Jan 1979, p 142.

70- Arts 25 and 44 of the Cooperation Agreement.

71- The latest review session consequent on the EEC's enlargement ended by granting Lebanon more preferential treatment.

72- The Association Agreement between the EEC and Greece held for over than 25 years, and that with Turkey is still in operation (since 1963), For further details see, Dam K., The GATT Law and International Economic Organisation, (1970).

73- Long O., Law and its Limitations in the GATT Multilateral Trade System, (1978), p 96.

74- O. J No L 267 , 27.9.(1978), p 1 .

75- U.N Charter Art 1(2 and 3).

76- Ibid Chapter IX, Arts 55 & 56.

77- For a general discussion concerning the effects of Arts 55 and 56 see: Akehurst M., A Modern Introduction to International Law , (1987), 6th ed, p 76-77; Verloren van Themaat, The Changing Structure of International Economic Law, (1981), p78-79; Brownlie I., Principles of International Law , (1979), 3rd ed, p 570 ; Greig W., International Law,(1976), 2nd ed, p 773.

78- White G., "Principles of International Economic Law: an Attempt to Map the Territory", in Fox H., International Economic Law and Developing States, (1988), p 6; Tiewal S. A., Journal of International Law & Economics, V.10, (1975), p 645.

79- Para (4) of the Preamble of the Cooperation Agreement.

80- White R., "A New International Economic order", I.C.L.Q, (1975), July, 24, p 542.

81- El haddad A., Marketing and Economic Growth: An Analysis of the Contribution of Marketing to Economic Growth in Developing Countries with Particular Reference to the Case of Egypt, Ph.D Thesis submitted to the Unversity of Strathclyde University, Dept. of Marketing, (1980).

82- The subject of financial cooperation is discussed in chapter six of this thesis.

83- In this regard it is worth saying that Lebanon, unlike other Mashreq or Maghreb countries, adopts a free economic market system, consequently, private investment is protected by law in Lebanon.

84- Article 4 of the Cooperation Agreement.

85- Exchange of letters, Letter No 1, O.J L 267, 27.9.78, P 87.

86- Art 9 of the Cooperation Agreement.

87- These measures were held until the first of January 1985, Art 1 of protocol 7 of the Act of Accession; Art 12 of the Cooperation Agreement.

88- Art 13(4) of the Cooperation Agreement.

89- Ibid Art 10.

90- Ibid Art 15.

91- Ibid Art 30.

92- Ibid Art 42.

93- Ibid Art 11.

94- However, this is more than likely following the accession of Spain. The EEC would enjoy surplus in most of its agricultural needs. This would increase the difficulties of the Mediterranean exports to the EEC. For further details see Section VI of this chapter.

95- Art 16(2) of the Cooperation Agreement.

96- Unrefined olive oil, having been charged with a special exports levy by Lebanon in which such levy effects its prices, and exported directly from Lebanon to the EEC territories, would be subject to specific rate of duties. Otherwise the EEC may take further steps to cancel the reduced amount of the tariff cuts. In fact, Lebanon's export of this product, if any, is irrelevant.

97- Art 16 (4) Cooperation Agreement.

98- Ibid Art 20.

99- Ibid Art 43.

100-Particularly Arts 16, 17 Cooperation Agreement, Art 22 (2) EEC Council Regulation No 1035/733.

101-A memorandum by the Lebanese Conseil des Relations E´conomiques Exte´rieures to the Commission of the European Communities, Delegationfor the Enlargement Negotiations, Brussels, 28th Nov. 1983.

102-Art XXXVI: (8) GATT, Agreed Conclusion, and the Enabling Clause.

103-Art 23 Cooperation Agreement.

104-Ibid Art 41.

105-Ibid Art 22.

106-The first to be amongst the developed contracting parties only, the second between the developed and the developing contracting parties and the third between the developing contracting parties themselves.

107-Article 36 (8) GATT.

108-Yusuf A., Legal Aspects of Trade Preferences for Developing States, (1982), p 71.

109-Canadian view, GATT Doc M/ 46 "minutes Meeting", p 14, traced in Yusuf, supra note 108.

110-protocol relating to trade negotiation among developing countries.

111-Decision L/3636, 26 Nov. 1971, BISD 18 S/70-71,p 26.

112- Dec L/4903, BISD, 26 S/80, 28.Nov.1979, p 203.

113- Art 22 (3) of the Cooperation Agreement.

114- Ibid Article 41.

115- Exchange of letters on article 43 of the Cooperation Agreement, O.J No L 267, 27.09.78, P 88.

116-Ibid.

117- For general reading about such practice by peoples of states see, Hyde.C.C and Wehle.L.B, "The Boycott in Foreign Affairs", 27 Am. J. Int'l. Law, (1933), p 1-10; Bouve`, "The National Boycott as an International Delinquency", 28 Am. J. Int'l. Law, (1934), P 42; Lauterpacht.H, "Boycott in International Law", XIV Bri Y. B. Int'l L., (1933), p 125.

118- The U.S' "Trade Reform Act" aimed to put pressure on Russian immigration policy in order to relax it for the Jewish population; see Lillich R., "Economic Coercion and the International Legal Order", 51 International Affairs, (1975), p 366.

119- Ibid, p 360. See in general supra note 117, Lauterpacht; Bouve`; and Hyde. The draft report of the Special Committee of the League of Nations views that "it seems difficult to contest that the boycott is a legitimate weapon of defense against military aggression by a stronger country", Draft Report of the Special Committee of the Assembly, Supp(1931), p 249, traced in Bouve´, supra note 117, p 42.

120- For a discussion on the practice of states see Shihata.I, Destination of Arab Oil : Its Legality Under International Law; Muir Dapray.J, "The Boycott in International Law", both in Lillich R.B, (ed), Economic Coercion and the New International Economic Order, p 153-191 and 21-38 respectively.

121-G.A Res. 2625, 25 U.N, GAOR, Supp 28, p 121, reprinted in 65 Am. J. Int'l Law, (1971), p 243.

122-Resolutions 217 in 1965; 221 and 232 in 1966; 253 in 1968; 277 in 1970; 314 and 320 in 1972.

123-Resolutions 181 and 182 in 1963 191 in 1964; 282 in 1970; and 311 in 1972."

124-Resolutions of (1990).

125-Shihata supra note 120, p 176.

126-See Muir Dapray.J, supa note 127, p 21-38, at

127- Doxey.M.P, International Sanctions in Contemporary Perspective, (1987), p 65.

128- Resolution 357, 9 March 1951.

129- For more detail about the classification of the Arab boycott see, Turck N., "The Arab Boycott of Israel", 55 Foreign Affairs, (1976-77), p 472.

130- For more details see, Textes Documentaires (Damascus, Bureau des Documentations Syriennes et Arabes), April 1956; Macdonald R.W, The League of the Arab States: a study in the dynamics of regional organisations, (1965); see Doxey. M.P, supra note 127.

131- For details concerning the American Export Control System see Truck N., supra note 129, p 482-87.

132- Sec 3 (5) of Export Administration Act, found in Turck N., supra note 129, P 484; Small .D.A, a state Department official, to the panel on "policy conflicts in foreign trade and investments", American Society of International Law, 72nd annual meeting, proceedings, April 1978, p 83, found in Doxey, note 127.

133- Doxey.M.P, Economic Sanctions and International Enforcement, 2nd ed, (1980), p 22-23.

134- Turck N., "Arab Boycott of Israel", 55 Foreign Affairs, (1975), p 476.

135- Anti-dumping measures go back into history earlier than GATT, For a general review see, Dale.R, Anti-Dumping Law in a Liberal Trade Order, (1980), p 12-17; Jackson. J, World Trade and the Law of GATT, (1969), p 403-6; Stanbrook.C, Dumping, A Manual on the EEC Anti-Dumping Law and Procedures, (1980), p 7-8; Beseler. J and Williams A., Anti-Dumping and Anti-Subsidy Law: the European Communities, (1986), p 3-5.

136- Art 31 of the Cooperation Agreement.

137- Ibid Art 34.

138-Ibid Art 32.

139-There is a slight difference in the definition of "dumping practice" between the economic and the legal definition, this quotation is adopted from Art VI GATT. for more details see supra note 135 as

regards, Dale.R, p 1-8.; Stanbrook.C, p 14; Beseler and William, p 41; and Van Bael.I and Bellis. J.F., International Trade Law and Practice of the European Community, (1985), p 22.

140- Dale.R, supra note 135, p 14.

141- For a legal analysis of Art VI GATT see, Jackson.J supra note 56, p 401-25; Dam. K., supra note 72, (1970), p 167-179.

142- Agreement on Implementation of Article VI of the GATT, BISD, 15th Supp, (1967), p 24-25, GATT Doc L/2812 (1967), Reprinted in Jackson's ed, supra note 56, p 426-38; On the Anti-dumping Code see, Rehm J., "The Kennedy Round of Trade Negotiations", Am. J. Int'l Law, LXII (1968), p 403-34 at 427.

143- BISD, 26th Supp, (1980) p 171.(see p 56 and 177).

144- EEC Council Regulation No 459/68, O.J No L93, (1968), p 1 [O.J Special ed, 1968 (1) , p 8]

145- (EEC Council Regulations No 1681 /79 of 8/1/79, O.J No L 196 (1979); Regulations 3017/79 [O.J No L 339, (1979), p 1]

146- [O.J No L 209, (1988), p 1], See Regulations 2176/84 [O.J No L201, (1984), Regulations 176/ 87, O.J No L 16 (1987), p 9], For a general legal analysis of this Regulation see, Lasok.D, The Customs Law of the European Economic Community, 2nd ed, (1990), p 315-31; Beseler; Van Bael.

147- [ECSC products are dealt with elsewhere, Regulation 2424/88 , O.J No L 209, (1988), p 18].

148- Art 33 of the Cooperation Agreement.

149- Ibid Art 33 (2).

150- EEC Council Regulation No 1661/77, 18.06.77, O.J N0 L 186/7, 26.07.77.

151- Arts 31, 32, and 33 of the Cooperation Agreement.

152- The Agreement on implementation of Article VI of GATT.

153- Jackson J., supra note 56, p 424; Dam.K, supra note 72, p 177-179.

154- Art 31 of the Cooperation Agreement stipulates for "undertaking respect to Art VI GATT in case of measures directed against bounties and subsidies".

155- The difference between dumping on one hand, and bounties and subsidies on the other is that the former is a practice of private firms

whereas the latter is an action of governments.

156- Arts 31 & 33 of the Cooperation Agreement; EEC Council Regulation /88; Code 79 GATT.

157- Art 3 of EEC Council Regulation No 1661/77, 18 .07.77, O.J No L 186, 26.07.77, p 7. For the common rules of EEC's imports see EEC Council Regulation No 1439/74, and in particular Article 13 Para 2&3.

158- The Commission would take an action on behalf of the EEC in accordance with Art 12 of the EEC Council Regulation No 1439/74 or any of the EEC's member states if the urgency of the case preclude such procedures, in accordance with Article 14 of the same regulation, O.J No L 159, 15.06.74, p 5.

159-For a general legal discussion concerning Gatt's rules of safeguard measures justified on balance of payment grounds see Jackson J., supra note, p 673-716.

160- Art 34 of the Cooperation Agreement.

161- For the table of the EEC's actions concerning anti-dumping and anti-subsidies measures see Beseler and Williams, Supra note 135, p 363-428.

162- Art IX GATT.

163- Para 4 of the Recommendation adopted by the working group on Marks of Origin, on 21. Nov. 1959, BISD 7th Supp, (1959), p 31.

164- The Special Committee on Preferences which was set up in May 1969, TD/B/AC.5/38, 21.12.70, traced in"Rules of Origin" 5 JWTL No.4 (1971), p 466.

165- Gesellschaft Fur Uberseehandel mbH v. Handelskammer Hamboury, "Certificate of Origin", Case 49 / 76, (1977), ECR 41.

166- The EEC Rules of Origin are designed vis a vis third countries, since the principle of free movement of goods left no scope for applying such method in intra community trade, particularly once the pertinent CCT duties and import formalities are met. Lasok D., The Customs Law of the EEC, 2nd. ed (1990), p 217.

167- EEC Council Regulation 802/68; O.J No. L 148 (1968),p 1.

168- Products which are naturally recognised as wholly obtained in either

of the contracting parties are specified in Art 2 of the Protocol, similar to Art 4 of Council Regulation of 802/68; O.J No. L 148 (1968), P 1, which was modified by Reg No. 1318/71, O.J No. L 139 (1971), p 6; For a legal analysis concerning the EEC concept of rules of origin see Lasok D., supra note 166, p 217-229.

169- Art 4 of the Protocol annexed to the Cooperation Agreement and List A of Annex II of the Protocol annexed to the Cooperation Agreement, O.J L 267/78, p 31 respectively; revamped by List A of Annex II of working or processing operations which result in a change of tariff heading without conferring the status of originating products on the products undergoing such operations, O.J No L.286, 29.10.1980, p 46.

170- List B of Annex III of the Protocol annexed to the Cooperation Agreement, O.J L 267 / 78, p 65 , revamped by List B of Annex III of working or processing operations which do not result in a change of tariff heading, but which do not confer the status of originating products on the products undergoing such operations, O.J No L.286, 29.10.1980, p 79.

171- Case 49 / 75, (1977), ECR 41.

172- Cooperation Council Decision No 3/80, 06.06.80, O.J No L.286, 29.10.80, p 45.

173- Resolution 96 (IV) UNCTAD, Doc TD/217, 12.07.76, found in 13 JWTL, (1979), p 34.

174- BISD 25 S/Jan 79, p 149.

175- European Information , External Relations, 28/79, p 3.

176- Nusbaumer J., "Origin System of Trade of Developing Countries", 13 JWTL, (1979), p 38-42.

177- Cooperation Council Decision, Supra note 172.

178- Art 38 of the Cooperation Agreement.

179- Ibid Art 40 Cooperation Agreement .

180- Art 13 Dec 1/80, concerning rules of procedures of the Cooperation Council; Collected Acts EEC-Lebanon CO-OP , updating supplement 31 Oct 1980, Decisions, p 1

181- Ibid Art 4

182- Ibid Art 2 & Art 18 of the Decision says "the deliberations of the

Cooperation Council shall be covered by the obligation of professional secrecy"

183- For more detail see Chapter Six.

184- Art 38 Cooperation Agreement.

185- Art 14 of the Decision of the Cooperation Council, see note 177.

186- See section "Fields of cooperation" p 188.

187- In principle, the discussion is merely concerned with the legal implications on EEC trade relations with Lebanon. For further discussion regarding other issues see, The Commission of the European Communities, Enlargement of the Community, Bulletin of the EC, Supp 1, 2, & 3 /78; Opinion on Greece' Application for Membership, Supp 2/76; Opinion on Potuguese Application for Membership, Supp 5/78 Opinion on Spain's Application for Membership, Supp 9/78.

188- For further discussion see, Stanaolla F., " Spanish Accession to the EEC: Legal and Constitutional Implications, 23 C. M. L .Rev., (1986), p 11-37; Eurigenis D., "Legal and Constitutional Implications of Greek Accession to the EEC", 17 C. M. L. Rev., (1980), p 157-169.

189- Agence Europe, (new Series) No 3058, Sat. 17.Jan.1981.

190- From the outset it should be mentioned that it is an arduous task to analyse the repercussions of the second enlargement of the Communities on Lebanese exports to the EEC or its acceding countries. Lebanese exports in general have been handicapped and destabilised since 1982, following the Israel invasion of Lebanon. The invaders have systematically destroyed Lebanon's agricultural infrastructure. In addition, the eruption of the civil war in late 1983 contributed further to the destruction of the Lebanese economic infrastructure. The focus in the present section will be on drawing, as far as possible, an approximate picture of the facts surrounding Lebanese exports to the EEC and its new member states.

191- See in general regarding this subject, Pomfret R., Mediterranean Policy of the European Community, (1986), p 98-100; Minerbi I., "The Accession of Spain to the EEC and its Implications for Mediterranean Third Countries: The Israeli Case, The Jerusalem Journal of

international Relations, Vol.6, No 3, (1982-1983), p 27-47; Morawitz R., "The Impact of the Extension of the Community Southerwards to the Mediterranean Basin, Paper presented at a seminar in Mardid, Nov. (1979); Taylor R., "The Implications for the Southern Mediterranean Countries of the Second Enlargement of the European Community", Europe Information Develoment, June 1980; Tovias A., "Israel and Southern Enlargement of the European Community, Institute of Jewish Affairs. Research Report, no 4 (1988), p 1; Ibid, "The impact of the Southern Enlargement of the Community on Its System of Foreign Relations", Jerusalem Journal of International Relations, Vol.10, No 3, (1988), p 11; and Donges J., "The Second Enlargement of the European Community", (1982).

192- Competition could become keener since the structure of industry in the acceding countries is very similar to that in Lebanon such as : manufactured goods, chemicals, machinery and transport equipment, textile, clothing and footwear industries, for further discussion see, EEC Commission, Europe Information Development, "Implications of the Second Enlargement for the Mediterranean and ACP policies of the European Communities", Oct. 1980, p 9; see Minerbi I., Ibid, p 34-38.

193- Pomfert R., "the Impact of EEC Enlargement on Non-member Mediterranean Countries' Exports to the EEC", The Economic Journal, September 1981, p 728.

194- The breakdown data of Lebanese exports to the EEC in 1978 reveals that, machines 33.6 per cent, leather 9.3 per cent, food 6.2 per cent (pet pr) 6 per cent clothing and other 44.9 per cent. [A study by Instituto de Scienze Statistiche e Matematiche of Milan University and published inEC trade with the ACP states and the Southern Mediterranean states, no 1- 1980, traced in Taylor R., supra note 191.

195- Saudi Arabia, Iraq and other Gulf countries imposed restrictions against the movement of Lebanese exports to their markets since 1986, Al Hayat newspaper, Mon. 20. March 1989.

196- In 1985, 1 US $ was worth 6 L£ (Lebanese pounds) whereas its value in 1989 was equivalent to more than one thousand Lebanese pounds.

197- Al Hayat newspaper, Mon. 20. March 1989 , p 4.

198- O.J No L 297, 21.10.1987.

199- Council of the European Communities, Protocols to the EEC - Lebanon Cooperation Agreement and Other Texts, 1990, p 1.

200- Ibid , p 51.

201- EEC communication of 10 March 1987, Com Doc (87) 99 final, and communication 19 April 1987, Com Doc (87) 172 final.

202- EEC Council Regulation No 3558/80, O.J No L 382, 31.12.1980, p 48.

203- EEC Council Regulation No 2573/87, 11.08.87, O.J No L 250, 01.09.87, p 1.

204- products provided for in Annex II of the EEC Treaty.

205- Annex X of the Arrangements and Annex VII of the Protocol.

206- This tariff preferences constitute the difference between the basic duties and preferential duty, Art 19 of Protocol to the Cooperation Agreement Between the Lebanese Republic and Portuguese Republic.

207- Communique´ of Paris Summit, para 11.

208- Ibid

209- O.J No C 226, 7.11.77, p 18.

CHAPTER FIVE

LEGAL ASPECTS OF TRADE RELATIONS BETWEEN THE ECSC AND LEBANON

I- INTRODUCTION

It is not surprising that the European Coal and Steel Community did not attract writers to deal with it, comparing it with the European Economic Community. The limitation of power bestowed upon the ECSC as regards particularly its international activities on the one hand, and the limitation of products covered by it on the other made the ECSC look like a less problematic international organisation. The Treaty of Paris establishing a free trade area for coal and steel between its member states did not confer upon the ECSC powers to conclude commercial agreements with third countries. Despite the fact that the ECSC was established many years before the EEC, Lebanon had no relations with the ECSC owing to the fact that this organisation has no influence on products of special interest to Lebanon. However, following the Mediterranean policy all the Mediterranean countries concluded agreements with the member states of the ECSC alongside with and as supplement to the conclusion of cooperation agreements between the EEC and the respective countries. With this as a background, Lebanon too concluded with the member states of the ECSC an Agreement aimed at establishing a "free trade area".

The present Chapter analyses the legal aspects of the Agreement between Lebanon and the member states of the ECSC. In addition, the substantive provisions of the Agreement and its relationship to the Treaty of Paris and norms of international law are scrutinised. The major elements of this Agreement and subsequently this Chapter, are similar to the previous Chapter IV, not least because of the common provisions between the two Agreements (the Cooperation Agreement and the

Agreement with the ECSC), therefore the stress will be on areas not discussed in the earlier Chapter IV. The reason behind the incorporation of this Chapter in the analysis is to provide as complete picture as possible on the relations between Lebanon and the European Communities.

The Agreement on products covered by the Treaty of Paris was named an "Agreement between the Member States of the European Coal and Steel Community and the Lebanese Republic".[1] This means that the ECSC was, as an organisation, denied participation in the conclusion of the Agreement. This raises a question as to to what extent the conclusion of the Agreement between Lebanon and the member states of the ECSC is, or is not, a matter falling outside the ECSC treaty-making powers. Why was it concluded as an instrument exclusively between Lebanon and the member states of the ECSC?

II-THE LEGAL PERSONALITY AND THE TREATY MAKING-POWERS OF THE ECSC

The Treaty of Paris established in 1952 the European Coal and Steel Community[2] (ECSC), as an international organisation entrusted to fulfill certain functions internationally, that is, independently from its individual member states. As such, it possesses an international legal personality by virtue of norms of international law.[3] This legal personality is recognised in the Treaty of Paris: Article 6, "The Community shall have legal personality". Although this Article does not provide details of the legal personality of the ECSC with respect to external competences, it constitutes a conspicuous proof of the intention of the parties to the Treaty of Paris to recognise the personality of the ECSC.[4] However, the legal personality of an international organisation may imply, but does not carry with it, explicit treaty-making powers. The latter are attributes based on its constitutional documents and, not least, recognised practice. In such a context, the ICJ considered the U.N as

possessing a competence not expressly provided for by its Charter, but nonetheless conferred upon it by necessary implication as essential to the performance of its duties.[5] Correspondingly, the ECJ in the ERTA case followed a similar teleological reasoning when dealing with the treaty-making powers of the EEC. It considered that the EEC treaty-making powers in the field of external relations relate to the whole range of objectives of the Treaty of Rome.[6]

For the purpose of achieving objectives entrusted to it, the ECSC too was endowed by certain powers to act at the international level. It can exercise, however, such powers only in accordance with provisions anchored in the Treaty of Paris.

The question whether the Agreement between Lebanon and the members of the ECSC is or is not a matter lying within the ECSC treaty-making powers may be answered by examining the express provisions of the Treaty of Paris in addition to an evaluation of the purposes of the ECSC and functions assigned to it. However, the point should be taken into consideration that the powers possibly inferred from the purposes and functions of the ECSC should not be contradicted by explicit clauses found in the Treaty. To assess fully the treaty-making powers of the ECSC, not least the practice of the ECSC with respect to its contractual relationships with third parties has to be probed.

A-CONSTITUTIONAL TEXT ON TREATY-MAKING POWERS

By and large, the Treaty of Paris has empowered the ECSC to enter into international agreements with third parties in limited areas. In the express area of the treaty-making powers of the ECSC, the Community is empowered to conclude agreements with third parties in two fields. A first competence which the Treaty expressly confers upon the ECSC relates to the power to establish contractual relationships with third parties pertaining to the financial sector. Article 49 ECSC expressly empowers the

High Authority (H.A); (after the Merger Treaty the H.A merged with the *Commission*)[7] to "procure the funds it required to carry out its tasks". The apparatus provided for in this Article, *inter alia*, to secure financial funds, enables the ECSC to "contract loans".[8] Therefore, the H.A might conclude loan agreements with third parties. In fact, in the early stage of its inception, the ECSC concluded a loan agreement exclusively with the USA in (1954).[9]

The other area where the ECSC is expressly empowered to conclude agreements with third parties relates to the accession of new members to the Community.[10] The Treaty of Paris authorises the Community to receive applications from any European state wishing to accede to the ECSC. The relevant provision states that such agreements on accession to the ECSC fall expressly within the exclusive power of the ECSC.

However, the treaty-making powers of the ECSC are not confined to these areas. Unlike the respective two Treaties of Rome (1957) which specifically provide for the competence of the EEC and the Euratom to conduct their external relations,[11] the Treaty of Paris does not contain express provisions for the conclusion of agreements with third countries with respect to areas other than the above mentioned two (loans, accession). It contains, however, provisions which are directly related to the conduct, by the ECSC, of external relations by concluding agreements with third parties in areas other than those which can be teleologically identified with reference to the (necessary) attainment of the objectives and purposes of the ECSC Treaty. The Treaty requires the ECSC to maintain all necessary relations with different international organisations. Articles 93 and 94 ECSC stipulate that the H.A has to "maintain all appropriate relations with the U.N and the Organisation for European Economic Cooperation". In addition, the Treaty requests the H.A to maintain similar relations with the Council of Europe. It is thus clear that, although these provisions do not include plain language similar to that used by the earlier enumerated articles or other articles embodied in

the EEC Treaty (Art 111, 113 and 238 EEC), maintaining "all appropriate relations" with other organisations embraces necessarily the conclusion of agreements with them or their specialised organs. Correspondingly, the ECSC concluded an agreement with the International Labour Organisation in 1953.[12]

B-TELEOLOGICAL APPROACH TO TREATY-MAKING POWERS

The treaty-making powers of an international organisation extend inevitably to embrace all areas essential to enable it to perform the functions and the purposes entrusted to it. The ECSC Treaty (Article 6) provides for a general competence (wider than those expressly provided for) to engage the ECSC at an international level. This Article states that "in its international relationship the Community shall enjoy the legal capacity necessary to exercise its functions and achieve its purposes". This Article does not define the treaty-making powers of the ECSC, but it does provide for the capability of the ECSC to conclude, where necessary, agreements with third parties. The ECSC has thus a general competence to conclude agreements with third parties necessary to achieve its objectives, provided that such derived competences are not overridden by other express provisions. This approach suggests the question as to what are the objectives of the ECSC with respect to which additional implied competences for the conduct of the external relations of the ECSC, may be assumed to exist.

The founding member states of the European Communities established the ECSC and the EEC to regulate different categories of matters. While these Communities have some resemblance in form, there is correspondingly less affinity and resemblance in the substance and purposes of the two Communities.

The ECSC and the EEC were, in principle, established to contribute to "the economic expansion, growth of employment and rising standard of

living in the member states" of the Communities. The two Communities chose the common market as the form to achieve these objectives.[13] Beyond such a common ground, the two Communities are different as to the objectives and the means provided for their achievement. The Treaty of Rome provides for a wider spectrum of objectives for the EEC; its member states intend to achieve an ever closer union between themselves. In addition, the EEC has been provided with more tools to attain its objectives. The introduction by the EEC, of, inter alia, the four freedoms and the common policies has no comparable arrangement in the ECSC Treaty. An essential differences between the ECSC and the EEC is that the former was directed towards an inward looking policy. As such, the member states specifically undertook to eliminate and prohibit, within the Community, import and export duties and quantitative restrictions, or charges or measures having equivalent effect on coal and steel products, and to prevent any restrictive or discriminatory practices impeding normal competition so far as they relate to coal and steel products.

To achieve the tasks given to it, the EEC was entrusted with functions which reflect the outward looking dimensions of the EEC. This outward dimension, beside its internal policies, highlight an essential difference between the two Communities. In addition to the functions entrusted to the ECSC, the EEC is empowered to set up common external tariffs and maintain a common commercial policy towards third countries and pursue association policies with overseas territories.

Chapter one of the EEC Treaty deals with the customs union, laying down in detail the elimination of customs duties between the member states. It prescribes procedures for the establishment of a common customs tariff. Chapter two of the EEC Treaty deals with the elimination of quantitative restrictions and measures having equivalent effect between the member states. The EEC Treaty eliminates, as far as imports and exports of goods are concerned, all customs duties, quantitative restrictions, and all charges and measures having equivalent effect to

duties and quantitative restrictions between its members states. It provides for a common external customs tariff regime and the establishment of a common commercial policy towards third countries.[14] These elements constitute and meet the requirements of a customs union to substitute "a single customs territory for two or more customs territories so that duties and other restrictive regulations to commerce are eliminated with respect of substantially all the trade between the constituent territories of the union, or at least with respect to substantially all the trade in products originating in such territories. Substantially, the same duties and other regulations of commerce are applied by each member of the union to the trade of territories not included in the union".[15] Moreover, the EEC Treaty specifies four areas where the EEC has exclusive treaty-making powers designed particularly to conclude agreements with third parties for the conduct of the EEC external relations.[16] Consequently, the EEC was established to function as an organisation not limited to a customs union. As such it has been given more powers than the ECSC.[17] The EEC treaty-making powers have also been shaped with reference to the theory of implied powers.[18]

In contrast, the ECSC has sought to reach its objectives (in principle) merely through the creation of a free trade area. The Treaty of Paris has provided for the creation of the common market fundamentally in accordance with Article 4 ECSC. It has specifically committed the member states to eliminate and prohibit between themselves all import and export duties and all quantitative restrictions, charges and measures having equivalent effect to duties and quantitative restrictions on coal and steel products. The Treaty of Paris provides for no common external tariff towards third countries. It provides only for powers to set minimum and maximum external tariffs toward third countries.

Art XXIV para 8 (b) GATT defines the above outlined elements from a legal perspective, as the characteristics of a free trade area. In a report,[19] GATT considered the ECSC Treaty, in the light of an analogy with

procedures adopted with respect to interim agreements leading to the formation of a free trade area,[20] and asked to receive annual reports on the measures taken towards the full application of the Treaty. This means that the GATT deemed the ECSC to be in line with Article XXIV GATT as regards the formation of a free trade area (FTA).

In the light of the differences between the ECSC and EEC, the founders of the ECSC, by establishing a FTA, dissociated the ECSC from common customs tariffs as a prerequisite to the establishment of a common commercial policy towards third countries. Accordingly, the conclusion of all external commercial agreements is left within the jurisdiction of the member states of the ECSC, though marginal powers were entrusted to the H.A, by virtue of which the H.A could interfere internally (within the member states of the ECSC via recommendations) in order to secure stability in the ECSC markets. However, this marginal power could by no means give the ECSC the powers to conduct its external relations in contradiction with non-existent express provisions necessary for a common commercial policy.[21]

On the other hand, Article 3 (f) ECSC reads that the ECSC is empowered to promote the growth of international trade. This means that the ECSC has to cooperate with other subjects of international law which have the same objectives of promoting the growth of international trade, such as UNCTAD and GATT.[22] However, such competence may not conflict with the traditional competences of the member states. In case of conflict, the competences and the powers of the member states may prevail.

In the light of the above exposition, there are but limited competences which the ECSC may derive or claim with reference to the objectives of the Treaty of Paris, all the more as general competence would be derived from Articles 6 and 3 (f) ECSC. The ECSC used its objectives as a legal basis for the conclusion of a consultation agreement with Switzerland.[23] However, as far as the commercial links of the ECSC are

concerned, the Community could not claim any implied powers to conclude agreements in this field with third parties.

C-RECOGNISED PRACTICE AS A BASIS FOR TREATY-MAKING POWERS

Throughout its practice, the ECSC has been party to a number of agreements with different subjects of international law. These agreements were concluded in the early years of its inception.[24] The ECSC is directly involved in concluding agreements, exclusively, with a third party and has also participated with its member states in concluding other agreements (in the form of mixed agreements). Other agreements were concluded by the member states of the ECSC in their capacity as members of the Community. The agreements in question can be classified into three categories.

With reference to the first category, the ECSC concluded a few agreements exclusively for the conduct of its external relations in accordance with its constitutional treaty-making powers. In 1953, an agreement was signed concerning cooperation with the I.L.O in Geneva.[25] In 1954 a loan agreement with the U.S.A,[26] and in 1956 an Accord of Consultation with Switzerland were concluded.[27]

The "mixed form" agreements constitute the second category of agreements linked with the activities of the ECSC. They were concluded with different states and emerged in the last two decades. That is to say, the ECSC participated alongside its member states in the conclusion of the agreements. In 1972 an agreement for unlimited duration was signed with the Portuguese Republic.[28] Another similar agreement with the same legal characteristics was concluded with Sweden in the same year.[29] In 1973 an agreement was concluded with Norway;[30] in 1974 with Finland;[31] and in 1980 with Yugoslavia.[32] Two protocols concerning commercial and economic cooperation were signed with Canada and India in 1976 and 1981

respectively.[33]

Furthermore, the member states of the ECSC, as member states of the latter, have been involved in further commercial and trade agreements relating to products covered by the Treaty of Paris. The ECSC has been excluded from participation in the conclusion of such agreements. The most relevant agreements in this respect are the ones concluded in 1977 between the member states of the ECSC, on the one hand, and each of the Mashreq and Maghreb countries respectively on the other. The agreement which was concluded between the member states of the ECSC and Lebanon in 1977 is no exception to this practice.

The purpose of the evaluation of the treaty-making practice of the ECSC is to answer the question whether the ECSC assumed treaty-making powers as a consequence of its practice. In the light of practice one may consider whether the ECSC witnessed any development in its treaty-making competences as regards the conduct of its external relations.

A sample of agreements relevant to the above will be discussed briefly. They are agreements concluded with Sweden, Yugoslavia and Lebanon.

The justification for choosing these agreements as examples is, firstly, the fact that these agreements are similar to each other. For example, the agreement with Sweden is identical to the agreements with Austria and Portugal, whereas the agreement with Lebanon is a carbon copy of the agreements with the Mashreq and Maghreb countries.

Secondly, each agreement corresponds to a type of classification. The first set includes agreements with the U.S.A, I.L.O and Switzerland. They were concluded by the ECSC on the legal basis of exclusivity (ECSC only without the participation of the member states). However, no reference to any relevant article of the ECSC was thereby made.[34] The other set of agreements, which includes the EFTA countries, was concluded in the form of mixed agreements, but the agreements with Lebanon (Mashreq and Maghreb) were exclusively concluded by the member states of the

ECSC (no participation of the ECSC). These three types of agreements provide a clear understanding of the legal bases by virtue of which the differentiation between them has been made in practice. In this respect, the mixed procedure (the second set of the agreements) is of particular interest.

Thirdly, in terms of a chronological order, the agreement with Sweden was concluded prior to the agreement with Lebanon, while the latter agreement was concluded earlier than the agreement with Yugoslavia. This enables us to point out any legal developments (if any) in the ECSC treaty-making competences in the sphere of its external relations.

The agreement with Sweden opens with a preamble emphasizing the objectives of the Agreement which aimed at treating products falling within the ambit of ECSC in a manner similar to those under the EEC Treaty. Nonetheless, no provisions of the Agreement could be considered as a waiver from the application of international norms incumbent upon the contracting parties. The Agreement with Sweden relates to tariff and non-tariff barriers. It calls for a standstill on the introduction of new duties or charges having equivalent effect; of new quantitative restrictions or measures having similar effects, on imports or exports between the contracting parties. The agreement then provides for some safeguard measures should difficulties arise as far as the balance of payments between the contracting parties is concerned. Moreover, it defines some practices as incompatible with the proper functioning of the agreement and confers upon the ECSC, in the final Act, the power to assess any practice as being contrary to Art 19 of the agreement "on the basis of criteria arising from Arts 4(c), 65, and 66(7) of the ECSC Treaty". The contracting parties established a joint committee representing them and expected to act by mutual agreement.

The Agreement with Yugoslavia, commences with a preamble which is identical to the preamble of the agreement with Sweden. The

Agreement is divided into two titles: Trade and General Provisions, in a similar form as the Agreement with Lebanon. Save with respect to certain products mentioned in Art 3 (2) of the Agreement, the Agreement abolishes all customs duties and quantitative restrictions, in addition to all charges and measures having equivalent effect to customs duties and quantitative restrictions. Moreover, it sets up rules of origin and some safeguard measures against conditions of competition governing prices. Last but not least, the Agreement establishes a joint committee. Thus, broadly speaking, most of the articles of the agreement with Yugoslavia are similar to those found in the Agreement with Lebanon.

The Agreement between Lebanon and the Member states of the ECSC governs mainly trade cooperation as regards products covered by the Treaty of Paris offering free access for Lebanese exports to the ECSC markets. As preferential treatment, it provides for the elimination of all customs duties and quantitative restrictions affecting Lebanese exports to the ECSC markets. In addition, safeguard measures are envisaged against any detrimental effects in the functioning of the common market. Moreover, the contracting parties set up a special joint-committee with its own rules of procedures. Furthermore, the Agreement is interrelated with the Cooperation Agreement concluded between Lebanon and the EEC as it provides for the applicability of Articles 21-46 of the Cooperation Agreement, *mutatis mutandis* to the Agreement with the ECSC.[35] These Articles refer to financial issues, rules of origin, non discrimination policy, transfer of payments, M.F.N treatment applicable to the interests of the Community, safeguard measures against dumping practices, and disturbances of the common market, balance of payments, security measures, guarantee measures and review.

The Agreement with the Swiss confederation[36] is titled "Agreement between the Member states of the ECSC and Swiss Confederation". However, when the contracting parties are listed, the ECSC is mentioned

as a contracting party. This may give the impression that the agreement is a mixed agreement, but no signature by the ECSC is found for the conclusion of the agreement. On the other hand, all the agreements with Austria, Portugal and Sweden (which copy each other) have been concluded by the Commission (H.A) on behalf of the ECSC. However, unlike the above three agreements, although the ECSC participated in the agreement with Yugoslavia, the Council appears as the organ qualified to conclude the final Act of the Agreement as an integral part of the Agreement itself, whereas the Agreement itself was concluded by the "Community" without any particular reference to any specific organ.

In the conclusion of the agreement with any of the Mashreq or Maghreb countries, the ECSC as a Community was not involved, despite its participation in the joint-committee with a representative of the ECSC rather than of the member states.

The other remarkable point as regards the legal basis of the these agreements is that, apart from the case of the agreement with Canada, where Articles 6 and 8 were cited as a legal basis to conclude the protocol,[37] there was no specific reference to any provision of the Treaty of Paris as a legal basis for such a conclusion. The citation of the whole Treaty of Paris as a legal basis to conclude these agreements reflects the general approach of Art 6 ECSC, which confers upon the ECSC the power to conclude treaties with third parties to attain its objectives.[38] Besides, all the agreements which the ECSC and/or its member states concluded with third parties were concluded in conjunction with other agreements concluded with the EEC and its member states, and the agreements with the EEC were cited as an additional legal basis beside the whole ECSC Treaty to every agreement concluded with the ECSC.[39]

The common features of the agreements focus, inter alia, on tariff and non tariff barriers in addition to other trade issues and some other technical arrangements necessary to implement the agreements. All the above mentioned agreements include provisions on M.F.N treatment.

Moreover, all agreements establish joint-committees with specific administrative tasks. Furthermore, the agreements set up nearly similar rules of origin and adopt certain safeguard measures against detrimental functioning of the ECSC market. Consequently, it may be concluded that thereby the agreements fall within the jurisdiction of the commercial policy of the ECSC, but this policy provides no competence for the ECSC to conduct its external relations.

However, the participation of the ECSC in the conclusion of some agreements but not in others raises the question as to the legal justification for such participation or non-participation. Is the participation perhaps based on customary powers assigned to the ECSC?.

It is clear that the contents of the agreements deal with issues relating to commercial policy with respect to which the ECSC lacks explicit powers. If this is the case, why then have some of the agreements been concluded as mixed agreements, that is involving, the member states as well as the ECSC as contracting parties? In other words, the ECSC has participated in the agreements concerned despite its lack of powers in this area. On the other hand, the ECSC did not participate as a party in the agreements with the Mashreq and Maghreb countries even though the same matters are treated in the agreement with Sweden, on the one hand as in the agreements with the Mashreq and Maghreb countries on the other. Furthermore, one may add that the agreements with the latter are considered to be interim agreements on the road to the formation of a free trade area, gradually abolishing all customs duties and quantitative restrictions between the contracting parties, but the relationship with the Mashreq and Maghreb countries is not based on reciprocity.[40] Be that as it may, it cannot be concluded that this practice confers upon the ECSC a regime whereby it may participate as a party in a commercial agreement with one country and not participate in the conclusion of a similar agreement with another country

Legal consideration cannot cement together convincing arguments to

explain and anchor the legal logic of this incongruous practice and state of affairs. One may guess that, in the absence of clear-cut provisions governing the external relations and thereto related treaty-making powers of the ECSC, different legal officers and/ or experts may have evaluated the competences of the ECSC differently at different times in relation to the power to conclude treaties. The result is an incongruous and legally unconvincing situation, which may be summarised as a table as below:

TABLE AND CHART OF COMPARISON

1- Country	Switzerland	Sweden	Yugoslavia	Lebanon
2- Reference by the agreement to:	M. S[41] + Switzerland	(M.S+ECSC) + Sweden	(M.S+ECSC) + Yugoslavia	M.S+Leb.
3- List of contracting parties	(M.S + ECSC) + Switzerland	As above	As above	As above
4-Signature for conclusion of the Agreement	M.S + Switzerland	(M.S+Comsion) + Sweden	(M.S+Comty) + Yugoslavia	As above
5-Final Act	M.S + Switzerland	(M.S+Council) + Sweden	(M.S+Council) +	As above Yugoslavia

The fact remains that the ECSC is an international organization, which has legal personality and has been involved in treaty-making practice with some customary aspects. Incoherence in its treaty-making practice may disappear anyhow when after one more decade (2002), the ECSC possibly merges with the EEC.[42]

III-LEGAL BASIS OF THE AGREEMENT BETWEEN THE ECSC MEMBER STATES AND LEBANON

A-INTERNAL OR COMMUNITY LEVEL

The Council of the ECSC cited no particular provision nor the Treaty of Paris as a whole as a legal basis for the conclusion of the Agreement between the member states of the ECSC and Lebanon when the Agreement was published in the European Communities' Official Journal. The Agreement is noted as an "act whose publication is not obligatory".[43] This reflects the view that the Agreement is not within the powers of the ECSC.[44]

The Agreement between Lebanon and the member states of the ECSC involves tariff and trade issues, the establishment of a joint-committee, with, in addition, some safeguard measures to ensure the proper implementation of the Agreement. All the matters of the Agreement fall within the market policy of the ECSC.

As discussed above, the ECSC was established as a free trade area which does not embrace the adoption of common external tariffs towards a third country as the foundation of a common commercial policy. A commercial policy of the ECSC has been left to the internal the jurisdictions of the member states. As such, the competence of the ECSC for the conduct of its external relations has been circumscribed. Nonetheless, very limited powers in exceptional cases have been conferred upon the ECSC in this field.[45]

Article 71 ECSC provides in its general approach that "the powers of the governments of the member states in matters of commercial policy shall not be affected by this Treaty, save as otherwise provided therein". This shows that, despite the general approach of the Article, the candid intention of the authors of ECSC Treaty was to refrain from surrendering

sovereignty from member states to the ECSC in the field of commercial policy. While the Treaty expressly provides for exceptions, any envisaged exception in favour of the ECSC "may not exceed those accorded to member states under international agreements to which they are party".[46]

The Treaty of Paris confers upon the ECSC powers to supervise the administration of import and export licenses, but the administration itself is left within the jurisdiction of the member states.[47] The ECSC through the H.A (now the Commission) is entitled to "make recommendations to member states to ensure that"[48] the administration of import and export licenses is not more restrictive than is required. Furthermore, the ECSC is empowered to impose further restrictions on imports into the ECSC and exports from it, if difficulties in its market arise. For example, in the event of a decline in demand, and following certain procedures, the H.A. is authorized to establish a system of production quotas.[49] These restrictions are subject to extension in the light of Art 58 (1) ECSC in conjunction with Art 74 ECSC, which confer upon the.H.A a competence to take any appropriate measure in accordance with the objectives of the Treaty.[50] In the case of dumping practices, or if imports cause or threaten to cause injuries to production within the ECSC market,[51] the High Authority may also impose restrictions on exports from all member states in case of shortage of products covered by the ECSC Treaty".[52]

Other issues forming part of commercial policy are tariff and non-tariff agreements. The member states of the ECSC have vested in the latter no power to conclude tariff or trade agreements with third parties. The treaty of Paris leaves the power of determining the tariff of each member state to its national legal system.[53] However, the Treaty of Paris empowers the ECSC through the Council on a proposal from the H.A to fix minimum and maximum rates which the member states may not ignore whenever an envisaged tariff agreement with third parties may take place.[54]

Thus, powers conferred upon the ECSC in the field of commercial

policy could be interpreted as being internal technical functions for the purpose of ensuring proper implementation of the common market. However, this power does not constitute by any means a legal basis for the ECSC to conclude agreements with third countries in the field of commercial policy in general and trade and tariff agreements in particular. As such the Agreement with Lebanon had to be concluded exclusively by the member states of the ECSC.

B-EXTERNAL OR INTERNATIONAL LEVEL

The Agreement between Lebanon and the member states of the ECSC aimed at providing products originating in Lebanon and falling within the ambit of the ECSC Treaty a free access to ECSC markets. These tariff preferences were non-reciprocal in nature. That is to say, Lebanon did not make similar tariff concessions to the ECSC member states in return. Instead, it offered the member states of the ECSC the most favoured nation treatment applicable to other developed countries.[55]

Preferential trade arrangements which discriminate between different countries conflict with norms of international trade and in particular the MFN clause operating under the GATT. Nonetheless, the GATT witnessed different developments towards waiving certain preferential treatments with respect to the application of Article 1 GATT.[56] However, these new waivers were formulated as binding standards and thus a preferential treatment offered by one country to another should be in conformity with such standards. In this context, the contracting parties to the Agreement made clear that "no provision of the Agreement shall be considered as exempt of the international obligation of the contracting parties".[57]

In the preceding Chapter IV, the compatibility of the Cooperation Agreement with international standards was examined. Since the Agreement with the ECSC resembles the Cooperation Agreement in most

of its provisions (trade provisions); there is no need to repeat what has already been discussed above. Instead, the main points shall be briefly recapitulated.

The observer of Lebanon and the representative of the ECSC to GATT deemed the present Agreement as an interim agreement leading to the formation of a free trade area and, as such, falling within the ambit of Article XXIV GATT.[58] However, the Agreement does not meet, entirely, the requirements of Article XXIV GATT for a waiver from the application of Article 1 GATT. The Article requires, inter alia, for qualifying an agreement as 'interim", the incorporation of a schedule and plan for a reasonable length of time. Therefore, the Agreement lacks two essential elements to be in line with Article XXIV GATT as regards a FTA -schedule plan and reciprocity. Thus, the Agreement could be considered, from a legal angle, to be formally an interim agreement leading to the formation of a free trade but in fact disguising preferential treatment. The contracting parties to GATT always look sceptically on such forms of agreements despite the little consideration they give to the legal issues raised by such agreements.

IV-THE AGREEMENT BETWEEN LEBANON AND THE MEMBER STATES OF THE ECSC.

A-AIMS AND OBJECTIVES

Alongside the conclusion of the overall Cooperation Agreement, Lebanon as one party and the member states of the ECSC as the other parties concluded an Agreement of unlimited duration covering products which are not included in the Cooperation Agreement and fall within the ambit of the ECSC Treaty.

The Agreement with the member states of the ECSC (hereafter called the Agreement) opens with a preamble involving no theoretical or

political objectives. The preamble is interrelated thoroughly with the preamble of the Cooperation Agreement. It confirms that international trade norms override the provisions of the Agreement if they contradict. It further aims at pursuing objectives and intentions similar to those of the cooperation Agreement for the sake of establishing a system for products not encompassed by the EEC, and falling within the range of the ECSC Treaty. The products in question are specified in an Annex attached to the Agreement. The Agreement is divided into two titles: Trade Cooperation and General and Final Provisions.

The section on Trade Cooperation which is similar to the trade section of the Cooperation Agreement, aims to promote trade relations between the contracting parties with a view to increasing the rate of growth of Lebanon's trade, and improving the conditions of access for Lebanese products into the ECSC market.

B-SUBSTANTIVE CONTENTS OF THE AGREEMENT

Trade cooperation between both parties focuses on providing Lebanon with non-reciprocal preferential treatment by the member states of the ECSC. However, it involves some safeguard measures to ensure the "better performance" and proper implementation of the Agreement.

The Agreement abolished, on its date of entry into force, all customs duties and charges having equivalent effect to customs duties, on products covered by the Treaty of Paris and originating in Lebanon and imported directly into the ECSC market. The trade preferences provided by the ECSC member states to Lebanon are not confined to tariff barriers; all quantitative restrictions and measures having equivalent effect to quantitative restrictions would be lifted on the same products. According to Art 5 of the Agreement between Lebanon and the Member states of the ECSC, the undertaking of liberalising quantitative restrictions and measures having equivalent effects bears no exceptions.

Steel and coal products originating in Lebanon might not be treated more favourably than the products of the member states of the ECSC are treated internally. In other words, if ECSC products are subject to certain limitations or exceptions, Lebanese products would be subject to similar restrictions.

In return for tariff concessions granted to Lebanon, the latter undertook to grant the member states of the ECSC most favoured nation treatment. However, some traditional exceptions were waived from the application of the most favoured nation treatment. Moreover, trade cooperation involves, *mutatis mutandis,* provisions similar to those found in the Cooperation Agreements. Article 6 of the Agreement provides that "Arts 21 to 34 of the Cooperation Agreement shall apply *mutatis mutandis* to this Agreement". The articles in question relate to the M.F.N clause, to Lebanon's right to introduce or increase tariff and non-tariff measures, rules of origin, non discrimination policy, free transfer of remittances, as well as safeguard measures against anti-dumping practices.[59]

The Agreement retains, however, some safeguard measures, other than those adopted against dumping practices, to be taken in a few cases. If the tariff concession offered to Lebanon results in a detrimental functioning of the ECSC market as regards the conditions of competition and prices, the member states may take appropriate measures to remedy the situation. However, prior to the selection of such measures, the Joint Committee shall be supplied with all the relevant and required information. The Joint Committee shall examine the proposed complaints and reach a conclusion. The contracting parties went further in the safeguard measures by assuming that if Lebanon failed to meet the suggested measures laid down by the Joint Committee or if the Committee reached no agreement, then the member states of the ECSC may adopt the necessary measures which might embrace withdrawal of tariff preferences.

C-INSTITUTIONAL CONTENT

General and final provisions provide for establishing a Joint Committee for the task of administration and for ensuring the proper implementation of the Agreement. The Joint Committee comprises representatives of the ECSC and Lebanon (excluding representatives of the Member states). Its chairmanship is headed alternately by the representative of each party. It lays down its own rules of procedure and acts by mutual agreement. It convenes once a year unless either of the contracting parties requests extraordinary sessions. The Committee is empowered to take decisions binding on the contracting parties and may make recommendations pertinent to fields provided for in the Agreement.

V-THE LEGAL IMPLICATIONS OF THE SOUTHWARD ENLARGEMENT OF THE ECSC ON THE AGREEMENT BETWEEN LEBANON AND THE MEMBER STATES OF THE ECSC.

The southward enlargement of the ECSC, though it did not have repercussions for trade between the members states and Lebanon (as regards products falling within the ambit of the ECSC Treaty), involves legal implications arising from the provisions of the Treaty of Paris which provide that any European state may apply to accede to the Community.[60]

Concerning the accession of new members states, the Council is the organ qualified to determine the conditions of accession and to conclude such agreements after consulting the H.A (Commission). In joining the Community, the new member state has to accede without reservations affecting the "acquis communitaire" adopted by the representatives of the

Governments of the member states in the Council.[61] The "acquis communitaire" to be accepted by a new member state included also the Agreement with Lebanon. The three countries acceding in the 1980s, Greece, Portugal and Spain, thus acceded also to the Agreement concluded between Lebanon and the earlier member states of the ECSC in 1977.[62]

On the 12th of December 1980, an additional Protocol to the Agreement between Lebanon and the member states of the ECSC was concluded.[63] It aimed at adjusting the original Agreement, whereby Greece became a contracting party, and provided for transitional measures for the application of substantive matters arising from the accession by Greece. The Protocol was suggested to enter into force on the first of January 1980, provided it was approved by the contracting parties in accordance with their own national procedures. This, however, would possibly delay the operation of the Protocol. Consequently, pending the ratification of the Protocol, the contracting parties laid down provisional arrangements to be in operation on the first of January 1980. These arrangements are identical to the transitional measures embodied in the Protocol.

These measures provided for the progressive elimination of customs duties and charges having equivalent effect to duties over a reasonable length of time, ending by the first of January 1986. If Greece suspended or reduced, other than originally planned, duties or charges having equivalent effect to duties on products imported from the member states of the ECSC it should offer Lebanon no less favourable treatment. The Protocol progressively eliminated, over a three year period ending by first of January 1984, import deposits and cash payments in force against Lebanese exports to Greece. Finally, the Joint Committee, established by the Agreement, amended the rules of origin consequent to the accession of Greece.

Portugal and Spain similarly acceded to the Agreement between Lebanon and the member states of the ECSC, by virtue of a protocol

concluded on 9th of July 1987.[64] The substantive contents of the Protocol are similar to those embodied in the Protocol with Greece. The Protocols dismantle, over a given period of time, ending at the latest by the first of January 1993, customs duties and charges having equivalent effect to duties.

VI-CONCLUSIONS

The Agreement between Lebanon and the member states of the ECSC governing products falling within the ambit of the Treaty of Paris was concluded in 1977 alongside the Cooperation Agreements. Despite its (legally) unjustified precedent in concluding commercial agreement in mixed form with the EFTA, the ECSC as a Community was denied participation in the conclusion of the Agreement with Lebanon, as it lacked express or implied competence in the field of commercial policy. Such a competence is left within the jurisdiction of its member states.

The Agreement suppressed all customs duties and quantitative restrictions as well as all charges and measures having equivalent effect on Lebanese exports to the ECSC markets. It promoted free access of products originating in Lebanon and exported directly into the ECSC markets. In such a context, it marked progress on the road to the formation of a free trade area. Notwithstanding, the Agreement fell short of meeting the entire requirements of Article XXIV GATT for being completely a genuine interim agreement leading to the formation of a free trade area within a reasonable length of time.

The Agreement was adjusted by three protocols consequent to the accession of the Mediterranean European countries, providing a transitional period for liberalising their markets for Lebanese exports entirely.

The Agreement between Lebanon and the member states of the ECSC can be evaluated from two angles; legal and as to substance.

From a legal point of view, the Agreement established possibly the most preferential treatment provided by developed countries to a developing country. Although it suggests the establishment of a free trade area between Lebanon and the member states of the ECSC, such an envisaged free trade area is factually inconceivable in the foreseeable future, not least owing to the lack of a schedule and plan within a reasonable length of time. It marked, however, a new development in the relations between the two parties, despite the rigidity of the rules of origin. However, as a matter of substance, the Agreement covered products which do not constitute a matter of primary interest to Lebanon. Therefore, it remains unlikely to influence trade relations between the contracting parties. Moreover, similar agreements have been adopted between the ECSC and all the Mediterranean countries. This means that the relationship between Lebanon and the European Communities has witnessed no special individual, development, consequently, qualitatively no special contractual relationship between Lebanon and the ECSC and its member states exists.

FOOTNOTES

1- O.J No L 316, 12.12.1977, p24.

2- The word Community throughout this Chapter refers to the European Coal and Steel Community (ECSC).

3- Review the Second Chapter, legal Personality of the Treaty Making-power of the EEC.

4- See Feld W., "The Competence of the European Communities For the Conduct of External Relations", Texas Law Review, Vol. 43, (1965), p 891 at p 894.

5- Reparations Case, ICJ [1949], p 174 at 179.

6- Case 22/70, Commission v. Council, re ERTA.[1971], (ECR) 263.

7- Merger Treaty establishing a Single Council, a Single Commission, and a Single Parliament; O.J No L 152, 13 July 1967.

8- Art 49 ECSC.

9- 412 UNTS 273.

10-Art 98 ECSC.

11-Arts 111, 113, 210, 228, and 238 EEC; 101, 199-201, and 206 Euratom.

12-J.O 1953, P167-168; 229 UNTS 229.

13-Art 2 EEC, and Art 2 & 4 ECSC.

14-Art 3 EEC; Simmond S., "The Evaluation of the External Relations Law of the European Community"28 I.C.L.Q , (1979), p 645.

15-Art XXIV para 8(a) GATT. GATT working party which examined the compatibility of the ECSC with the provisions of GATT failed to reach a satisfactory conclusion to recognise the EEC as being in line with Art. XXIV GATT and subsequently became a waiver from the application of the MFN clause, see BISD 6 S/68 GATT report, 29 November 1957, L/778. For critical approach for Art XXIV and GATT see, Dam.K, "Regional Economic Arrangements and the GATT: The Legacy of a Misconception", U Chic. L. Rev., Vol. 30, No 4, Summer 1963, p 615; Haight F. A., "Customs Unions and Free Trade Areas under GATT", 6 JWTL, (1972), p 391.

16-See Chapter two.

17-In fact, the EEC, following the adoption of the Single European Act

(SEA) is emerging as a single market which is expected to complete its final process of integration in 1992.

18- BISD 6 S/68 GATT report, 29 November 1957, L/778.

19- BISD 1 S/89, GATT report (G/35),10 November 1952.

20- It seems that GATT reports did not focus on the legal point concerning the difference between F.T.A and custom union.

21- Chapter 10 of the Treaty of Paris.

22- This is of course subject to the internal rules of such international organisations.

23- J. O ECSC No 17, 29.05.1957, p 85. English version appears in O.J Special ed, Sec Series VIII (Supp 1974), p 315.

24-Feld. W, supra note 4, p 891.

25- J.O ECSC No 11, 14.08.1953, P 167-168; English version appears in 229 UNTS 229.

26- 1954,1,U.S.T &O.I.A 524,T.I.A.S.No 2945; 412 UNTS 273.

27- J. O ECSC 1957, p 85.

28- O.J No L 350/53, 19.12.73.

29- O.J No L 350/76, 12.12.73.

30- O.J No L 348/17, 27.11.74.

31- Ibid, p 1.

32- O.J No L 41/113, 14.02.83.

33- O.J No L 260/27, 24.9.76; O.J No L 352/ 28, 8.12.81. respectively.

34- The agreements which were concluded by the ECSC exclusively were discussed earlier in this chapter which made no need to tread the same path.

35- See Chapter 4 of the Thesis.

36- O.J No L 350, 19.12.73, p 113.

37- Art 8 ECSC reads as "It shall be the duty of the High Authority to ensure that the objectives set out in this Treaty attained in accordance with the provision thereof".

38- Commission of the European Communities, Agreements and other Bilateral Commitments Linking the Communities With Non-Member Countries, (1986).

39- Ibid.

40- This is the view of the Community as presented to the GATT working party, see BISD 25 S/142.

41- M.S stands for the member states of the ECSC in their capacity as members of the Community.

42- It has been suggested by many writers and by the Commission that since the continuation of sectorial policies is now defunct, there are three options for resolving the issue of the ECSC,

1-Maintaining special rules for the coal and steel industries after 2002 by extending the ECSC Treaty.

2-Early termination of the Treaty, using provisions in the EEC Treaty to cover the coal and steel industry. It has been suggested by Ehlerman that the commercial policy of the EEC is implicitly governed by Art 113 EEC, see Ehlerman.C.D, "The Scope of Article 113 of the EEC Treaty", in Teitgen P., Etudes de droit Communautes Europenes (1984), p 10.

3-Expiry of the ECSC Treaty in 2002, and in the run up, incorporation of certain ECSC provisions into the EEC Treaty.

See, Commission of the European Communities, ISEC/B14/91, 20 May 1991 and SEC (91) 407 final.

43- O.J L 316,(1979), P 1.

44- See Arts 14 & 15 ECSC.

45- Art 71 ECSC.

46- Art 71 Para 2 ECSC.

47- Art 73 ECSC.

48- Art 72 Para 2 ECSC.

49- Art 58 (1) ECSC.

50- Art 74 (5) ECSC.

51- Art 74 (1,2,3)ECSC.

52- Art 59 (5) ECSC.

53- Art 72 ECSC.

54- Art 71 Para 1 ECSC.

55- See Chapter Four sect.

56- See Chapter Four sect.

57- The preamble of the Agreement para 3.

58- BISD 25 S/142.

59- As these provisions were thoroughly analysed in Chapter 4 of this Thesis, there is no need to tread the same path.

60- Art 98 ECSC.

61- Art 3 concerning the conditions of accession stipulates that the "new member states accede by this Act to the decisions and agreements adopted by the representatives of the governments of the new member states meeting in Council. They undertake to accede from the date of accession to all other agreements concluded by the present member state relating to the functioning of the Communities or connected with the activities thereof, extracted from Rudden B. & Wyatt W., Basic Community Laws, 2nd ed. (1986).

62- This issue was examined profoundly in previous Chapters of this Thesis.

63- Council of the European Communities, Protocols to the EEC-Lebanon Cooperation Agreement And Other Basic Texts, (1990), p 35.

64- Ibid, p 165.

CHAPTER SIX

EEC DEVELOPMENT COOPERATION POLICY AND LEBANON

I-INTRODUCTION

The Treaty of Rome did not stipulate for a development policy when it was framed by its founders. Changes in attitudes and approach took place in the Community over several years, particularly as regards EEC's international responsibility towards developing countries. Consequently various policies were introduced in the sphere of Community law. The EEC, following its first enlargement, during the Paris Summit (1972), undertook to meet the international responsibilities incumbent upon Europe towards developing countries. Hence, the Mediterranean Global Policy was introduced (which recently came to be known as a new Mediterranean Policy). This policy was designed to meet the needs of the special relationship between the EEC and the Mediterranean countries. The main feature of this policy is to provide free access of certain, mainly industrial, products originating in the respective non-member countries to the EEC markets with a view to bringing about the conditions for a successful economic development process in the region. It was supplemented by a financial and technical cooperation policy by which the EEC undertook to finance operations in these countries, in accordance with ad hoc financial protocols, with a view to contributing to their efforts in economic development.

Financial cooperation between Lebanon and the EEC was first introduced into their relationship when a financial protocol was incorporated into the Cooperation Agreement of 1977 for a duration of a five year period of time expiring in 1982. Since then, three more generations of financial protocols have been concluded for a similar duration in 1982 and 1987 respectively. A new financial protocol is

expected to be concluded between both parties by early 1992.[1] Additional financial cooperation is foreseen under special emergency aid arrangements dating from 1977 and 1982 respectively.

The EEC food aid policy emerged in 1969, with a view to combating hunger in the world, particularly in Africa. The aim of this policy evolved towards reducing the food import dependence of developing countries. It put the emphasis on the contribution of this aid to the efforts of developing countries in their economic development. The EEC food aid policy consists of a normal annual food aid programme and emergency food aid. In 1976, following the outbreak of the civil war in Lebanon the EEC dispatched its first consignment of food aid to Lebanon, as part of its emergency aid. The continuation of the civil war made Lebanon a regular receiver of EEC emergency aid, embracing food aid. In 1978 and thereafter, Lebanon was included in the list of countries eligible for EEC annual food aid programmes. As such, financial cooperation and food aid (both normal and emergency aid) formed the essential elements of the EEC development policy.

The first financial and technical cooperation protocol was appended to the Cooperation Agreement as an integral part of it. That is to say, the Cooperation Agreement was concluded in a mixed form and Article 238 EEC was cited as a legal basis to it. The same Article was cited as a legal basis for the other financial protocols, which were concluded however, exclusively between the EEC and Lebanon. The financial protocol committed the EEC to finance operations in Lebanon from financial resources other than the EEC budget. This gives rise to several questions.

The purpose of this Chapter is to examine the legal framework of the EEC development cooperation policy and its particular significance for the relationship between the EEC and Lebanon, i.e development cooperation in financial and food aid fields. This entails on the one hand, an examination of EEC competences to conclude exclusively financial protocols, within which the EEC undertook obligations on behalf of the

European Investment Bank (hereinafter referred to as the EIB or the Bank) towards a third party, and on the other, to design and dispatch food and other emergency aid. Lastly, the substantive contents of the development cooperation between Lebanon and the EEC will be scrutinised below.

II-GENERAL BACKGROUND TO EEC-LEBANESE FINANCIAL COOPERATION

The financial cooperation policy of the EEC began in the early sixties with the Agreement between the EEC and each of Greece and Turkey which aimed at strengthening their economies as a preparatory stage for their accession to the European Communities. This policy developed and expanded following the Paris Summit (1972), which marked a turning point in EEC external relations with developing countries in general, and with the Mediterranean countries in particular. During that Summit, the heads of states and governments pledged to establish an overall Mediterranean Policy. This policy emphasized "the prime necessity of going beyond the purely commercial aspects of the question"[2] aiming, *inter alia,* at contributing to bringing about the conditions for a successful economic development in the Mediterranean countries. The EEC Mediterranean policy has been operating, though less successfully than was expected, through a series of cooperation agreements with all Mediterranean countries wishing so. It included financial cooperation by which the EEC pledged to finance operations in the respective countries with a view to contributing to their economic development. EEC financial cooperation involved finances from both the EEC budget and the European Investment Bank's own resources.

Lebanon concluded three financial protocols with the EEC in 1977, 1982 and 1987 respectively.[3] A fourth protocol is expected to be concluded by early 1992.[4] By virtue of these protocols, the EEC was committed to offer Lebanon financial aid worth EUA 30m in 1977.[5] This financial

contribution increased to ECU 50m and ECU 73m in 1982 and 1987 respectively. However, in the envisaged protocol of 1991, the EEC financial contribution, contrary to the expected Lebanese needs in the aftermath of the devastating civil war, decreased to ECU 69 m.[6]

The first financial protocol was concluded in 1977 for five years, within the context of the EEC Mediterranean policy when the Council issued supplementary directives to the Commission to negotiate financial cooperation alongside the cooperation agreements with the Mediterranean countries.[7]

The negotiations for the renewal of the first financial protocol between the EEC and Lebanon were held in Brussels upon Lebanese request, and in accordance with the ad hoc directives issued by the EEC Council to the Commission.[8] On 18 March 1982, the Commission transmitted to the Council the result of these negotiations. Lebanon expressed its disappointment (like most of the Mashreq and Maghreb countries) at the amount of finances allocated to it, particularly when it was seen at that time that Lebanon was expecting lasting peace.[9] It urged the Community to consider further measures to develop other forms of cooperation.[10] The financial protocol was formally concluded on 17 June 1982. It replaced the earlier protocol and ran for a further five years expiring in October 1987.

The third generation of financial protocols between the EEC and the Mediterranean countries and, consequently Lebanon, was initiated on 25 November 1985 when the Council adopted new negotiating directives authorising the Commission to enter into negotiations with, inter alia, Lebanon with a view to concluding a new protocol on financial and technical cooperation.[11] The Commission, following the negotiations with Lebanon, recommended to the Council the conclusion of the protocol.[12] After the assent of the European Parliament,[13] the Council concluded the third financial protocol in December 1987 for a duration of five years expiring in October 1991.[14] It is noteworthy that the period of

negotiating the protocol coincided with the southern enlargement of the EEC in 1986. Following this enlargement, the advantages derived from the Mediterranean policy proved to be eroded.

After the negotiations which took place between the Mediterranean countries and the EEC on the one hand, and within the EEC institutions on the other, a new trend of relations between these countries and the EEC began to emerge. The EEC is currently, developing the Mediterranean policy with a view to maintaining the advantages accorded to these countries in 1977.[15] Against this backdrop, the financial protocols were concluded within the scope of other protocols concluded with other Mediterranean countries adjusting the cooperation agreements to meet the envisaged repercussions of the enlargement. Within such a context, specific attention was directed to specific areas of cooperation:

- The development of agricultural production with particular emphasis and support for national food strategies designed to increase self reliance and reduce food dependence.

- Industrial, scientific, technical and commercial cooperation, with particular attention to support for appropriate training operations in all the priority sectors. To this end, emphasis was put on practical project-related trainings, in companies and research institutions.[16]

The fourth financial protocol between Lebanon and the EEC, was negotiated within the context of the new Mediterranean policy and the development cooperation policy of the EEC laid down by the Council.[17]

On 19 December 1990, the Council adopted negotiating directives with a view to the conclusion of a fourth generation of financial protocols with all Mashreq and Maghreb countries and Israel. On 25 February 1991 the Council supplied these directives to the Commission and the latter conducted the negotiations with each country individually, including Lebanon. Following the completion of these negotiations between Lebanon and the Commission, the protocol was initialed in July 1991 and recommended to the Council for conclusion.[18] In conformity with the

SEA, the European Parliament has to ratify any agreement, based on Art 238 EEC, involving the EEC and a third party, in addition to its conclusion by the Council of Ministers.[19] Disapproval by the European Parliament would result in blocking the ratification of such an agreement. The European Parliament has, in fact, approved the fourth financial protocol between Lebanon and the EEC at its session on 14 January 1992. The financial protocol in question is supposed to be currently underway for its conclusion between the EEC and Lebanon without any foreseen legal barriers. It is worth mentioning that, following European Parliament deliberations on the fourth generation of the financial and technical cooperation protocols concerning the Mashreq and the Maghreb countries in addition to Israel, the European Parliament failed to approve two financial protocols, initially concluded between the EEC and Syria and Morocco respectively. The European Parliament justified its disapproval on the basis of its dissatisfaction with the human rights situation in these two countries, requesting Syria and Morocco to improve their respective human rights records as a prerequisite to approval of the financial protocols in question, ignoring the human rights record of Israel condemned frequently by Amnesty International.[20] Following the Council decision on the breakdown of finances allocated between the Mashreq and Maghreb countries and Israel, the Council pledged to supplement the new generation of financial protocols by other types of measures with scope to extend beyond the context of a single country and particularly in areas which concern the environment.[21]

The finances allocated to Lebanon were not of considerable significance, particularly when compared with its huge needs in the aftermath of the civil war. Lebanon requested the EEC to develop other areas of financial cooperation through increasing its financial contribution to the process of the reconstruction of Lebanon's economic infrastructure. The EEC responded twice by offering Lebanon emergency aid in the form of loans from the EIB's own resources in 1977 and 1982, worth ECU 20 m

and ECU 50 m respectively.

III-THE LEGAL BASIS OF THE FINANCIAL PROTOCOLS

The financial protocols concluded between Lebanon and the EEC involve financing operations in Lebanon from a combination of resources. Grants and long term loans on special conditions were offered to Lebanon from the EEC's own resources; other forms of loans were granted from the EIB's own resources, in accordance with the terms of the ad hoc financial protocols without prejudice to the Bank's Statute attached to the Treaty of Rome. This gives rise to a question as to the legal basis on which the EEC exclusively concludes a financial protocol with a third country, particularly when the protocol involves finances other than the EEC's budgetary resources.

A-THE LEGAL BASIS OF FINANCES FROM THE EEC OWN RESOURCES

The EEC has cited Article 238 EEC as a legal basis to conclude the financial protocols. This Article provides for association agreements "involving reciprocal rights and obligations, common actions and special procedures". In addition, it stipulates for specific procedures to be followed for the conclusion of such agreements. The legal aspects of this Article have been discussed elsewhere in this thesis,[22] and they will not be repeated here. Reference will be made only to the submitted conclusion that the Cooperation Agreement with Lebanon dealing with financial cooperation, could have also been concluded with reference to Article 113 and 235, because the Agreement is a cooperation and not an association agreement. If it had been in substance an association, it would have been based on Article 238 EEC. However, a final conclusion may depend on how extensively Article 238 EEC is interpreted so as to also include or not

to include financial cooperation. Nonetheless, this does not mean that Article 238 EEC is insufficient for the EEC to conclude, exclusively, financial protocols with a third party.

B-THE LEGAL FRAMEWORK OF THE RELATIONSHIP BETWEEN THE EEC AND THE EIB

The EIB was established by virtue of the Treaty of Rome as an independent financial body[23] possessing its own legal personality with a view to working towards the attainment of EEC objectives laid down in Articles 2 and 130 of the Treaty.[24] The degree of independence which the Bank enjoys is provided for in the Treaty of Rome and the Statute of the Bank which takes the form of a protocol annexed to the Treaty, and which is deemed to be an integral part of it with similar legal authenticity.[25] However, the Statute of the Bank and the Treaty of Rome leave unanswered questions on the position of the Bank within the Community. This issue was raised in a written question from the European Parliament to the Commission.[26] The Commission considered the Bank as a "public body under Community law",[27] i.e subject to the Treaty of Rome rather than subject to international law as an independent international organisation established between states. The European Parliament on the other hand accords the Bank an "autonomous status within the Community structure".[28] The ECJ described the Bank as an "organisme communautaire".[29] "Organisme" is a French word which bears different meanings as a legal term and consequently the ECJ left the definition of the Bank in ambiguity. In 1988 the ECJ concluded that the position of the Bank within the Community is "ambivalent".[30] Nonetheless, the Bank's operational and institutional autonomy does not mean that it is totally separated from the Community and exempt from the rules of Community law.[31] However, the Board of Governors of the Bank views it as being an independent international organisation

established between sovereign states, maintaining special links with the Community.[32] In addition, some writers consider the Bank as "*Glied*" or as a legally autonomous part a generally independent organ of the Community.[33] The importance of defining the position of the Bank, from a legal perspective, stems from the fact that Article 228 EEC makes Community decisions and agreements directly binding on the member states and Community institutions. Consequently, if the EIB is a Community institution, then the Bank would be bound by EEC Regulations and, subsequently, the EEC may undertake obligations on its behalf. However, Article 4 EEC, which lists the Community institutions, does not refer to the Bank as such.

The founding fathers of the EEC did not include the Bank within the EEC institutions. This means that they had in mind, at the time when they framed the Treaty, to detach the EIB from other Community institutions. Yet, the EIB protocol is treated as an integral part of the Treaty of Rome. Therefore, it could be concluded that the EIB, bound by its Statute which governs its activities, may be considered to be a body like the other Community bodies, and the Statute is its constitutional document. This gives rise to the point that the Communities have one Council, one Commission and one Assembly, whereas the Bank has its own decision making bodies. The member states, in establishing one single Council, Commission and ECJ, had as their aim the limitation of the number of similar institutions. However, the jurisdiction or the functions of the same institution in each Community has remained unchanged. In other words, although the same person is in office in each of these Communities, the rules to be applied in each field of activities belongs to the respective Treaty, i.e the Merger Treaty effected the fusion of the institutions and not the constitutional documents. Therefore, the EIB could be considered to be an autonomous body within the Communities' family. Consequently, there could be no authority to be exercised by any of the Community institutions in relation to the Bank's independent

decision-making powers.

Consequently, since the EIB is not a Community institution in the strict legal sense, the Community cannot undertake any commitment on its behalf, i.e the Bank is not bound by Community agreements with a third party. Subsequently such agreements would be binding only upon the Community and its member states under public international law and the Treaty of Rome.[34] Therefore, as the Bank stands in the Community as an independent financial organisation endowed with its own decision-making bodies, and possesses its own legal personality, it can only be bound by obligations which are incurred by itself.

Therefore, since the Community cannot undertake obligations on behalf of the EIB, a question arises as to what legal basis the EEC undertakes obligations to provide Lebanon (or a third party) with financial assistance through financing operations with a view to developing its economy from the EIB's own resources.

C-THE LEGAL BASIS OF FINANCES FROM THE EIB'S OWN RESOURCES

The Bank's main task is to contribute to attain the Community objectives specified under Article 2 and 130 EEC. These Articles do not impose upon the Bank's financial activities any geographical limitation as long as they serve the Community objectives. Within such a context, the Bank may finance operations mounted outside the Community by a special authorisation from the Bank's supreme decision maker, i.e the Board of Governors, acting unanimously on a proposal from the Board of Directors.[35]

The Board of Governors comprises ministers designated by the member states. It is entrusted with the power to lay down, inter alia, general directives for the credit policy of the Bank in accordance with its objectives and the set objectives of the Community.[36]

On the other hand, the decision making body in the EEC is the Council of Ministers. The fact is that, both the Council and the Board of Governors represent the same member states when the political decision is adopted. Therefore, the decision of the Bank's credit policy in general, and its consistency with the objectives of the EEC specially towards its external relations in particular, is presumably taken at the political level of the governments of the member states rather than at the technical institutional level. As such, a formula of cooperation assumingly exists and works between the two institutions, that is the EEC Council and the EIB Board of the Governors. This form of cooperation presents itself in the form of an invitation or recommendation from the EEC Council to the Board of Governors to participate in achieving the objectives of the EEC as regards its development aid policy towards a third party.[37] The Board of Governors then has to respond to such an invitation and take a decision in this area[38] and set up a ceiling for financing operations from the Bank's own resources outside the Community. Within such a context, the EIB undertakes binding commitments towards a third party on a triangular basis, i.e it undertakes binding obligations towards the EEC under Community law, which concludes with a third party an agreement binding under international law. This gives rise to a hypothetical question as to the possible refusal of the EIB to respond positively to the EEC invitation or recommendation.

The EIB's main task is to assist to attain Community objectives within or outside the EEC. The objectives are not confined by geographical limitations; they are merely subject to Community interests. The EEC founders did not foresee a Community development policy at that time within which financial cooperation would operate. However, the Community has witnessed various levels of development policies, inter alia, development aid policy which recently has become of vital importance to EEC interests. Therefore, refusal to respond to an EEC recommendation would not serve the interests of the Community. On

the contrary, it would be considered an action against the Community interests, thus contradicting the tasks entrusted to the EIB. Such a case would give the EEC Commission to invoke the right to institute proceedings against the EIB before the ECJ.[39]

Moreover, the EEC Council consists of the ministers of the member states whose task is, inter alia, to ensure the attainment of EEC objectives and to safeguard the interests of the member states. The ministers are usually the ministers of foreign affairs, but nothing prevents the Council from being convened as the Council of any other ministers when the agenda relates to their powers. Therefore, when the issue discussed relates to the financial field, the Council would comprise the finance ministers of the member states, i.e the members of the Board of Governors of the EIB. Hence it would be illogical to find a situation where the Council of Finance Ministers could adopt a recommendation or invite the Bank to participate in an action, and the same ministers, wearing another hat, could or would reject such a recommendation.

Furthermore, the financial protocols are concluded by virtue of Article 238 EEC. This Article includes a reference to Article 236 EEC, where there is a justified reason for the possibility of amending the Treaty of Rome. If such a case of disagreement were to arise, and the Council considered such a development policy necessary together with the relevant financial protocols concerned, then the possibility would arise of amending the Treaty with a view to bringing the EIB under commitments to take part in the implementation of such policy.[40]

In practice, however, such a situation has never arisen and, since 1977, the EIB has provided Lebanon, like other third countries, particularly Mediterranean and ACP countries, with finances from its own resources, in accordance with the respective financial protocols concluded between the EEC and Lebanon.

IV-THE SUBSTANTIVE CONTENT OF THE FINANCIAL PROTOCOLS

A-THE OBJECTIVES OF THE FINANCIAL PROTOCOLS

Each of the four financial protocols opens by a preamble of two paragraphs highlighting the general objectives which guide the contracting parties in the implementation of the protocol. The objectives reaffirm the resolve of the contracting parties to implement financial cooperation with a view to contributing to the social and economic development of Lebanon. The third and fourth financial protocols have in particular defined the objectives behind EEC's financial contribution in accordance with the new approach of the EEC to redirect its Mediterranean policy consequent on enlargement. Accordingly, the EEC has aimed to reduce the food dependence of Lebanon. To this end, as regards the agricultural sector, the protocols have put an emphasis on developing the production of agricultural products in short supply such as food crops. Moreover, the EEC has pledged to contribute financially, within a set ceiling and prre-determined criteria, to Mediterranean countries which undertake to execute programmes for structural adjustments. The EEC expects that its financial contributions may promote and strengthen the relationship between Lebanon and the EEC.

The preambles laying down the objectives of the contracting parties reflect the EEC's intention to undertake obligations, within a set ceiling, to finance operations in Lebanon. These commitments are of a binding nature under rules of international law, since the preambles constitute an integral part of the protocols. Yet, this does not mean that Lebanon has the right to claim the allocated finances once the protocols enter into operation. The preambles bind Lebanon as well not to use the EEC financial contribution arising from the protocols, except towards specific areas "reinforcing' the social and economic development of Lebanon.

Just as the Treaty of Rome did not leave it to the EIB to set the criteria for determining whether or not a project contributes to the Community's overall harmonious development, so the financial protocols have taken this matter out of the Bank's hands. The Statute of the Bank, as an integral part of the Treaty of Rome, has laid down the principles within which loans and guarantee operations for specific projects would qualify for credit by the Bank and accordingly contribute to the achievement of the overall economic development of the EEC.[41] These principles are to be applied with regard to projects designed to develop the common market in the EEC. As regards projects outside the EEC, loans and guarantee operations are provided from the Bank's resources upon special authorisation from the Board of Governors. The Statute of the Bank remains silent concerning any criteria for qualifying such projects for Bank's credits. Other than that, they correspond to EEC interests. Moreover, as the Bank operates on a non-profit basis, that is to say when granting loans, the EIB has to ensure that these loans are in line with the set objectives behind EEC financial contributions. As such, loans and operations financed by the EEC and the EIB are granted on the basis of criteria laid down and agreed upon in the respective financial protocols.

The financial protocols between the EEC and Lebanon have determined the activities and the fields which contribute to social and economic development in Lebanon. In addition, they have laid down criteria for determining whether or not a suggested project and various groups or organs established in Lebanon seeking loans from the EIB, beside the Lebanese state and its organs, are in line with the set economic objectives of the financial protocols and consequently qualify for loans from the Bank.[42]

The first and the second financial protocols have laid down the criteria for granting loans qualifying for "capital projects in the field of production and economic infrastructure which contributes to promote industrialisation and modernisation of the agriculture sector in Lebanon

as fields of activities eligible for finances from the EEC". The third and the fourth financial protocols have reinforced a similar attitude towards the possible use of the available finances with the emphasis put on developing agricultural products in short supply, thus mitigating Lebanon's food dependence. Economic infrastructure and industrial development complementary to projects in the field of production (agricultural and industrial projects) are considered to be eligible for finances. More emphasis has been placed on technical cooperation, be it preliminary or complementary to capital projects. Thus, technical cooperation in the field of training has been considered a priority field to be, partly or entirely, a beneficiary from EEC financial assistance. This technical cooperation has aimed at strengthening the economic links between Lebanon and the EEC in the fields of industry, training and research, technology and services. Furthermore, two more areas eligible for the EEC financial contribution have been added to the areas established in the first and second protocols, dealing with regional and multilateral cooperation and protection of the environment. A novel development in the fourth financial protocol is the introduction of a new package of finance operations in the form of non-refundable grant aid worth ECU 300 m designed to help the respective countries in the Mediterranean region in carrying out their structural adjustment programmes, in accordance with and complete agreement of the Bretton Woods institutions.

The financial protocols concluded between Lebanon and the EEC constitute part of the EEC's package of financial contribution to Lebanon within EEC global Mediterranean policy. The EEC has designed the objectives of its financial cooperation in such a manner as to meet the need for a more coherent and constructive approach towards all Mediterranean countries concerned. The central objective has been to contribute to the social and economic development of these countries. However, an ultimate aim is also to promote and strengthen relations

between the EEC and these countries.

The Mediterranean policy has been designed to take into consideration different levels of economic development in the respective countries with respect to achieving determined objectives. As such, the international legal instrument of the Mediterranean policy has been broken down into three categories of agreements: (1) Association agreements based on reciprocal preferential trade arrangements leading to possible accession to the EEC; (2) reciprocal preferential trade arrangements leading to the formation of a full free trade area within a defined period of time, for example with respect to Israel, and (3) cooperation agreements based on unilateral preferential trade arrangements. The main justification for designing these three sets of agreements has been the desire to meet the individual requirements of different levels of economic development in the Mediterranean countries.

EEC policy as regards financial cooperation has not, however, followed the same path. All the financial protocols are similar. However, if this could be held to be beneficial, if not non-detrimental, as in the case of all the Mediterranean countries, it cannot be said to be so as regards Lebanon. The first three generations of financial protocols ceased to operate in Lebanon, (rightly possibly), owing to the continuiing civil war. On the eve of the conclusion of the fourth financial protocol, Lebanon is witnessing a new era of peace, and is expecting to meet the requirements of the process of reconstruction as a prerequisite step for its social and economic recovery and development.

Apart from the value of finances allocated to Lebanon, the fourth financial protocol includes two novel areas of cooperation: protection of the environment and a package for backing structural adjustment programmes, beside the main objective of reducing Lebanon's food dependence. These objectives give rise to the question as to whether they satisfy the "urgent" needs of Lebanon for economic development, namely reconstruction.

Reducing Lebanon's food dependence is not an urgent objective for Lebanon, requiring indispensable infra-structural preparations for achieving such an objective. These requirements interrelate, partly, with the process of reconstruction which entails, *inter alia*, the implementation of capital projects such as, an energy supplies (Lebanon cannot currently produce electricity for more than six hours per day) telecom system, transport system, drinking water and irrigation projects. One may wonder what advantages the other two novel objectives (structural adjustment programme [SAP] and environmental programme) may achieve for Lebanon, particularly with respect to short term, urgent needs.

The EEC environmental programme for the Mediterranean is based on a joint initiative drawn up in 1988 between the EIB and the World Bank aimed at reducing pollution in the Mediterranean sea and at combating problems raised by environmental degradation.[43] This programme has set up an operational instrument, the Mediterranean Environmental Technical Assistance Programme (METAP). Within this context, the Commission of the EEC has established its Community Programme for the Environment in the Mediterranean region (MEDSPA). This programme identifies four priority areas for action:

- integrated water resources management (watershed management);
- management of solid and hazardous wastes;
- the prevention and control of marine oil and chemical pollution; and
- coastal zone management.[44]

This programme is far from being close to Lebanon's immediate requirements. It is a programme of main concern to the member states of the EEC rather than to Lebanon.

Structural adjustment programmes are policies which began emerging in 1979 in response to the third world economic crisis and international debt crisis. This policy was established by the Bretton Woods

institutions requiring the countries seeking World Bank and/or IMF financial assistance to undertake reform programmes as a preliminary step preceding financing specific projects, since no successful project could be implemented in a corrupted economic system. Structural Adjustment Programmes "embody measures which aim at achieving viability in the mid-term balance of payments while maintaining the level and rate of growth of economic activity at as high a rate as possible".[45] They mainly deal with questions as to "how, through changing policies and institutional arrangements in a country, can existing productive capacity be more efficiently used?".[46] The World Bank defines the purpose of its loans under reform programmes (SAL) as "Non project lending to support programmes of policy and institutional change necessary to modify the structure of an economy so that it can maintain both its growth rate and the viability of its balance of payments in the medium term".[47] Most of the countries seeking World Bank help are from the developing countries applying socialist economic policies. The reform programmes (structural adjustment programme) aim eventually to liberalise the economies of these countries and transform them into profit making economies; free market economies. As regards the EEC's novel objective, an assistance package, it is mostly concerned with two countries undertaking economic reform programmes, Algeria and Egypt.

From the outset Lebanon has enjoyed a free market economy combined with a unique financial (banking) system. This gives rise to some doubts as to the impact of the novel arrangements on Lebanon. In other words, would Lebanon be considered a potential beneficiary country from such a financial assistance package? If not, then why is a corresponding article incorporated in the financial protocol between the EEC and Lebanon?

The financial protocol between Lebanon and the EEC links directly the potential beneficiary of such a package with the implementation of the structural adjustment programme agreed upon with the Bretton Woods

institutions.[48] Moreover, within the structural adjustment programme, some specific elements are taken into consideration in providing loans from this financial package, in particular, the level of indebtedness and the charges of the debt services, the balance of payments situation and the availability of hard currency, the budget situation, monetary situation; the level of general domestic product per capita, and the level of unemployment.[49] The fourth financial protocol explains two ways of approving loans within this package. EEC financial assistance could be sought to finance;

-imports of capital projects designed to contribute to the expansion of the productive capacity in these countries, in conformity with the respective structural adjustment programme;

-technical assistance to reinforce structural adjustment programmes in the area of macro-economic policy.

Since Lebanon is not undertaking any reform programme and is not conducting negotiations with the Bretton Woods institutions for such a purpose, it would hardly be conceivable as being concerned with this financial assistance package.

Therefore, Lebanon may benefit from an EEC financial contribution only if it presents projects in areas in line with the objectives of the protocols. However, since these objectives have been tailored to meet regional needs rather than specific individual requirements of Lebanon, Lebanon is unlikely to be seen to be active in these areas before its economic infra-structure is reconstructed.

B-CONDITIONS FOR THE IMPLEMENTATION OF THE FINANCIAL PROTOCOL

The financial protocols provide the general framework within which the EEC may participate in financing operations, whether partly or wholly, in Lebanon. They lay down the areas and the criteria of activities deemed

to contribute to the objectives of the protocols; that is the social and economic development of Lebanon. In addition, they establish the framework within which firms or organisations, whether public or private, would be considered bodies eligible to benefit from EEC financial contributions.[50] Only meeting all these requirements would put Lebanon, the beneficiary country or the eligible organ in that country, on the right track to soliciting financial assistance from the EEC by means of implementing the financial protocols. Once the financial protocol enters into force, the government looking forward to securing loans, in particular from the EIB, is required to comply with a set of technical conditions (rules of procedures), beside specific conditions tailored to the nature of the project. These conditions are contained partly in the Statute of the EIB and partly in the respective financial protocols concluded between the EEC and Lebanon. However, both are inspired by the objectives of the EEC financial contribution.

I-RULES ON PROCEDURES AND GENERAL CONDITIONS

As the financial contribution is a combination of finance from EEC budgetary resources and EIB's own resources, the rules and procedures applied for envisaged loans are a combination of rules incorporated in the financial protocols as well as the Statute of the EIB. Loans granted by the EIB from its own resources are granted in accordance with the conditions and procedures embodied in its Statute, whereas loans on special conditions, and grant aid from the EEC, are granted and managed by the Commission of the EEC in accordance with the rules laid down in the respective protocols. Article 205 EEC confers upon the Commission an exclusive competence to implement the Community budget. This means that decisions on committing EEC budgetary funds cannot be delegated to other institutions or organisations. However, under Article 105 (3) of the Financial Regulations of 21 December 1987 applicable to the general

Community budget, "the Commission may authorise the EIB to administer interest rate subsidies and risk capital operations".[51] Thus, loans for risk capital operations are managed by the EIB upon special mandate from the EEC according to the rules embodied in the Statute and protocols, notwithstanding their source, EEC budgetary resources.[52]

The protocols lay down the procedures through which loans and guarantee operations could be applied for and granted thereafter. The Lebanese state, or the body soliciting loans, has to submit its request for the loan, whether from the EIB's own resources or EEC budgetary resources, to the Commission. The Commission appraises the request for financing in collaboration with the competent Lebanese body and delivers its opinion to the EIB.[53] If the body soliciting the loan is other than the Lebanese state or its organs, whether a private or semi-private entity, the request for the loan is to be transmitted to the Commission through the intermediary of the Lebanese state or its organ to ensure its assent for such a request.[54]

As regards loans from EEC budgetary resources, they are subject to conditions incorporated in the respective protocol. Loans on special conditions have been subject to 40 years reimbursement, with the first ten years free of repayment installments, with a fixed interest rate of 1 per cent. This kind of loan was considered in the first and the second financial protocols only. They were dropped in the third and the fourth financial protocols.

Loans to approved projects from the Bank's resources are subject to conditions laid down in the Statute. The Board of Directors of the EIB is the body entrusted with the exclusive power to take decisions in respect of granting loans and guarantee operations, following the favourable opinion of the Management Committee of the EIB.[55] The Management Committee and the Commission, deliver a favourable opinion towards the proposed project. If either body delivers an unfavourable opinion on the proposed project, the Board of Directors has to take its decision unanimously. If both bodies delivers an unfavourable opinion, the

project is dropped.[56]

EIB loans attract interest rates subject to the conditions of the capital market, (i.e the cost of borrowing), and are determined on the day of the signature of the loan. The EIB cannot grant any reduction in the interest rate.[55] However, if such a reduction in the interest rate appears desirable, an interest rate subsidy may be provided by the EEC. Within such a context, the first protocol specified that interest rate subsidies of 2 per cent are to be granted from the EEC grant aid. However, interest rate subsidies, unlike the protocols with other Mediterranean countries, and to the disadvantage of Lebanon, were provided only in the first protocol. Interest rate subsidies and loans on special conditions were excluded from the third and fourth financial protocols. Instead, the EEC introduced loans from risk capital resources granted from EEC budgetary resources and managed by the EIB upon special mandate.

The EIB only provides loans on the capital market, though on a non-commercial basis, worth 50 per cent of the value of the project. Therefore, the financial protocol has to specify what part of the project should be covered by an EEC financial contribution.

The decision on financing such a project is taken on a case by case basis, according to the nature and particular economic characteristics of the project. Thus, the EEC financial contribution may cover the necessary costs incurred in carrying out approved projects including feasibility studies and consultation. However, the loans do not cover any administrative, maintenance or operational costs.

In addition to the set of rules laid down in the Statute of the Bank and adopted by the protocols, the protocols have laid down further rules governing the rights and procedures for tendering for projects financed by the EEC.

All natural and legal persons of the EEC and Lebanon are eligible for such tenders, provided that they have their headquarters and are registered in either the EEC or Lebanon. Moreover, tendering for projects

of primary interest to Lebanese undertakings are subject to accelerated procedures, provided that the proposed project is estimated at less than ECU 1m. This ceiling was increased to ECU 3m in the third financial protocol in order to encourage the participation of Lebanese firms in tendering activities. Moreover, with a view to encouraging regional cooperation, natural or legal persons of third developing countries associated with the EEC through overall cooperation agreements or association agreements, may be exceptionally authorised by the EEC on a case by case basis to participate in tendering on similar and equal terms as nationals of Lebanon and the EEC.

ii-SPECIFIC CONDITIONS (FEASIBILITY)

In financing projects, both inside and outside the EEC, the EIB takes a strictly developmental approach. The viability of each project is assessed by "teams of qualified financial analysts, economists and engineers able to draw on wide ranging experience built up by the Bank over the years".[58] The EIB adopts a rigorous approach to project appraisal inside the EEC, to assess investment in countries outside the EEC. Through an in-depth analysis of the economic, financial and technical viability of each project, the Bank ensures that the successful execution of the investment it finances will enable the receiver country to raise money back from the project for reimbursement purposes, and have a long term positive impact on social and economic development of the borrower country. This kind of condition is familiar in modern financial relations particularly with the World Bank and IMF. The creditor institutions, whether private or public, resort to such conditions for "safety reasons" to ensure that the borrowing organs have sufficient resources to refund the debts and service the charges. They sometimes get involved in the economic process of the project through various forms of "cooperation", ranging from suggestions

to common feasibility studies including sometimes direct supervision of the envisaged project, let alone evaluating the projects to ensure that the outlined objectives have been achieved.[59]

Since these conditions are specifically tailored to the nature of the envisaged project, they cannot be contained in the respective protocols or in the Statute of the Bank. Therefore, the best method to examine these conditions is to illustrate two projects proposed by Lebanon to be financed, one in the form of a loan from EIB's own resources and the other from EEC budgetary resources in the form grant aid.[60]

The energy project:

Following the modest value of EEC finances allocated to Lebanon in the first financial protocol, Lebanon requested the Commission to identify, as a practical response to its needs, other resources for furthering the proportion of aid available to Lebanon in the EEC financial contribution. The Commission recommended the Lebanese request to the Council, which is empowered to invite the EIB to participate in financing projects in Lebanon. The Council asked the EIB to make EUA 20 m available from its own resources as exceptional aid to Lebanon in the form of loans for reconstruction projects.[61] The Board of Governors adopted a favourable resolution towards the Council invitation under the heading of "exceptional aid".[62] Consequently the EEC and Lebanon signed the "first emergency financial protocol" allocating EUA 20 m in the form of loans, attracting no interest rate subsidy, from EIB's own resources.

Amongst the projects needed in Lebanon an energy project was identified. At that time and consequent to the civil war, the production of electricity power was reduced to six hours per day. Lebanon forwarded a request for a loan for building 30 additional 70 M W turbines at the Jieh and Zook thermal power stations.

The appropriate Lebanese authority submitted to the EIB a

documentation file justifying the loan for the project, concluding that the project represents one of the key measures adopted by the Lebanese government to revive the economy in the country. The project was necessary if anything resembling normal life was to be re-established and maintained in Lebanon. Moreover, increasing electricity output is essential to cope with the expected growth in industrial and commercial activity and to meet increasing private domestic demand. Following a visit to Lebanon by the Commissioner in charge of development, accompanied by a representative of the EIB, the Bank advanced the funds of EUA 20 m under the first emergency aid allowing for different loans in three stages; in June 1978 and in August and December 1979.[63] The loans were for ten years attracting interest rates of 5.15 per cent and 5.9 per cent.[64]

Drinking water project:

Similar means were applied as regards the second project, under a second emergency protocol, following another modest value allocated in the second financial protocol.

In 1982, a member of the Commission[65] visited Lebanon, accompanied by an EIB representative, to examine Lebanon's needs following the Israeli invasion in June 1982 and consequent destruction in Lebanon, and to identify actions which the EEC might take. Amongst different projects put forward by the Lebanese government, ready for external financing, an urgent project was selected, consisting of pumping and piping drinking water for the capital Beirut.[66] The Commission appraised the project from three angles. Political, environmental and economic aspects were taken into account when the Commission recommended the project to the Council.

Politically, the project would have a maximum political impact as an EEC gesture for the support of Lebanon. The project would, moreover, reduce the risk of pollution of the distribution system resulting from the

disruption of the water supply.[67]

The project was classified as part of the reconstruction process undertaken by the Lebanese Government and thus non-direct income producing. Consequently, the project could not be funded by ordinary loans at market price without interest rate subsidies. It is worthy of note that the second financial protocol did not provide for interest rate subsidies from EEC grant aid. The cost of the project was estimated at around ECU 35 m of which it was suggested that ECU 20 m may be financed by the EEC, and ECU 15 m by Lebanon. The proposal of the project called for international tendering procedures for its essential components, whereas tendering as regards pipes was restricted for tendering by Lebanese firms in accordance with the rules of the second financial protocol with a view to encouraging the participation of Lebanese firms. Hence, the Commission recommended to the Council to provide Lebanon with ECU 20 m as non-refundable exceptional grant aid from EEC budgetary resources. On 14 March, the Council adopted a decision granting Lebanon an exceptional aid of ECU 20 m for a project to supply drinking water to the capital Beirut.[68] This decision did not take effect until Lebanon and the EEC signed the "Financing Convention" for this purpose on 22 November 1983.[69] However, the continuation of the civil war prevented the implementation of the project.

C-THE IMPACT OF EEC FINANCIAL CONTRIBUTION ON THE RELATIONSHIP BETWEEN THE EEC AND LEBANON

The four financial protocols together provided Lebanon with operations financing resources reaching ECU 292 m from a combination of the Bank's own resources in the form of loans, i.e own paid-up capital and borrowings, and from EEC budgetary resources in the form of a mixture of loans from risk capital resources, loans on special conditions and grant aid. The breakdown of the EEC financial contribution from the European

Investment Bank and the EEC budget has been as follows:

Fig 6.1

The breakdown of the EEC financial contribution to Lebanon

	loans from EIB's own resources	loans from risk capital	loans on special conditions	grant aid	total aid
1st F.P (78-81)	20	-	2	8	30
1st Emergency aid(77-78)	20	-	-	-	20
2nd F.P (82-86)	34	-	5	11	50
2nd Emergency aid (82-)	50	-	-	-	50
3rd F.P (88-91)	53	1	-	19	73
4th F.P (92-96)	45	2	-	22	69
	222	3	7	60	292

Source: EIB Information No 66 (1988) and EIB Annual Report (1990).

Lebanon was allocated finances amounting to ECU 223 m over 15 years, save in the fourth financial protocol. However, as the situation in Lebanon was deteriorating owing to the continuation of the civil war, the EIB ceased to apply the respective protocols, except for ECU 40 m for energy projects implemented between 1978 and 1983.[70]

In 1990 a new era of peace dawned enabling Lebanon to initiate and proceed with a process of reconstruction. The civil war has resulted, inter alia, in complete destruction of Lebanon's economic infrastructure. Without launching the process of reconstruction, the process of social and economic development would hardly take off. Within such a context, an International Fund for Reconstruction of Lebanon was launched. It is evident that rebuilding Lebanon's economic infrastructure, such as energy

supply projects, drinking water and irrigation projects, transport projects, telecommunication system, etc., are prerequisite capital projects for implementing any successful economic development plans in Lebanon.[71] Even if we assume that the EIB rightly ceased to apply the first three financial protocols, we may still evaluate, the effectiveness of EEC contributions to the process of reconstruction in Lebanon and consequently to the country's social and economic recovery and development, particularly as concerns the fourth financial protocol.

The first financial protocol contributed, in principle, ECU 30 m. This contribution represented 4.4 per cent of EEC's financial aid to the Mashreq and Maghreb countries and Israel. This small amount of finance contributed little if any to the process of rebuilding the economic infrastructure of Lebanon.[72] Consequently, Lebanon expressed its disappointment as to its share in the EEC finance pledge to Lebanon and urged the EEC to use all possible means to re-formulate its theoretical objectives into practical means. The EEC furthered ECU 20 m in 1978 as "exceptional aid". This aid marked the first emergency aid. EEC financial assistance was diversified, as the table above shows, between loans and grants. The loans were allocated to Lebanon from EIB resources in accord with market conditions and prices. However, the interest rate of that loan was to be subsidised by 2 per cent from EEC grant

The second generation of financial protocols concluded between the EEC and the Mashreq and Maghreb countries and Israel provided for a total of ECU 1015 m. This represented an increase of 51 per cent over the first generation of financial protocols. Lebanon's share from this financial contribution did not acceed ECU 50 m. The increase of the Lebanese share was calculated using the same criteria as those applied in respect of the Mashreq countries, without taking Lebanon's special needs into consideration. In addition to disadvantages for Lebanon, and contrary to the case in all the loans from the Bank to other countries, the second financial protocol dropped the interest rate subsidy to Lebanon funded

from EEC budgetary grants.

In 1987, the EEC decided on a much larger package of loans from the Bank and budgetary aid than under the second protocol, comprising ECU 1003 m in loans from the Bank's own resources and ECU 615 m from EEC budgetary resources advanced in the form of outright grants or risk capital granted and managed by the Bank. Compared with the preceding generation, this was tantamount to a 67 per cent rise in lending from the Bank and 48 per cent in fund from the EEC. As regards Lebanon, however, its total financial assistance rose by 46 per cent compared with the level under the earlier financial protocol. This increase was less significant than the increase in the share of other Mediterranean countries. This means that the percentage of financial resources allocated to Lebanon, with references to total EEC financial contributions, fell to 4.5 per cent, i.e 0.5 per cent less than the earlier share in 1982.[72]

The fourth generation of financial protocols witnessed, with reference to the third generation of financial protocols, a further increase in EEC financial contributions for financing operations in the Mediterranean countries, as regards both loans from the Bank's own resources and EEC budgetary resources. However, Lebanon's share under the fourth protocol did not only remain less significant; it even decreased from the level of the preceding protocol. The EEC financial contribution to Lebanon's "social and economic development" represented only 3.3 per cent of the total EEC financial assistance package to the non-European Mediterranean countries.

An innovatory feature of the fourth financial protocols signed with the Maghreb and Mashreq countries has been the allocation of a specified amount of financing operations from risk capital resources. The use of risk capital methodology provides a versatile means aimed at promoting the implementation of investment schemes undertaken jointly by national enterprises working with companies from the EEC in the industrial sector.[74] The EEC considers the provision of risk capital as a

clear indication of its intention of further exploring and developing industrial cooperation with the Mediterranean countries in a flexible and risk sharing manner.

Recent studies carried out by the Council for Reconstruction and Development (a Lebanese public organ) estimate the bill for reconstruction to be at about $ 17 bn.[75] A comparison between the estimated bill for reconstruction and the EEC financial assistance shows how modest the EEC contribution to the "social and economic development" of Lebanon is. Just as the objectives and the general framework within which the financial protocols operate, in particular the fourth financial protocol, fail to take into account Lebanon's level of economic development or its special needs, so did the criteria in accordance with which finances to Lebanon under the fourth protocol were allocated. The corresponding amount of finances represents the smallest portion amongst all the Mediterranean countries. The decrease in the EEC financial contribution to Lebanon clearly indicates that the financial resources allocated to Lebanon were once again calculated without taking, besides other elements, Lebanon's special and urgent needs into account.

There are different interpretations for the EEC's position towards Lebanon. The EEC has already made over the past years financial allocations to Lebanon reaching ECU 292 m which Lebanon has not been able to use. Nonetheless, these finances have not to be written off, and Lebanon would remain eligible to use these resources, in accordance with the respective protocols, until they are exhausted. This assumption holds true, but involves some weaknesses. The European Council, meeting in Madrid in 1989, issued a statement "reaffirming the commitments of the EEC and its member states to help provide Lebanon with assistance needed to build its future and viewed favourably the participation of the EEC in the pledging conference for the creation of the Lebanon Assistance Fund".[76] Although legally non-binding, the statement is of extreme political significance. It reflects the EEC will to take Lebanon's special

needs into account when a decision is to be taken in this field, subsequently neutralising any legal barriers, which may obstruct progress. This means that the EEC has pledged to provide Lebanon with the needed assistance regardless of unexhausted financial resources. The unused financial resources were already allocated to Lebanon in "harmony" with other Mediterranean countries.

Another interpretation might be that the EEC has not taken into consideration the special needs of Lebanon for "harmony reasons" to keep the adopted criteria in calculating the finances allocated to the Mediterranean countries operative. This should not, however, debilitate the possibility arising from the previous positive attempts to extends funds to Lebanon under an "emergency or exceptional aid" protocol.

A second explanation for the EEC's poor performance under the fourth financial protocol is political in nature. It could be construed that the EEC did not increase, or even keep at the same percentage, financial means allocated to Lebanon owing to its lack of confidence that Lebanon was treading the path of lasting civil peace. Subsequently, Lebanon would not be able, as the case of previous protocols, to make use of the resources, particularly in fields of activities laid down in the respective protocols. It would be altogether a different assumption to think that the EEC lost its interest in Lebanon altogether. Whichever assumption holds true would consequently involve questions about the EEC's intentions to contribute to the Lebanese efforts towards the process of reconstruction as a prerequisite for economic development.

VI-THE EEC FOOD AID POLICY AND LEBANON

The Treaty of Rome has conferred, as far as food aid is concerned, no powers upon the EEC to conduct food aid policy towards a third party. The idea of providing food aid first surfaced in 1969, to do away with agricultural production surpluses generated by the CAP.[77]

Consequent to international commitments involving EEC participation in defined food aid programmes,[78] the Commission prepared its first detailed policy programme for food aid to developing countries.[79] This plan "marked an innovation in the EEC policy, since the EEC granted food aid only on an exceptional basis , and always at national level".[80] The main purpose of the Commission proposal was to set up a medium-term target programme of three years within which food aid commitments of the EEC would be determined annually. In addition, the proposal set up general principles for implementing the EEC food aid policy. Furthermore, the Commission intended to acquire authority to take executive decisions, if necessary with the assistance of government experts on development and cooperation matters. Consequently, ad hoc regulations were adopted annually by the EEC Council of Ministers laying down general rules for the supply of cereals and skimmed milk powder.[81] In addition, the Council adopted an annual programme of food aid.

Under these arrangements, the Council centralised the decision-making process for food aid policy. It was entirely responsible for structuring and managing EEC food aid. It was empowered to take decisions, and fix quantities to be allocated to each recipient country. Its authority covered every detail in food aid operations.[82] The EEC food aid policy and management was thereby suffering from unwieldy procedures and shortcomings.[83]

Developments in the field of food aid policy were effected when the food aid policy was integrated with the EEC development policy based rather on purely humanitarian considerations to combat hunger in the world, "mainly in Africa". The Commission proposed[84] to the Council a regulation which was, after approval by the European Parliament,[85] adopted by the Council in 1982.[86] It amended Regulation 2750/75[87] on food aid policy and management.

The Regulation was the first to draw up an independent policy concerning food aid. It highlighted EEC food aid policy as a new

community policy not defined in the Treaty of Rome. The Council cited Art 235 EEC as a legal basis for the Regulation. This Article authorizes the EEC to take action in areas where it lacks the necessary powers to do so, provided that the Council acts unanimously on a proposal from the Commission after consulting the European Parliament. The EEC has usually used Article 235 as a legal basis for action in the absence of treaty-making competences. For it, however, the political will or a common position between the member states must exist to provider the EEC with the necessary background to act, pre-empting member states from doing so.[88] The Regulation of 1982 established a new instrument of Community policy for cooperation with the developing countries. It has the following main characteristics:

1-The Regulation established the main objectives of food aid policy. It defined them as raising the standard of nutrition of the recipient peoples; helping in emergencies and contributing towards the balanced economic and social development of the recipient countries. By setting up defined objectives for its policy, the EEC marked a move from mere disposal of surplus to the construction of an independent policy targeted at defined objectives relating directly to development.

2-The Regulation laid down specific criteria for supplying food aid as a basic need in recipient countries. The criteria take the basic needs of the recipient countries, such as per capita income and the balance of payments situation of the aid receiving country, into consideration when a decision is taken to break down total quantities to recipient countries.

The centralisation of the decision making process remained the main feature of the Regulation. The Council reserved to itself most of the power regarding food aid policy. It remained empowered to lay down the general rules and procedures for implementing food aid operations.[89] On the other hand, and as far as the management of the policy is concerned,

the Regulation delegated some of the administrative power to the Commission. It provided the Commission with a limited power to take action in case of emergency. However, the administrative power of the Commission was restricted by the power of the ad hoc Food Aid Committee established for the task of delivering its opinion to the Commission on a given action. The power of the Committee is sufficient enough to block action by the Commission if its opinion contradicts that of the Commission. In such a case, the Commission would be unable to take a decision since the matter would be transferred to the Council for a final decision which may be contrary to the Commission's proposal as both the Council and the Committee represent the interests of the member states. This holds true because although the Food Aid Committee is chaired by a representative of the Commission, its members, who solely have the voting rights, are representatives of the member states.

Within such a context, the Regulation has divided the powers in the field of food aid policy and food aid management between the Council and the Commission. It has allocated to the Council the power to act by a qualified majority on a proposal from the Commission, after consulting the European Parliament:

-To decide on total quantities of each product on an annual or multiannual basis

-To determine the countries and organisations to which food aid may be supplied on an annual or multiannual basis

-To define the basic products to be supplied as aid, taking into account the available stocks of the production question

-To determine the derived products to to be supplied as food aid

-To lay down general criteria for the transport of food aid beyond the f.o.b stage.[90]

The Regulation thus confers upon the Council the power to decide on the general framework within which specific food aid apportionment

and management may be effected by the Commission. There exists in this way a general background against which specific decisions are to be taken by the Commission on the allocation and management of food aid. Within such a context, the Commission, subsequent to "compulsory" consultation with the Food Aid Committee, decides on the allocation of food aid to recipient countries and organisations and amends such allocation during the implementation of the annual programme. The Commission may, in addition, define the quantities and the nature of the cereals products which the member states have to make available for emergency action.[91] Furthermore, the competence of the Commission is extended to cover the power to take action in case of emergency.

The EEC emergency aid is targeted (outside the EEC) at those facing exceptional and serious economic and social difficulties as a result of natural disasters or extraordinary circumstances with similar effects. There are two categories of emergencies to which the Commission may refer in the implementation of action for food aid policy. The first category may apply when certain countries are facing serious difficulties generated by sudden unforeseeable natural disasters. In such a case, the Commission has the power to take action and then inform the member states. The second category is defined as applicable when countries face serious difficulties as a result of exceptional circumstances comparable to natural disasters.[92] The Commission may decide on action after consulting the member states which may communicate an objection within 48 hours.

The Commission has felt that this Regulation involved ambiguities as a source of frequent conflict between the Community institutions. The Regulation of 1982 left the Commission far from controlling food aid management, let alone policy making. Seeking to incorporate food aid policy more effectively into EEC development aid policy, besides avoiding fragmentation of management responsibilities spread too widely, the Commission has sought to strengthen the Commission's powers of

implementation of EEC food aid policy. The Commission has presented a new proposal to the Council aiming at reforming the Regulation of 1982 on food aid policy and food aid management. The Commission's proposal involves amendments to the basic framework of the Regulation and changes in the organisation of the departments responsible for implementing the policy.[93]

After reaching a common position and following the assent of the European Parliament,[94] the Council formally adopted on 22 December 1986 a new Regulation on food aid policy and food aid management, initially concluded for one year expiring on 31 December 1987.[95] The short validity of the Regulation provided an opportunity to review the applicability of the Regulation in the light of experience. However, it was first extended for a period of six months, and then extended twice for a one year period each time until June 1990.[96] The Regulation of 1986, in addition to repealing the Regulation of 1982, transferred the EEC food aid policy to the sphere of EEC policy of cooperation with the developing countries. The Regulation of 1986 enhanced the objectives of the earlier Regulation by aiming at promoting food aid security in the recipient countries and regions, and supporting efforts initiated by recipient countries to improve their own food production.[97] Moreover, the new Regulation strengthened the criteria for providing food aid. In addition to the criteria provided in the Regulation of 1982, the new Regulation added to per capita income the "existence of particularly impoverished population groups" with respect to which the "economic and social impact" and financial cost of the proposed action are to be taken into consideration when supplying food aid.

As regards the procedures for implementing food aid operations, (division of powers between the Commission and the Council), the Regulation of 1986 has transferred certain managerial powers to the Commission,[98] particularly in the area of decisions relating to total quantities of each offered product, defining the basic products to be

supplied as food aid and determining the derived products to be supplied as food aid. However, the importance of the development in the Commission's power to implement such operational tasks has been reduced by the power of the ad hoc Food Aid Committee. The Food Aid Committee has to be consulted prior to any action taken by the Commission. Like the previous Regulation of 1982, both the Commission and Food Aid Committee are to have a common position as a basis for the Commission's power to take decisions. However, if the two bodies differ in their views, the Commission loses its power to make a decision, by referring the issue to the Council which may decide in a way contrary to Commission intentions. However, the Regulation of 1986 has indeed enhanced the powers of the Commission to take action in emergency cases.[99]

In 1990, before the expiry of the Regulation, the Commission proposed a new regulation amending the Regulation of 1986 and seeking a strengthening of the managerial and operational powers of the Commission.[100] To achieve this, the role of the Food Aid Committee would be that of a consultative committee in accordance with Regulation 373/87[101] which lays down various types of procedures for committees assisting the Commission in the exercise of powers conferred on it by various Council decisions.

The Council adopted the new Regulation, at present in force, regulating EEC food aid policy and food aid management.[102] The present Regulation is of unlimited duration, and is intended to adapt the role of the Food Aid Committee to the types of committee roles established by the Council in its Regulation 373/87, for making the decision-making process more appropriate and efficient. The present Regulation retains the power of the Commission concerning managing and operating the EEC food aid policy under emergency circumstances.

Currently, a debate is taking place in the Commission on the rationalisation of the EEC humanitarian aid system and to improve its

organisation. The debate is aimed at defining a "unified framework for emergency aid and the possible establishment of a European Office for Humanitarian aid; and defining a specific financial system adapted to humanitarian operations".[103]

Hence, the EEC food aid policy currently constitutes an integral part of the EEC development and cooperation policy with developing countries. The Council has the power to set up the general framework within which the Commission is empowered to operate the policy.

Within such a context, Lebanon was not considered as an eligible beneficiary country as regards EEC food aid with respect to categories of food aid, normal annual food aid programme and emergency food aid.

As far as the normal annual food aid programme is concerned, the criteria set up by the Council to determine whether a country is to be classified as a recipient country did not apply to Lebanon. Prior to the eruption of the civil war in Lebanon in late 1975, the per capita income in Lebanon was higher than the average set up by the Council.[104] In addition, Lebanon had no problems as regards its balance of payments; its economic stability was not endangered. However, following the outbreak of the civil war, Lebanon became for the first time necessarily included in a field relevant for food aid. As such it qualified for EEC emergency food aid.[105]

It is worth mentioning that political instability and war are included in the second category for eligibility for emergency food aid, whereby the Commission has to consult the member states by telex, giving them 48 hours to reject the proposal. In 1976, after the outbreak of the civil war, the Commission, after consulting the member states, arranged for the first emergency dispatch of food directly to Lebanon. It amounted to ECU10m, comprising aid in the form of food and medicines and other general supplies. Since then, and consequent to the continuous tragedy of the war in the country, Lebanon has been a frequent recipient of EEC emergency food aid. This aid has amounted to ECU 55.9 m until 1990.

The emergency food aid was distributed directly by the Commission or by specialised organisations such as the International Committee of the Red Cross, the League of the Red Cross Societies,[106] and other non-governmental organisations meeting the conditions laid down by the EEC and accredited by the Commission.[107]

The following tables show the details of the EEC emergency aid and annual food aid to Lebanon.

Fig 6.2

Emergency food aid by the EEC to Lebanon

year	value 000ECU	volume tonnes	products	reference Bull EC
21.12.76	10280	-	General	12-76, 2325
12.02.76	_	25	Skimmed milk powder	2-7, 2324
= = =	_{		Medical supplies	= = =
= = =	1000{	3589	cereals	= = =
= = =	{	250	Skimmed milk powder	= = =
= = =	{	2	butteroil	= = =
22.03.78	100	_	medical supplies	3-78, 2.2.31
Nov.78	400	_	medical supplies	11-78, 2.2.21
April.78	300	_	medical supplies	4-81, 2.2.34
21.06.82	4200	20000	cereals	6-82, 2.2.27
29.06.82	10000	_	general	7/8-82, 2.2.37
6.10.82	8900	_	general	10-82, 2.2.23
21.09.83	500	_	general	9-83, 2.2.24
23.11.83	1000	_	general	11-83, 2.2.37
30.11.83	1000	_	general	11-83, 2.2.49
June 85	_	70	Skimmed milk powder	6-85, 2.3.51

Dec,86	500	_	General	12-86, 2.2.34
12.02.87	500	_	medical supplies	2-87,2.2.31
19.02.87	400	_	medical supplies	= = =
11.12.87	2000	_	Non govt'l Org.	12-87, 2.2.51
April 89	300	_	general	4-89, 2.2.50
= = =	1500	_	Maronite Welfare Fund	= = =
= = =	2500	_	basic needs(medicines)	= = =
16.08.89	500	_	medical supplies	7/8-89, 2.2.46
31.08.89	8600	_	general	= = =
March 90	800	_	Medical supplies	3-90,1.2.59(ii)
Feb. 90	275	_	medical supplies	1/2-90, 1.2.65
= = =	359	_	Govt'l organisations	= = = =

Fig 6.3

Annual food aid from the EEC to Lebanon

year	Cereals	Skimmed milk powder	Butteroil	others	reference Bull EC
1978	_	350	650	_	4-78, 2.2.24
1979	10000	350	650	_	5-79, 2.2.32
1980	10000	1100	700	_	
1981	10000	1100	1000	_	5-81, 2.2.23
1982	token entry	1100	_	1000	4-82, 2.2.20
1983	10000	800	_	_	7/8-83,2.2.67
1984	8000	600	_	_	7/8-84,2.2.46
1985	8000	500	_	_	7/8-85,2.3.45
1986	10000	300	200	_	7/8-86,2.2.36
1987	10000	3000	200	_	4-87,2.2.33
1988	10000	800	200	3000	

VII-CONCLUSIONS

The Treaty of Rome did not provide for a development cooperation policy. Such a policy based on Article 235 EEC evolved over the years, involving international responsibilities incumbent upon the European Communities and calling for action. It comprises essentially food aid policy, both emergency aid and annual food aid programmes, and financial and technical cooperation policy.

Food aid policy first appeared in 1969 with a view to doing away with agricultural surpluses. It developed through different stages to an instrument contributing to the efforts leading to the economic development of the receiver countries. Similarly, the EEC financial cooperation policy, following its emergence in the Agreement with Greece, witnessed progressive developments towards the same objectives. Recently, within the fourth generation of the financial protocols, the EEC has taken a further innovative step in this field introducing, inter alia, two financial assistance packages concerning the environmental problems in the Mediterranean Sea and structural adjustment programmes, in cooperation with the Bretton Woods institutions, in particular the World Bank.

It is against this backdrop, that the EEC development cooperation policy operates in the Mediterranean region and consequently in Lebanon.

As the EEC food aid policy was designed to combat hunger and famine in the world, particularly with respect to Africa, the receiver countries were restricted to compliance with specific criteria. As such, Lebanon received its first EEC food aid consignment under an emergency heading following the eruption of the civil war in 1976. Thereafter, it was included within the beneficiary countries in the EEC food annual programme receivers. Lebanon however, has its own special circumstances generating special needs. The continuation of the civil war

for over 16 years made Lebanon's need for survival a first priority. As such, basic needs were matched by the EEC food aid for direct consumption for survival purposes, in particular by displaced people. Yet, nothing argues against the assumption that if the EEC had not contributed to these needs, as far as food aid is concerned, the balance of payments in Lebanon could have met further difficulties, since Lebanon had to spend its own hard resources in purchasing and supplying urgent basic needs. Indirectly, therefore, the EEC food aid policy, particularly emergency food aid consignments contributed to easing Lebanon's balance of payments difficulties.

The financial cooperation between Lebanon and the EEC has its origin in the conclusion of the Cooperation Agreement of 1977 in line with EEC's Mediterranean global approach. In principle, financial cooperation was directed towards contributions to Lebanese efforts in economic development. However, the eruption of the civil war in Lebanon two years prior to the conclusion of the first financial protocol and its continuation then for sixteen years, made the implementation of this protocol, in particular if the rules embodied in the protocols were strictly taken into consideration, impossible. Nonetheless, Lebanon and the EEC continued to conclude further financial cooperation protocols with no chance for implementing them, presumably for "harmony or political reasons".

Recently, the political situation in Lebanon has improved allowing for launching the revival of civil peace in Lebanon. The destruction of the civil war in Lebanon generated special and urgent needs in Lebanon, which must be met. Without which, anything resembling basic and normal life to be resumed in Lebanon would hardly be conceivable, let alone operating any social and economic development. The fourth financial protocol, however, which is expected to be concluded between Lebanon and the EEC, has not taken these special Lebanese needs into consideration.

EEC innovatory steps in the fourth generation of financial protocols could be of great significance for countries like Algeria and Egypt undertaking structural adjustment programmes under the surveillance of the Bretton Woods institutions. But, however significant and indicative these measures might be, they do not correspond to Lebanon's urgent needs. Moreover, the amount of finances allocated to Lebanon were worth only ECU 69 m compared with Lebanon's bill for reconstruction estimated to be at about $ 17 bn. Consequently, the statement of the European Council meeting in Madrid reaffirming an EEC commitment to undertake an obligation to contribute to Lebanon's effort in its process of reconstruction has as yet failed to translate into action.

As one Lebanese official expressed it to the Commission of the EEC: the Community does not forget to produce always its highest concern as regards Lebanon; however, no resolute action yet is taken. Too many words and too little action, if any. Would the EEC respond to Lebanon's special and urgent needs under emergency in the form of exceptional financial assistance in the near future?. One may hardly claim that the performance thus far by the EEC can promote optimal relations between the EEC and a country like Lebanon, which has been claimed to have a "special and historical" relationship with the EEC .

FOOTNOTES

1- Recommended by the Commission in May 1991 and initialled in July 1991, The Commission of the European Communities, Com (91) 203 final.

2- A speech made by the Head of the Commission to the European Parliament on 9th February 1971, 5th Gen. Rep. EC, (1971), pt 400, p 307.

3- O.J No L 267, 27.09.78, p 21; No L 337, 29.11.82, p 22; No L 22, 27.01.88, p 25 respectively.

4- Awaiting signature, not published yet.

5- The EUA stands for European Unit of Account. It was originally adopted in 1974 for the Community's statistical and financial transactions purposes. It values the sum of fixed amount of member states currencies. The ECU, the European Currency Unit, replaced the EUA in 1981 following its introduction within the European Monetary System in 1978. Both the EUA and the ECU are the same in composition and equal in value. For further details see EIB, 25 years 1958-1983.

6- Bull EC No.1/2, (1991), pt 1.3.24.

7- Bull EC No.9 (1976), pt 2324. For more details as regards the backgrounds of the first financial protocol see Chapter IV of this Thesis p 162.

8- Bull EC No 10 (1981), pt 2.2.40.

9- Following the invasion by Israel of Lebanon in 1982.

10-Such as emergency financial aid, Bull EC No 3 (1982), pt 2.2.40.

11-The Commission of the European Communities, Com (87) 529 final.

12-O.J C 323, 2.12.87, p 6.

13-O.J C 13, 18.1.88.

14-O.J L 22, 27.1.88, p 22.

15-Overall Decision by the Council on redirecting the Mediterranean policy (1992-1996), Bull EC 12 (1990), pt 1.4.15.

16-Com (85) 646.

17-Com (91) 184.

18-Com (91) 203.

19- Art 9 SEA amending At 238 EEC reads as follows: "These agreements shall be concluded by the Council, acting unanimously and after recieving the assent of the European Parliament which shall act by an absolute majority of its component members".

20-European Parliament, EP News, 13-17.Jan.1992, p1 &4.

21-Com (91) 48.

22-For a discussion of this issue see Chapter Four, Section III B (i).

23-It enjoys financial independence, with its member states being the sole shareholders, and is not funded from the Community budget.

24-In addition to Art.2 EEC there are other objectives established by Articles 130a and 130b which were added to the Treaty by virtue of Article 23 of SEA, O.J L169, 29.06.87.

25-EIB information , No 66, Nov. 1990.

26-Written Question No 489/74, 12.11.74, O.J C 55, 7.3.75, p 4.

27-Written Question No 489/74, 12.11.74, O.J C 55, 7.3.75, p 4.

28-Para 5 Res.15 April 83, O.J C 128, 1983, p 98.

29-Case 110/75 Mills v.EIB [1976] ECR 955 at 968.

30-Case 85/86 Commission v.the Board of the Governors of the EIB [1988] ECR 1281 at 1320.

31-Case 85/86 Commission v.the Board of the Governors of the EIB [1988] ECR 1281 at 1320.

32-Case 85/86 Commission v.the Board of the Governors of the EIB [1988] ECR 1281 at 1320; CML Rev 1988, p 621.

33-German expression, see Hilf M., Die organisationsstruktur der Europaischen Gemeinschaften (Spring. Verlag 82) p 32, traced in Kaser J., The EIB : its Role and Place within the European Community Community System, Ybk of E L, (1984), p 321.

34-Article 228 EEC.

35-Art. 18 (1) of the Statute of the EIB.

36-Art.9 and 18 of the Statute of the EIB.

37-Review EIB information issues and footnote (28).

38-Written Question no 652/75, O.J C 119, 29.5.76, p 4.

39-Art 180 EEC.

40-On the Treaty amending the Statute of the Bank see O.J No L 91, 6.4.78, p 1.

41-Art 20 of the Statute of the Bank.

42- Art 3 of the third financial protocol, O.J No L 22, 27.1.88, p 27.

43- EIB Information, No 57 (1988), p 9.

44- EIB Annual Report, (1989), p 16.

45- Please S., The Hobbled Giant: Essays on the World Bank, (1984), p 18.

46- Ibid, p 18.

47- The Bank Operational Manual, For further details concerning this topic see Feinberg .R and Kallab.V ed, "The World Bank: Lending for Structural Adjustment" in Adustment Crisis in the Third World, U.S-Third World Policy perspectives, No 1; The Courier, No 111, (1988), Special Dossier, p 50-95.

48- Art. 13 of the proposal presented by the Commission to the Council on the application of the financial protocols concluded by the EEC with non-member Mediterranean countries, The Commission of the European Communities, Com (91) 184 final.

49- Art 4 of the Fourth financial protocol.(awaiting signature).

50- Art 8 of the financial protocol.

51- The Commission of the European Communities, Com(91) 184 final.

52- Art6 of the third financial protocol.

53- Art 10 of the third financial protocol.

54- Art 6 (3) of the first financial protocol.

55- Art 11 and 21 (3) of the Statute of the EIB.

56- Art 21 of the Statute of the EIB.

57- Art 19 of the Statute.

58- EIB Information, No 57, Sep (1988).

59- Art. 8 of the proposal presented by the Commission to the Council on the application of the financial protocols concluded by the EEC with non-member Mediterranean countries, The Commission of the European Communities, Com (91) 184 final.

60- It is worth mentioning that the unavailability of the agreement granting loans or grant aid makes it difficult to examine these conditions in detail, in particular, since the project financed from the EEC budgetary resources in the form of grant aid was not implemented.

61- Bull EC No 12, (1977), pt 2.2.53.

62- EIB Annual Report (1979), p 53&54 and (1980), p 62.

63-EIB Annual Report, (1979), p 53 and 58.

64- Bull EC No 7/8, (1979), 2.3.87; No 12, (1979), 2.3.94.

65- Mr Pisani who visited Lebanon between 5 and 8 December 1982 was in charge of development, Bull EC No 12, (1982), pt 2.2.65.

66- Commission of the European Communities, Com (82) 375 final.

66- Ibid, Com (82) 375 final.

68- Bull EC No 3, (1983), pt 2.2.36.

69- Commission of the European Communities, Press Release, 22 Nov. 1983, Ip (83) 402..

70- For further details see EIB Annual Reports, 1979-1983.

71- All these sector are in a state of collapse,and they can hardly produce 25 per cent of the needed services.

72- Reinforcing one energy project cost ECU 40 m. For further details see Bull EC No 7/8, (1979), 2.3.87; No 12, (1979), 2.3.94.

73- EIB Annual Report (1987), p 70.

74- Risk capital is employed for financing acquisition of direct equity participation by the Bank on behalf of the EEC or for lending to states or to a national development agency to bolster an enterprises's equity capital.

75- Al Hayat, Arab daily newspaper published in London, Al Hayat Business, Friday 11 October 1991, issue No 10475, p 9.

76- Conclusion of the European Council meeting in Madrid, Bull EC No 6 (1989), pt 2.3.62.

76- The EEC financial motives had a role in its "humanitarian" food aid to compete hunger in the world since disposal of surplus would save storage cost in addition to the cost of necessary export refunds. A food aid scheme was devised by the Commission in 1969. See Strasser D., The Finances of Europe, (1980), p 285.

78- Following the Kennedy round, the Food Aid Convention was first concluded in 1967 and came into effect in 1968 for a duration of three years, (68/69-70/71).

79- Bull EC No 3, (1974), pt 1301-13, p 29.

80- Europe Information Development, "Food Aid From the Community", December (1982).

81- O.J No L 138, 29.05.75, p .

82- Bull EC No 11(1978), 2.3.18.

82- Europe Information Development, "Food Aid From the Community", December (1982).

84- O.J No C 26, 30.01.79, p 2.

85- O.J No C 93, 3.04.79, p 75.

86- Council Reg. EEC No 3331/82, 3 Dec. 82, O.J L 352, 14.12.82, p 1

87- O.J No L 281, 1.11.75, p 89.

88- However, usually when Article 235 is cited as a legal basis for Community action, the member states make clear that such a decision does not effect their jurisdiction in the field dealt with.

89- Art 4 of EEC Reg No 3331/82, op cit.

90- Art 4 of EEC Reg. 82 No 3331/82, op cit.

91- Art 5 of EEC Reg.82 No 3331/82, op cit.

92- Such as war or political instability.

93- Bull EC No 7/8, (1986), 2.2.34; O.J No C 265, 21.10.86.

94- O.J No C 297, 24.11.86.

95- Council Regulation (EEC) No 3972/86 on 22 Dec 86, O.J No L 370, 30.12.86.

96- Council Regulation (EEC) No 3785/87 of 14 Dec 87, O.J L 356, 18.12.87, p 8; No 1870/88 of 30 June 88, O.J L 168,1.7.88, p 7; and No 1750/89 of 28 June 89, O.J L 172, 21.6.89 respectively.

97- Art 2 of EEC Reg. No 3972/86.

98- Art 4 of EEC Reg. No 3972/86.

99- Art 6 of EEC Reg. No 3972/86.

100- Communication from the Commission to the Council, the European Commission, Com (90) 193, 4 May 1990.

101- Council Regulation (EEC) No 1930/90 of 29 June 1990, O.J L 176, 7.7.90, p 6.

102- Council Regulation (EEC) No 373/87 of 13 07.1987, O.J L 197, 18.07.87, p 33.

103- For details see , European Commission, press release, Information, Emergency Humanitarian Aid from the Community, 24.July.1991.

104-The Council set up the per capita income as US $680 per year in 1979, Bull EC 5-81, 2.2.23.

105-Lebanon receives two kinds of emergency food aid. Those which are directed to the Lebanese people and others for the benefit of Palestinian people living in Lebanon. The amount listed below belongs merely to those for the beneficiary of Lebanese people.

106- Office of the UN Higher Commission for Refugee; UN Children's Fund; World Food Programme; and UN Relief and Works Agency For palestine Refugees in the Near East.

107- In order to be accredited by the Commission as a non-governmental organisation eligible to be supplied EEC food aid for the account of beneficiary countries, Article 2 of Regulation laid down the conditions as follows:

- Have their headquarter in a member state of the Community;

-Have a statute that is characteristic of non-governmental organisation

-Show that they have the capacity to carry out food aid operation successfully

-In exceptional circumstances the Commission may accreditan NGO which does not meet the conditions specified above.

GENERAL CONCLUSIONS

It is widely recognised by academic writers that not only economic considerations make relations between the EEC and the Mediterranean countries so important, but that "historical links [too] between these countries and several member states of the EEC have been particularly close either because of past colonial links or because of shared cultural heritage. These links continue to represent a factor largely determining the attitude to policy of decision-making elites in both Europe and in the non-European Mediterranean".[1] EEC interests towards the Mediterranean countries underlined the EEC development of a special relationship between the EEC and the countries of the region. The Communique' of the Paris Summit in 1972 called upon the Community to respond more than in the past to the expectations of all developing countries, and particularly to fulfill its commitments to the countries of the Mediterranean region, without "detracting from the advantages enjoyed by countries with which it has special relations".

The relationship between the member states of the EEC and the countries of the Mediterranean basin involves more than purely economic and trade relations. In fact, most of the countries share some historical, political, cultural and geographical characteristics as common with the member states of the EEC. However, there is no other country in the Mediterranean basin which may possess all these elements at any one time, than Lebanon. The European Parliament in endorsing the Cooperation Agreement of 1977 drew the attention of the EEC to the close economic and historical relations between the Community and Lebanon.[2]

The analytic examination undertaken in the present thesis with respect to the legal framework of trade relations between Lebanon on the one hand, and the EEC and the ECSC on the other, dealt with the question

of whether Lebanon had, at any time, special treatment from the EC as reflected in the legal rules which provide the framework for EC-Lebanese trade and commercial relations. The special characteristics of Lebanon invoked in its memorandum requesting special treatment from the EEC were parallel to the, close economic, political, cultural and historical relations between Lebanon and (some of) the member states of the EC. Moreover, the thesis focuses on the development of the legal framework of these relations in the light of the evolution of international trade law. The analysis evaluates the contribution of the treaty relationships between the EC and Lebanon to the promotion of trade between them involving, more than the promotion of EC imports to Lebanon, the expansion of Lebanon's exports to EEC markets to offset a stubborn trade deficit between the two parties, contributing thereby to the economic development of Lebanon.

Lebanon's contractual trade relationship with the European Communities, first established with the EEC in 1965, has passed through three stages in its form of development, from a non-preferential trade relationship to a partial reciprocal preferential trade relationship and thereafter to a non-reciprocal preferential trade relationship.

The non-preferential trade arrangements stage represented simple succession by the EEC of the six to trade and technical cooperation agreements between Lebanon and the relevant original member states of the EEC, with no developmental contribution to the then existing relationships. The EEC denied Lebanon's request for better access to the EEC markets out of a fear of violating the rules of GATT, namely the MFN clause, notwithstanding the offer it made to Israel involving more favourable access for Israeli products to the EEC markets via various unilateral tariff cuts.

The second stage of the contractual relationship between the EEC and Lebanon claimed to be leading to the formation of a free trade area, despite the lack of two essential elements namely, schedule and plan within a

reasonable length of time. The so called interim free trade area included no express provision referring to the suggested intention. Furthermore, the agreement did not enter into force for lack of the necessary ratifications! There can be found no legal or any other argument to justify the fate of the agreement. The agreement was the production of the quid pro quo deal invoked by France aiming at approaching more balanced relations between the EEC on the one hand, and each of the Arab states and Israel on the other whose agreement with EEC went into force at the intended time. The "interim agreement leading to the formation of a free trade area" was, moreover, short of providing the advantages arising out of the developments in international trade rules, particularly the notion of non-reciprocity of preferences in trade relations between developed and developing countries.

The non-reciprocal preferential trade arrangements stage was the product of the Mediterranean policy. The "new model of relations between developed and developing countries", as claimed by the EEC, involves free access to industrial products under the jurisdiction of both the EEC and the ECSC, originating in Lebanon and exported directly into the EC markets. In addition, this new model of relations includes financial and technical cooperation and food aid at both emergency and annual programme levels. By concluding the Cooperation Agreement with Lebanon, the EEC considered that the Mediterranean policy had been rounded off.

It seems, at first sight, that the contractual relationship between Lebanon and the EEC witnessed a significant development, from non-preferential trade arrangements to non-reciprocal preferential trade arrangements. It would in fact, be a gross mistake to assume that this development was due to elements forming the natural basis for a special relationship between two parties. The development of the relationship was basically due to developments in the rules of international trade law, and to the necessity of implementing a "more balanced approach" between

the EEC on the one hand, and the Arab countries and Israel on the other.

Indeed, the EEC shows great sympathy towards Lebanon. This sympathy was manifested in more than fifty political statements issued by the EEC, in particular within European Political Cooperation, supporting Lebanon. These statements involved commitments to respond and contribute to Lebanon's urgent and special needs, in addition to defend Lebanon's positions in the context of its regional conditions. Moreover, the response of the EEC emergency aid to Lebanon may represent a real EEC endeavour to stand by Lebanon. However the new model of relations between the EC and Lebanon failed once again to respond to the expectation of a developing country, like Lebanon, sharing with the Community common characteristics, for three main reasons. The new contractual model of relations did not take into consideration the special needs of Lebanon, particularly the aftermath of the civil war in Lebanon; as one Lebanese official put it, "the EEC development aid and cooperation represent a drop in the Ocean".[3] Moreover, the free access of Lebanese industrial products and preferential tariff cuts for agricultural products were neutralised owing to the severe rules of origin with respect to industrial products and the quotas and import calendar as regards agricultural products. Furthermore, the EEC Mediterranean policy pledged to take into account the level of economic development in undertaking its commitments in each cooperation agreement with the relevant Mediterranean countries. The great similarities between most of the cooperation agreements contradicts such a pledge. The permanent legal framework between Lebanon and the EEC may scarcely shows a reflection of the EEC's political sympathy and support for Lebanon into special or even close relationship between them. It is even suggested that Lebanon was treated less favourably than the EEC treats other third parties, let alone its next door country Israel.

The developments in the legal framework of the EEC and ECSC-Lebanese relationship was in parallel to the development in the legal

aspects of relationships between developed and developing countries. Rules of international trade have experienced a marked development which have ultimately had profound effects on reshaping relations between developed and developing countries. Part IV GATT has been adopted and it has been the first to introduce the notion of non-reciprocity of preferential treatment between developed and developing countries as a response to the needs of the economically weaker members of the international community of states. The legal effectiveness of the non-reciprocity notion has had to wait for further developments in international trade law in order to exempt this notion from the application of the MFN clause. A generalised system of preferences has also evolved, bringing about, unilaterally, legal conditions for better access of products originating in developing countries, to the markets of the developed countries. The GSP has set up a legal framework of non-reciprocal non-extendible preferential treatment for developing countries waiving the application of the MFN clause to special arrangements under Article XXV GATT, initially for ten years. Following the Tokyo Round, the Enabling clause has been inserted into the GATT system as a permanent legal framework for the differential and more favourable treatment of developing countries in international trade relations notwithstanding the provisions of the MFN clause.

The analysis of the legal framework of relations between Lebanon and the EEC shows development in their relations parallel to those of international trade rules, however, only in the third stage. The first stage of non preferential trade arrangements between two parties took place at the time when the notion of non-reciprocity was first debated. The second stage offered Lebanon reciprocal trade arrangements contrary to the notion of non-reciprocity despite the adoption of Part VI GATT and the GSP and other relevant legal instruments for non-reciprocal non-extendible preferential treatment between developed and developing countries. In the third stage, the EEC and the member states of the ECSC within the

Community responded "more than ever to the expectations of developing countries" and in particular their special relationships with the Mediterranean countries. Nonetheless, the substantial affects of the EEC offer of free access of products originating in Lebanon to the EEC markets, were neutralised by other provisions, namely the rules of origin, quotas and import calendar. Therefore, it would be safe to suggest that although the EEC-Lebanese legal framework of relations witnessed theoretical developments, these developments were, in substance, less than developments witnessed in international trade rules.

Changes in patterns of trade between the preference offering and receiving countries may be used as a measure of the impact of trade preferences on the receiving country, notwithstanding that the data that is needed to examine is the difference between actual trade with the preferences and the trade that would have occurred without them. This can not be observed even by applied economists, it is a customary problem for them.[4] Trade flows between Lebanon and the EEC did not show any improvement as regards the exports of the preferences receiving country, that is Lebanon, to the markets of the preferences offering countries, be it with the EEC of six, nine, ten or twelve. In fact, Lebanese exports to the EEC markets decreased following the preferential treatment offered by the EEC to nearly all developing countries. The proliferation of preferential trade agreements between the EEC and third countries had an adverse affect on Lebanese exports to the EEC. Prior to the establishment of trade contractual relationships, Lebanon enjoyed a small share in the EEC markets with an average of 11 per cent of its total exports. Thereafter, (1967 onward) Lebanese exports to the EEC decreased to an average of 6.6 per cent of Lebanese total exports. These exports never witnessed any further progress, after the proliferation of the EEC tariff preferential agreements with third countries, until 1986, compared to the increase in Lebanon's imports from the EEC which amounted to an average of 50 per cent of total Lebanese imports particularly between 1978 and 1990. This

acute imbalance of trade is not likely to be reduced significantly or even marginally in the short term.

There are different interpretations for the imbalance of trade. It is suggested that the war in Lebanon hindered the proper implementation of the Cooperation Agreement. However, the increase in total Lebanese exports at different intervals during the war minimised the affect of the war on Lebanese exports to the EEC. Independently from it, preferential trade arrangements offered to Lebanon were subject to two main obstacles, that is to say, rules of origin as regards industrial products and import calendar as regards agricultural products. Moreover, the proliferation of preferential trade agreements between the EEC and third developing countries in general and the Mediterranean countries in particular led to a transfer in trade competition from the developing countries, where their markets are heavily protected, to the EEC markets where all these developing countries enjoy, in principle, favourable access to the EEC markets. For these reasons, it is inconceivable for Lebanese producers to develop their share in the EEC markets in the foreseeable future to which they are originally marginal suppliers. Furthermore, trends in Lebanon's trade with the EEC have shown special characteristics. Imports from the EEC have possibly served the major purpose of supporting Lebanese export activities to third countries and capital projects. The conclusion is justified that any equilibrium in the trade balance between the contracting parties is not be expected. Therefore, the endeavour of the Lebanese government should be reoriented towards bringing about the conditions under which the EEC may undertake with greater commitment to support efforts of reconstruction in Lebanon as a prelude to satisfying the economic development in the country.

A twenty five year experience of relations between Lebanon and the EEC may enable the drawing of conclusions and the raising of other questions with respect to both parties, Lebanon and the EEC.

The experience gained from the Greek and Israeli relationship with

the EEC shows that where right terms and suitable conditions were given, relations between a group of developed economies and a less developed economy can be fruitful and contribute to the economic development of the less developed economy. Indeed, the increase of Lebanese exports in 1988-1989 owing to the of the abuse the rules of origin indicated that these rules and the import calendar constituted an obstacle to achieve the trade objectives of the relationship between Lebanon and the EEC. However, should Lebanon persist in this direction, or should it abandon its fervent request for seeking more preferential and liberal terms in the legal framework of its trade relations with the EEC? Is Lebanon in a negotiating position to enable her to achieve any progress along this path? Experience shows negative results, unless Lebanon promotes and adheres to collective Arab action in this direction. Collective Arab action possesses two strong cards, a very wide market need for EEC producers and subsequently exporters and the strategic import products needs of the EEC. This assumption is far from being workable at the present time, not only because of the fruitless results of Euro-Arab dialogue, but also because of the experience gained from the intra-Arab political and economic relationship and failure to adhere to legal terms made by them. In the present circumstances, Lebanon has to devote all the efforts and all the experience of its international lawyers and skillful diplomatic relations to gain better terms in its legal framework of relationship with the EEC bringing about the conditions for greater commitments to be made by the EEC for increasing technical financial assistance for direct development purpose. Moreover, one would wonder whether it is necessary for a country like Lebanon to seek better access to the EEC markets, is it not the time for "regional" dialogue for better legal framework for integrating their markets and in general when South-South dialogue would substitute South North dialogue!

FOOTNOTES

1- Von Gesau A., "The External Relations of the European Community: Perspectives, Policies and Responses, (1974), p 71).

2- O.J No C 226/18, 7.11.77.

3-Memorandum of Lebanese Conseil des relations e´conomique exterieures to the Commission of the European Communities, Delegation for the Enlargement Negotiations, Brussels, 28th Nov.1983

4-Pomfret. R, Mediterranean Policy of the European Communities, a study of discrimination in trade, (1986), p 42).

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