

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/1521

13 July 1961

Limited Distribution

ASSOCIATION BETWEEN THE MEMBER STATES OF THE EUROPEAN FREE TRADE ASSOCIATION AND THE REPUBLIC OF FINLAND

Report of Working Party

1. The Working Party, which examined the Stockholm Convention in May 1960, was reconvened by the CONTRACTING PARTIES during the eighteenth session with the following terms of reference: "To examine, in the light of the relevant provisions of the General Agreement on Tariffs and Trade, the Agreement of 27 March 1961 creating an Association between the Member States of the European Free Trade Association and the Republic of Finland and to report thereon to the CONTRACTING PARTIES at the nineteenth session." The Working Party met on 5 and 7 July 1961. It carried out its task through (a) an Article by Article examination of the Agreement of Association (b) an examination of the Agreement between Denmark and Finland on trade in agricultural products and (c) a consideration of the question of the consistency of the Agreement of Association with Article XXIV.

I. The Agreement of Association

2. The Working Party noted that the Agreement of Association in effect extended the application of the Stockholm Convention to include Finland, except that the Articles of the Convention dealing with institutional and organizational matters had been excluded and modifications made to some Articles in order to meet the particular problems faced by Finland.

3. As, basically, the rights and obligations arising from the Agreement of Association ran parallel to those contained in the Stockholm Convention, the views expressed by members of the Working Party when the Stockholm Convention was under examination continued to be relevant. This meant that, on fundamental issues, the differences of view on that occasion between the EFTA countries, to which should now be associated Finland, and other members of the Working Party still existed. Most important among these issues were:

(a) Whether the Agreement of Association with Finland meets the requirement of Article XXIV:8(b) as regards "substantially all the trade". The representative of Finland explained that 94.5 per cent of Finland's trade with EFTA countries was covered by these arrangements. Some other members of the Working Party however, expressed the view that agricultural and fisheries products were not included in the free trade arrangements. The representatives of Finland and the EFTA members, however, maintained the view that agricultural and fisheries trade was not excluded from the Agreement of Association; they were satisfied that

the association arrangements constituted a free-trade area in the sense of Article XXIV, since they fully met the requirement of Article XXIV:8(b) relating to "substantially all the trade". Some other members of the Working Party, however, found it difficult to accept this contention in view of the manner in which agriculture and fisheries are dealt with in the Convention (paragraphs 47-54 of the Working Party's report on the Stockholm Convention in document L/1235).

(b) Whether the provisions of Article XXIV allow parties to a free-trade area arrangement to deviate from the provisions of Articles XII-XIV of the General Agreement (paragraphs 19-28 of document L/1235).

(c) Whether it is consistent with the provisions of Article XXIV to include in the free-trade area arrangements trade in a product in respect of which only one member of the free-trade area has eliminated duties as a result of bilateral agricultural agreements (paragraphs 37 and 38 of document L/1235).

4. The Working Party then noted that, from the trade point of view, the only significant differences from the Stockholm Convention in the Agreement were contained in Articles 3 and 4.

5. When Article 3 was under discussion the representative of Austria, who spoke on behalf of the member States of EFTA during the meeting, informed the Working Party that, in order to bring herself into line with the acceleration of tariff reduction introduced by the EFTA countries, Finland had made an initial tariff reduction of 30 per cent on 1 July 1961. This did not affect the timetable set out in Article 3 for reductions applicable to products listed in Annex I of the Agreement. Commenting on these products, the representative of Finland explained that, while tariff reduction in respect of these products would be slower during the earlier years, the date for the final elimination of duties would be the same as that provided for in the Stockholm Convention. The products concerned were from sensitive sectors of industry, but they would progressively enter into the full operation of the Agreement. State interference was not intended; the industries concerned would have to make the necessary adjustments and to increase their competitiveness.

6. In connexion with paragraph 3 of Article 3, which makes 1 June 1961 the applicable date for the basic duty for any product, the representative of Finland indicated that Finland had only recently adopted the Brussels Nomenclature.

7. The representative of Finland said that the rules of origin applicable between Finland and the EFTA countries were the same as those applicable among the member States of EFTA themselves. The Basic Materials List, which covered a quarter of Finland's imports, would apply to trade between Finland and the EFTA countries. The representative of Finland associated himself with the assurances with respect to the administration and interpretation of the rules of origin given previously by the member States of EFTA and recorded in paragraph 10 of document L/1235.

8. In connexion with Article 4, the representative of Austria pointed out that the exceptions provided for in Annex II of the Agreement were marginal in value and did not infringe the concept of "substantially all the trade" required by Article XXIV. The representative of Finland said that the percentage of Finnish imports from the EFTA countries covered by the products in Annex II could be estimated at around 1%. (see statistics given in document L/1522) No complaint had been made about the restrictions on these products when Finland consulted with the Committee on Balance-of-Payments Restrictions. He stated that the competitive possibilities extended to EFTA countries would likewise be applicable to contracting parties to the GATT.

9. Commenting on global quotas, the representative of Finland referred to the increase to be made in accordance with the Agreement of Association, which brings into effect for Finland Article 10 of the Stockholm Convention. Since Finland, as a practical measure, intended to continue its present policy of enlarging import quotas for all contracting parties to GATT, the implementation of this would benefit all contracting parties. As regards bilateral arrangements with third countries, his Government likewise hoped for an increase in trade although the extent to which this could be done was, of course, conditioned by the limitations imposed by the balance of trade, having due regard to the corresponding payments arrangements.

10. The following information was also provided during the discussion in the Working Party on other Articles of the Agreement, either by the representative of Austria or by the representative of Finland:

(a) Entry into force of the Agreement of Association

The necessary ratification processes had now been completed and the Agreement entered into force on 26 June 1961.

(b) Invisible transactions and transfers

The Finnish system, taking account of the reservations contained in Annex III of the Agreement, has not met with objections from the International Monetary Fund.

(c) Amendment of the Agreement of Association

If substantial amendments were made to the Agreement, these would be communicated to the CONTRACTING PARTIES.

11. The representatives of Finland and of the EFTA countries expressed their Governments' readiness to furnish information pursuant to paragraph 7(a) of Article XXIV as the evolution of the association between Finland and the member States of EFTA proceeds. These representatives also expressed their Governments' willingness to furnish in Article XXII consultations information as to the measures arising out of the application of the Agreement.

II. Agriculture and the bilateral agricultural agreement
between Finland and Denmark

12. Commenting generally, the representative of Finland said that Finland considered the bilateral agricultural agreement with Denmark as constituting an integral part of the association arrangements with the EFTA countries. As regards the agreement with Denmark, this was based on the traditional trade between Finland and Denmark. The aim of enabling Denmark to obtain a share of Finnish increase of consumption by no means precluded the possibility of other contracting parties to GATT also sharing in this increase. For instance, the considerable increase on 1 July 1961 in the global quota originally fixed at the beginning of the current year for the importation of fresh fruit, namely from Fmk.2 billion to Fmk.3.1 billion, gave ample opportunity for exporting countries to share in the Finnish market.

13. Other members of the Working Party, however, repeated the views they had expressed when the Working Party had examined the Stockholm Convention, namely, that they felt that the claim that the arrangements made constituted a free-trade area in the sense of Article XXIV could not be sustained and that the trade covered by the bilateral agricultural agreements could not justifiably be included in the free-trade arrangements as such.

14. During the detailed examination of the agreement between Finland and Denmark, these members of the Working Party expressed, inter alia, the following views; these corresponded to a large extent to the views they had put forward when the bilateral agricultural agreements between individual EFTA countries had been examined by the Working Party.

(a) The arrangements providing for specified quotas for Denmark, e.g. for bacon and pork, apples and pears, amounted to a form of discrimination which could only be removed if separate country quotas were allocated in accordance with Article XIII or if these specified quotas were replaced by global quotas open to all contracting parties.

(b) The removal of tariffs by Finland alone did not conform with the requirements of Article XXIV; the only way conformity with that Article could be achieved would either be for the concessions concerned to be extended to all contracting parties to GATT or for all the member States to remove tariffs on the same products.

15. The representative of the member States of EFTA reiterated the views which the member States had expressed previously and which are contained in paragraphs 36-46 of document L/1235. The Working Party welcomed the assurance given by Finland that, when allocating quotas, it would be fully prepared to pay due attention to the provisions of paragraph 2(d) of Article XIII of the General Agreement.

16. The representative of Finland explained that his Government was not contemplating the removal of customs duties on the products covered by the bilateral agricultural agreement with Denmark towards other contracting parties to GATT. The Finnish view was that these concessions extended to the member

States of EFTA fell within the overall free-trade arrangement permitted under Article XXIV of the General Agreement, so that there was no obligation on Finland to extend them to other countries. In reply to another question the representative of Finland said that there were no firm purchasing commitments with Denmark; the arrangements simply offered opportunities for commercial sales.

III. The question of the consistency of the Agreement of Association with Article XXIV of GATT

17. As indicated in paragraph 3 above, the views of members of the Working Party on fundamental issues were the same as those they expressed when the Working Party examined the Stockholm Convention. In these circumstances, the Working Party agreed that Section II of its report (L/1235) on the Stockholm Convention applied generally to the Agreement of Association.

IV. Conclusions

18. In view of the foregoing considerations, the Working Party recommends to the CONTRACTING PARTIES that they should consider the desirability of adopting, with respect to the matters referred to the Working Party, conclusions on the lines of those they adopted on 18 November 1960¹ with respect to the EFTA. In order to expedite the work of the CONTRACTING PARTIES, the Working Party submits the following draft for their consideration:

(a) The CONTRACTING PARTIES have examined, in accordance with paragraph 7 of Article XXIV of the General Agreement, the provisions of the Agreement creating an Association between the member States of the European Free Trade Association and the Republic of Finland and have taken cognizance of the information submitted by the parties to that Agreement in this connexion.

(b) The CONTRACTING PARTIES have taken note of the provisions of the Agreement as well as of the statements made by the representatives of parties to the Agreement to the effect that their governments are firmly determined to establish, within the time-limit provided for, a free-trade area in the sense of Article XXIV.

(c) The CONTRACTING PARTIES feel that there remain some legal and practical issues which could not be fruitfully discussed further at this stage. Accordingly, the CONTRACTING PARTIES do not find it appropriate to make recommendations to the parties to the Agreement pursuant to paragraph 7(b) of Article XXIV.

(d) This conclusion clearly does not prejudice the rights of the CONTRACTING PARTIES under Article XXIV.

¹B.I.S.D., Ninth Supplement, page 20.

(e) The CONTRACTING PARTIES welcome the readiness of the parties to the Agreement to furnish information pursuant to paragraph 7(a) of Article XXIV as the evolution of the association between Finland and the member States of EFTA proceeds.

(f) The CONTRACTING PARTIES also welcome the willingness of the parties to the Agreement to furnish in Article XXII consultations information as to the measures arising out of the application of the Agreement.

(g) The CONTRACTING PARTIES note that the other normal procedures of the General Agreement would also be available to contracting parties to call in question any measures taken by any of the parties to the Agreement in the application of the provisions of the Agreement, it being open of course to such countries to invoke the benefit of Article XXIV insofar as it is considered that this Article provided justification for any action which might otherwise be inconsistent with a provision or provisions of the General Agreement.