

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/4064

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AGREEMENTS BETWEEN THE EUROPEAN COMMUNITIES AND FINLAND

Report of the Working Party

1. At the meeting of the Council on 19 October 1973, the contracting parties were informed that a Free-Trade Agreement concluded between the European Communities and Finland had been signed on 5 October 1973, and that the text of the Agreements¹ had been submitted to the Finnish Parliament for approval (C/M/90). The Agreement consists of the following legal instruments:

- Agreement between the European Economic Community and the Republic of Finland;
- Agreement between the member States of the European Coal and Steel Community and the European Coal and Steel Community, of the one part, and the Republic of Finland, of the other part.

2. At the meeting of the Council on 19 December 1973, a Working Party was set up with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement on Tariffs and Trade, the provisions of the agreements between, on the one hand, the European Economic Community, the member States of the European Coal and Steel Community and the European Coal and Steel Community and, on the other hand, the Government of Finland, signed on 5 October 1973, and to report to the Council."

3. The Working Party met on 17 June and on 23 July 1974 under the chairmanship of Mr. P. Tomic (Yugoslavia). It had available the texts of the Agreements (L/3973 and Corr.1) and the replies of the parties to the questions asked by contracting parties (L/4024).

¹For reasons of convenience, the term "Agreement" is used in this document as designating both agreements mentioned in this paragraph.

4. In an introductory statement, the representative of Finland recalled that the Agreement had been negotiated at the same time as most of the agreements concluded between the European Communities and other EFTA countries, in order to seek appropriate solutions to the economic problems faced by Finland as a result of the enlargement of the Communities. The Agreement provided for the development of commerce between the parties, while at the same time retaining the parties' autonomous power of decision and preserving a satisfactory balance in trade. On the other hand, the Preamble stated clearly that the Agreement did not in any way exempt the parties from their obligations under other international agreements. The Agreement provided for the establishment of a Free-Trade Area, limiting itself strictly to trade matters. Referring to the relationship between regional integration and trade liberalization on an m.f.n. basis, he said that efforts in both areas were necessary and indeed complementary. His Government had fully subscribed to the Tokyo Declaration opening the multilateral trade negotiations. Finland was in this context prepared to join in efforts to safeguard and promote the interests of developing countries. As for the present Agreement, it fully met the requirements of Article XXIV of the General Agreement for the establishment of free-trade areas. It was an agreement between two industrialized economies and would cover, after the expiration of the transitional periods, some 96 per cent of total trade between the parties.

5. The representative of the European Communities said that the Agreement was fully consistent with the provisions of Article XXIV, providing on the basis of a short and reasonable time-table, for free trade in a very high proportion of trade between the parties, while quantitative restrictions would be virtually eliminated. As was the case with the Communities' agreements with other EFTA countries, it did not formally cover trade in agricultural products. Nevertheless, Article 15 of the Agreement recorded the parties' desire to encourage trade also in this sector, and Protocol No. 2 indicated the extent to which the parties felt they could already move in this respect. He believed that the background to the Agreement of the enlargement of the European Communities and the general movement towards increased economic integration in Western Europe was well known, and drew attention to the declarations made by the parties at the end of the Agreement, which should be read together with the text of the Agreement and its protocols.

6. One member of the Working Party said that in the view of his Government the Agreement failed to comply with at least three paragraphs of Article XXIV. It contravened paragraph 4 of that Article in that it raised barriers to trade of other contracting parties, the requirement of paragraph 5(b) that duties and other regulations of commerce not be higher or more restrictive after the formation of the free-trade area, and the provisions of paragraph 8(b) that duties and other restrictive regulations of commerce be eliminated on substantially all the trade between the parties. Notably the complicated nature and the trade restrictive effects of the rules of origin frustrated the purposes of Article XXIV:4 and 5(b),

while the exclusion of an entire sector such as agriculture was clearly inconsistent with paragraph 8(b). International trade was by nature a dynamic process, and the possibility could not be excluded that trade in agricultural products would occupy a larger share of total trade between the parties if allowed the same opportunities as trade in industrial products.

7. Another member of the Working Party said that his authorities doubted that GATT compatibility for the Agreement could be established at the present time, as it seemed to be a preferential arrangement for trade in industrial products. He shared many of the specific concerns noted in paragraph 6 above, especially the fact that paragraph 8(b) of Article XXIV was violated by the exclusion from the Agreement of a whole product sector such as agriculture. He was also concerned with the trade restrictive effects of the unnecessarily complex rules of origin, and noted that this problem was subject to consultations under the procedures of Article XXII.

8. Other members of the Working Party shared the doubts and concerns about the compatibility of the Agreement with the provisions of Article XXIV expressed in the two preceding paragraphs. One of these members expressed concern about possible trade-distorting effects. He welcomed the assurance given by the representative of Finland of his Governments' dedication to the objective of liberalizing world trade in the multilateral trade negotiations, and expressed the hope that the arrangement presently under examination would not be an impediment to multilateral efforts towards trade liberalization. Another member stressed that the creation of new free-trade areas in Western Europe raised problems for the industrial co-operation between his country and the parties to such arrangements. He was pleased to note that the Finnish authorities recognized these problems and were ready to look for solutions to them, as well as to certain problems posed by the rules of origin. Yet another member reiterated the preoccupations expressed by his delegation on a number of past occasions when similar arrangements had been examined, namely that the Agreement, reinforcing the trend towards economic integration in Europe, might create new distortions to international trade to the particular detriment of the export interests of developing countries, and the possible erosion of the benefits of the Generalized System of Preferences (GSP).

9. The parties to the Agreement, supported by some other members of the Working Party, reiterated their view that the Agreement, covering substantially all the trade between the parties, was fully compatible with the General Agreement. They did not subscribe to interpretations of some other members of the Working Party of what constituted "substantially all the trade", which was a notion open to different interpretations. One of the main reasons why the formation of free-trade areas was permitted by the General Agreement was that they also encouraged growth and liberalization of world trade, which was indeed the spirit in which they had concluded the Agreement; they could see no reason why this and similar agreements would prevent satisfactory multilateral solutions to world trade problems.

10. The representative of Finland added that experience from EFTA showed that that agreement had facilitated the necessary structural changes in the Finnish economy to adapt to increased competition on international markets, and that it had been instrumental in enabling Finland to play its full rôle in the Kennedy Round of Tariff Negotiations.

11. After the general discussion set out above, the Working Party proceeded to an examination of the Agreement based on the questions submitted and replies provided on more specific matters. The main points made during the discussion are summarized below.

Trade coverage

12. Some members of the Working Party recalled their earlier statements that their governments interpreted Article XXIV:8(b) to mean free trade in all products and not carved out by sectors; the exclusion of a whole sector, no matter what percentage of current trade it constituted, was contrary to the spirit of both Article XXIV and the General Agreement itself. In this connexion, one member pointed out that it was a fact that the Agreement in several places specifically excluded agricultural trade, i.e. the whole range of products in BTN Chapters 1-24 and not just certain agricultural products; such exclusion of an entire sector was certainly not permitted by the General Agreement.

13. The representative of the European Communities said that the Agreement covered a very high percentage of total trade on an actual basis, namely some 96 per cent. The meaning of "substantially all the trade" had never been defined in GATT but the present percentage of trade covered must on all accounts be considered both substantial and reasonable. In the event that trade in agricultural products would take on significant importance at some future stage, then the parties would take steps to adjust to such a situation.

14. Concurring with this view, the representative of Finland also emphasized the very high proportion of total trade covered, and explained that the bulk of the products not covered by the Agreement were composed of some agricultural product groups which were traditional in the trade between the parties, the most important of which, as far as Finnish exports were concerned, was dairy products, which did not easily lend themselves to free trade. In this respect, he attached importance to the declaration of intent contained in Article 15 of the Agreement to develop trade also in the agricultural field.

Quantitative restrictions

15. Some members of the Working Party, referring to the provisions for non-discriminatory administration of quantitative restrictions of Article XIII of the General Agreement, said that they would appreciate an elaboration on the reply

given to question 14 of L/4024, as it did not appear to be explicit enough in its present form. More specifically, they wanted to know whether quantitative restrictions would be removed on a discriminatory or non-discriminatory basis, adding that in their view the parties' foremost duty was to abide by their GATT obligations which did not permit discrimination among member countries in the application of such restrictions.

16. The parties to the Agreement thought that the reply given was quite clear. In their interpretation, Article XXIV:8(b), specifically mentioning Article XIII, was permissive in this respect and covered certain possibilities in relation to the maintenance of outward restrictive regulations of commerce in certain circumstances, while eliminating these between the parties to the Agreement. In the present case no new restrictions would be introduced and existing ones were to be abolished. One member of the Working Party said that the European Communities' response was disappointing, as in his view this response was outside the provisions of Article XXIV and outside the letter and spirit of the GATT itself.

Agriculture

17. One member of the Working Party, referring to the reply to question 20, requested that the contents of the exchange of letters concerning the beef sector be made available to the contracting parties to the GATT. The representative of the European Communities explained that this had hitherto not been the general practice, and that this case was no exception, since the exchange of letters did not relate to matters covered by the Agreement; nor was the exchange of letters a formal part of the Agreement but a bilateral exchange between the parties.

Relations with developing countries

18. The representative of a developing country member of the Working Party noted that the Agreement contributed to the reinforcement of the trend towards increased economic integration in Europe, a process which might well bring new distortions to international trade, to the particular detriment of the export interests of developing countries, who were trying to join in the main world trade flows. He also pointed to the possibility that the Agreement would erode the benefits enjoyed by developing countries under the GSP. He welcomed the statement by the representative of Finland that Finland considered itself committed to safeguarding the interests of developing countries in the course of the multilateral trade negotiations, and hoped that the assurances given earlier by the parties to similar agreements, to the effect that any detrimental effects of the Agreement on the GSP would be alleviated through improvements to the respective schemes would apply also in the present case.

19. The parties to the Agreement reiterated their view expressed on earlier occasions that the question of any reduction in benefits of a unilateral scheme like the GSP was not relevant to the examination of an Agreement concluded under Article XXIV. They also repeated earlier assurances that they would try to alleviate negative effects of the Agreement on the GSP, if any, through improvements to their schemes.

20. The representative of Finland, recalling that his Government had been among the first to introduce the GSP, reiterated the assurance expressed earlier that his authorities were committed, together with other countries, to safeguard and promote the interests of developing countries in the course of the multilateral trade negotiations.

Rules of origin

21. Some members of the Working Party, referring to their views expressed in some detail during earlier examinations of similar agreements, reiterated that they found the rules of origin of the Agreement unnecessarily complicated and cumbersome, creating new barriers to third-country trade in violation of the provisions of Article XXIV. However, since the problem was subject to consultations under Article XXII of the General Agreement, they saw little need in pursuing the matter in detail in this context.

22. The representative of the European Communities considered the rules of origin to be perfectly consistent with Article XXIV, all the more so since that Article contained no provision relating to the rules of origin. With regard to the alleged complexity of the rules, some simplifications had taken place as part of the ongoing process of internal reviews and discussions in which the parties to the Agreement were taking account of its practical functioning, and in the context of which they were always prepared to receive representations from third countries. The parties to the Agreement were not aware of any adverse effects of the rules on the trade of third countries, and they furthermore believed that the fact that similar sets of rules of origin now applied in trade between a large number of contracting parties would be helpful to other countries. The representative of Finland added that rules of origin were a natural part of any free-trade arrangement between two industrialized economies. They were not designed to complicate trade of third countries, but had been drawn up to meet the requirements of the existing situation; for that reason it would not be valid to attempt a comparison between them and rules that had been drawn up at a different time and designed for different economic circumstances.

Other questions

23. Elaborating on the reply given to additional question 7 of L/4024, the representative of the European Communities stated that Article 23 of the Agreement listed those measures which were not compatible with the functioning of the Agreement, adding that the Agreement contained provision for discussion between the parties on these questions.

General considerations

24. Some members of the Working Party did not find it possible to establish GATT compatibility for the Agreement at the present time. Their views on this point had not been modified in the light of the discussion on the questions and replies document.

25. The parties to the Agreement reiterated their view that the Agreement was fully compatible with Article XXIV of the General Agreement.

26. The Working Party could not reach any unanimous conclusions as to the compatibility of the Agreement with the provisions of the General Agreement. It therefore considered that it should limit itself to reporting the opinions expressed to the competent bodies of the CONTRACTING PARTIES.