

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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AGREEMENT BETWEEN FINLAND AND CZECHOSLOVAKIA

Report of the Working Party

1. At the meeting of the Council on 21 October 1974 (C/M/100) the CONTRACTING PARTIES were informed that on 19 September 1974 Finland and Czechoslovakia had signed an Agreement on the reciprocal removal of obstacles to trade taking into consideration the provisions of Article XXIV of the General Agreement.
2. In accordance with the notification procedures, the parties to the Agreement transmitted to the secretariat the texts of the following legal instruments, which were subsequently circulated to contracting parties with document L/4138/Add.1:

Agreement between the Republic of Finland and the Czechoslovak Socialist Republic on the reciprocal removal of obstacles to trade, together with the Protocols and Annexes forming integral parts thereof.
3. At the meeting of the Council on 3 and 7 February 1975 (C/M/103) 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, the provisions of the Agreement between Finland and Czechoslovakia signed on 19 September 1974; and to report to the Council." (L/4150/Rev.2)
4. The Working Party met on 1-3 October 1975 and on 27 and 29 April 1976 under the chairmanship of Ambassador G.L. Easterbrook Smith (New Zealand). It had available the text of the Agreement, and the replies by the parties to questions asked by contracting parties (L/4197).

I. GENERAL CONSIDERATIONS

5. In an introductory statement the representative of Finland referred to the preamble of the Agreement, where the desire of the Parties was expressed to solve in a fair and equal way the problems arising from the contemporary European integration processes and to do this in accordance with their international obligations. He recalled that the region of Europe was the main market for Finnish exports and also the main source of Finnish imports. When the process of regional integration in

Western Europe led to an enlargement of the European Communities, Finland had to secure its competitive position through a free-trade agreement with the European Communities. To avoid the consequential and foreseeable distortions in the trade with the European socialist countries, Finland invited these countries to enter into negotiations on similar arrangements. He emphasized that two preconditions were set for these agreements. The first and the most important was that they should be strictly consistent with Finland's international obligations and notably Article XXIV of the GATT. The second was that the agreement should be based on the reciprocity of advantages and obligations. He stated that in his view the provisions of the Agreement fully complied with the provisions of GATT. They included methods and a time-table for the elimination of tariffs on substantially all the trade. With a few exceptions the time-table and the product coverage of the normal and the slower time-table for the elimination of tariffs were the same as in other similar agreements concluded by Finland.

6. In an introductory statement the representative of Czechoslovakia addressed himself specifically to the problems which might arise from the contemporary European integration processes particularly with reference to the commercial and economic relations between Czechoslovakia and Finland. The effects of the operation of customs unions and free-trade areas in Europe had brought Czechoslovakia into the position of a third country having to overcome tariff barriers, and in some countries even discriminatory quantitative restrictions. He stressed that such obstacles no doubt hindered the normal development of mutual trade relations with the respective countries, and even resulted in serious distortions of the pattern of trade. Therefore, in the preparatory stage of the multilateral trade negotiations, Czechoslovakia supported suggestions presented by some other contracting parties to eliminate completely tariffs in industrial countries. Such a solution would have eliminated the unfavourable effects on a most-favoured-nation basis. Since it seemed that such expectations were far from being put into effect in the foreseeable future, Czechoslovakia appreciated the offer made by Finland to negotiate a free-trade area agreement between their two countries. In such a way the aforementioned difficulties would be overcome, at least on a bilateral basis between Czechoslovakia and Finland. The Agreement between Czechoslovakia and Finland fulfilled - in the view of the representative of Czechoslovakia - all the requirements of Article XXIV of GATT. It covered substantially all the trade, included a precise time-table for the elimination of tariffs and in no way was to be considered as an interim agreement.

7. One member of the Working Party recalled that in the February 1975 meeting of the Council (C/M/103), his delegation had expressed doubts as to the compatibility with Article XXIV of a free-trade area in which one country had a centrally-planned economy. In that system the customs tariff was only one element of foreign trade policy, and frequently a minor one. His authorities continued to have doubts in this respect, although they were prepared to examine the Agreement with an

open mind. He called attention to what his authorities considered the courageous and creative efforts represented by Finland's attempt to find a solution for a trade arrangement between market economy and centrally-planned economy countries, although this did not necessarily mean that it was compatible with the requirements of Article XXIV. For instance, his Government could not accept the argument that an artificial restraint on imports, such as making available or withholding foreign exchange, could be used as a permanent trade policy tool. In fact, the General Agreement specifically dealt otherwise with balance-of-payments questions.

8. One member of the Working Party recalled that at the same meeting of the Council his delegation had pointed out that the free-trade area concept had been included in the General Agreement when customs tariffs constituted the principal instrument of trade policy of market economy countries entering such arrangements. In the case of centrally-planned economy State-trading countries, however, factors other than customs tariffs figured prominently. This raised the issue whether a free-trade area including such a country could comply with Article XXIV. He noted that in his introductory statement the representative of Czechoslovakia had said that the formation of customs unions in Europe had led to trade distortion, but that the statement had not been supported by any proof. To the contrary, the formation of these customs unions had in fact had a trade-creative effect, as demonstrated by the increased trade between them and Czechoslovakia. He did not agree that Czechoslovak exporters faced discriminatory import regulations in the EEC.

9. Another member of the Working Party shared the view that a free-trade area in which one country had a centrally-planned economy represented a new phenomenon. Article XXIV of the GATT had been drafted on the basis that the customs tariff would constitute the principal instrument of import policy of countries entering customs unions and free-trade arrangements. With centrally-planned economies, the customs tariff generally appeared to represent only one element and perhaps a minor element of trade policy rather than the principal element. The differing rôle of the customs tariff of Finland on the one hand and Czechoslovakia on the other, within the context of the operation of the Agreement, therefore appeared to him to be a legitimate subject to explore further. He thought it valuable to gain a better understanding of the rôle of Czechoslovak trade policy instruments in addition to the customs tariff having an effect on Czechoslovak imports. In particular, he was interested in additional information regarding Czechoslovak central-planning mechanisms and bilateral import commitments vis-à-vis Council for Mutual Economic Aid (CMEA) countries.

10. The Czechoslovak delegate pointed out that at the time when the provisions concerning the free-trade area were drafted, that is to say at the Havana Conference in 1948, customs tariffs were far from being the prevailing instrument of trade policy, even in the majority of the market economy countries. Such trade policy instruments which then prevailed in majority of countries were quantitative and exchange restrictions. Non-tariff barriers notified during the

present Multilateral Trade Negotiations showed that customs tariffs were not the exclusive instrument of trade policy. The rôle of customs tariffs should therefore not be overestimated when considering the question of compatibility of the free-trade area with Article XXIV. In full conformity with this interpretation was also the provision of Article 8(b) of the Agreement, which clearly conditioned the free-trade area by the removal of customs tariffs and other restrictive regulations of trade. One member of the Working Party observed that the free-trade area concept had not been evolved at the Havana Conference, but had emerged already in the eighteenth century. The free-trade area concept was basically a product of the economic theory of that period, which viewed things only in terms of a market economy. Now, such an economy did not include any planning or any foreign trade monopoly. In addition, the function of tariffs within a centrally-planned economy, where prices were fixed centrally, independently from world market prices, did not arise. Other delegations felt that free-trade areas had found their way into the GATT as a result of prevailing historic economic thought, as related to market forces. They also called attention to the fact that GATT negotiations taking place under Article XXVIII bis in the early years of GATT following the drafting of Article XXIV concentrated primarily on tariffs.

11. Another member of the Working Party agreed that a special relationship between the parties appeared to have given rise to the new type of agreement under examination. It was presented to the Working Party as an arrangement aimed at increasing the parties' mutual trade without prejudice to third countries. His authorities had doubts as to the compatibility of such an agreement with Article XXIV, and would be willing to participate in an examination of the arrangement under other Articles of the General Agreement.

12. A member of the Working Party noted that in the parties' reply to question No. 3 in document L/4197, as well as in the introductory statement by the representative of Czechoslovakia, it had been stated that the new market conditions in Europe had caused undesired repercussions in the parties' trade. He was pleased to see in the reply to question No. 5 that the parties considered that the Agreement would have a trade-creative effect, from which third countries would also benefit. He recalled, however, that the same assertion had been made when the EEC was in formation and again when Finland had entered into a free-trade agreement with the EEC. He sought assurances from the parties that they would take all possible measures so that the Agreement would in fact have a trade-creative effect. Another member of the Working Party shared this concern.

13. In reply, the representative of Czechoslovakia recalled his earlier statement and noted that his country was in the position of a third country with respect to the trade arrangements that had been mentioned. This meant that his country's exports faced customs duties that had in some instances harmed Czechoslovakia's foreign trade pattern. Referring to the operation of the Agreement so far and to the provisions of Article XXIV:4, he stated that it was the firm intention of

the parties to the Agreement to comply fully with the mentioned provisions, i.e. to facilitate trade between the constituent territories and not to raise barriers to trade to third countries. One member said that he had no doubts about the parties' good intentions, but hoped that they would be borne out by the results of the Agreement. The representative of Finland assured him that there was no intention to create trade barriers or to diminish trade between that country and Finland, which hopefully would increase.

14. Referring to the Czechoslovak answer to question No.4, one member of the Working Party requested information as to how the Czechoslovak import plan reflected import commitments to other CMEA countries, which his authorities understood to involve fixed quantities and set prices. He also asked whether these import commitments could be fulfilled without the introduction of any restrictive elements in the plan. The Czechoslovak representative said that Czechoslovak trade with the centrally-planned economies was conducted within the framework of long-term bilateral trade and payments agreements, currently covering five-year periods, which were supplemented by annual protocols. The long-term trade agreements normally stated the expected value of trade in each direction in each year of the agreement and contained a core list of essential items, where exchanges were specified, when practicable, in quantitative detail. Prices were not fixed in the long-term agreements or annual protocols, but were a matter for negotiation between the foreign trade corporations concerned on the basis of the acceptance of the principle of the world market prices. The exchanges written into long-term agreements or annual protocols concluded by Czechoslovakia with the planned economies might constitute commitments only to the extent that they were translated into contracts between the respective trade corporations. Some members of the Working Party noted that the delegate for Czechoslovakia had said, in his replies, that the agreements concluded between the CMEA countries provided for compulsory deliveries by the exporting country. One member noted that such agreements were related to international trade policy issues. He inquired whether such agreements were published, and the answer was that they were not, notwithstanding the existence of Article X of the General Agreement. This lack of information hampered the assessment of the Agreement with Finland. A member of the Working Party said that his earlier questions, like those of some other delegations, had not yet been answered by the parties to the Agreement. Contrary to the view expressed by the representative of Czechoslovakia, he considered that his and the other questions were not irrelevant and were aimed at acquiring an understanding of how the system worked, particularly with regard to Finnish exports to Czechoslovakia. In this light, he asked the following hypothetical question: The Czechoslovak import plan provided for imports of 100 units of commodity "A" in a given year. The trade agreements negotiated with the various CMEA countries provided for imports of 75 units from those countries. However, Finland now had the benefit of a lower tariff than the CMEA countries, and as a result was in a position to offer 100 units, when the tariffs were taken into account, at a lower price than the CMEA countries. What then happened? Could Finland then export 100 units of commodity "A" to Czechoslovakia?

15. Another member of the Working Party sought precise information as to: (a) the date when Czechoslovakia had introduced a customs tariff; (b) the exact amount of duties collected in 1972, 1973 and 1974; (c) the countries from which imports were subject to customs duties; and (d) which countries, if any, were exempted from paying customs duties, and why. He quoted from a number of Czechoslovak laws and decrees which, in his view, permitted the use of a series of different trade policy instruments allowing for detailed governmental regulation of Czechoslovak foreign trade. With this in mind, he sought precise information about the economic system in Czechoslovakia, including its planning system. He wanted in particular to know more about the Czechoslovak subsidy system and about the formation of Czechoslovak export prices.

16. The representative of Czechoslovakia informed the Working Party that in accordance with Article XVII:4(a) his Government regularly submitted notifications about its State-trading system, the most recent notification having been reproduced in document L/4140/Add.13 and circulated in September 1975. He declared his willingness to answer certain questions, for instance about the economic system in his country, although in his view they had no direct relevance to the subject under examination in the Working Party. He stressed that customs duties constituted an important instrument in Czechoslovak trade policy, and were very important in determining the choice of foreign supplier. After World War II Czechoslovakia had preserved its customs system, as amended by the customs laws of 1953 and 1974, so as to ensure that customs tariffs retained their economic, trade policy and fiscal functions under the present system of foreign trade management. He explained that there were four columns in the customs tariff: the normal rate, the m.f.n. rate, the GSP rate and now one for Finland, which was the only country that had entered into a free-trade agreement with Czechoslovakia. Finland's position would accordingly be unique in Czechoslovakia's trade relations as the only country which, in a few years, would not be required to pay customs duties. This would be important for Finnish exporters trying to gain or increase their access to the keenly competitive Czechoslovak market. In this connexion he confirmed that imported products from all countries, including members of the CMEA, had to pay customs duties in Czechoslovakia. Referring to the total amount of Czechoslovak customs receipts, he stated that total imports into Czechoslovakia in 1974 had amounted to US\$7.5 billion. The average incidence of the Czechoslovak tariff amounted to about 5-6 per cent; and the total revenue from the customs duties to about US\$450 million. As regards State planning, he explained that a national plan was elaborated for the entire Czechoslovak economy, including the foreign trade sector, which comprised 32 per cent thereof. The plan was flexible and could be over-fulfilled, for example as regards imports. As an industrialized country, but with a shortage of natural resources and a limited national market, Czechoslovakia set foreign trade targets in the plan to encourage the development of a dynamic economy.

17. A member of the Working Party, referring to Article 9 of the Agreement, asked which means, in addition to customs duties, had a bearing on the access of Finnish goods to the Czechoslovak market. He asked, furthermore, how Finland, when concluding the Agreement, could have entrusted the exclusive use of those means to the Czechoslovak side. He also wanted to know how these means should be viewed in the context of Article XXIV. The representative of Finland replied that the Finnish Government, before entering into the Agreement, had concluded that all means provided by the Czechoslovak economic system, which, in addition to customs duties, had a bearing on Finnish access to the Czechoslovak market, would fall within the scope of Article 9 of the Agreement, and had thereby become convinced of the compatibility of the Agreement with Article XXIV. He said that the parties had preferred that the text of Article 9, which referred solely to measures that could be taken by Czechoslovakia, be expressed in general terms, leaving it to the Czechoslovak party to find appropriate methods to fulfil its commitments. He called attention to the new dimension to be taken into account in an agreement concluded by two countries having different social and economic systems. If the language used by the founding fathers of the General Agreement in Article XXIV were interpreted so as to render impossible a free-trade agreement within the GATT framework, this would mean that contracting parties in general, and centrally-planned economy State-trading contracting parties in particular would be deprived of essential rights under the General Agreement.

18. A member of the Working Party observed that the information submitted in document L/4140/Add.13 was insufficient for the examination at hand. He repeated that it had to be demonstrated that the customs tariff was in fact the main instrument in the Czechoslovak foreign trade policy. Thus far he had received the impression that the planning system was the main instrument in this respect. He also wanted assurances as to the treatment of imports from other CMEA countries in the light of information obtained in other bodies to the effect that they were not subject to customs duties. In this connexion another member of the Working Party asked whether the representative of Czechoslovakia would dispute the assertion, as to the non-application of customs duties to goods from other CMEA countries, contained in the second paragraph of the answer to question No. 20 concerning the Agreement between Finland and Bulgaria (L/4196).

19. Another member of the Working Party supported the views of the previous speaker. He was also interested to know more about the nature of the new arrangements for reduction of trade barriers between the two parties, in order to see if the criteria of Article XXIV were met and to assess the effect on trade with third countries. He wanted information about the means referred to in Article 9 of the Agreement and about the obstacles to trade that would not be applied in relation to Finland but which would remain in force as to other countries. He also requested information about whether the CMEA countries were given more favourable treatment than other third countries.

20. The representative of Czechoslovakia stated that there existed no obstacles to trade in his country other than customs duties, and referring to questions (c) and (d) in paragraph 15 that these duties applied to all countries' exports to Czechoslovakia. He stated, furthermore, that there were no subsidies whatsoever affecting Czechoslovak foreign trade. Referring to document L/4140/Add.13, he explained that in the fulfilment of their tasks defined in the import plan, the foreign trade organizations were totally independent as regards the choice of imports. There was no country-by-country allocation for imports in the plan. Only commercial considerations were decisive in that respect. Answering a question of one member of the Working Party, who had referred to the reply to question No. 20 in document L/4196, he stressed that different trade policy instruments were used by the CMEA countries in their trade with each other. He repeated that the Czechoslovak tariff applied also to imports from other CMEA countries. Such treatment of imports from CMEA countries was - inter alia - foreseen in the General Terms for the Delivery of Goods in force among CMEA countries since 1958. As regards Article 9 of the Agreement, he said that it was designed to provide a positive means to forward the objectives of Article 1. Finland undertook to abolish customs duties and to eliminate quantitative restrictions and to refrain from the introduction of measures having an equivalent effect; Czechoslovakia had undertaken, in addition to the elimination of her customs duties, to provide under Article 9 certain advantages having a bearing on the access of the Finnish goods on the Czechoslovak market. Among such measures the representative of Czechoslovakia mentioned, inter alia: drawing the attention of the Czechoslovak foreign trade companies, which take import decisions, to the existence of the Agreement; improving the orientation of Finnish exports towards Czechoslovak projects and priorities in the industrial field which might be of interest to the Finnish commercial and industrial circles; granting internal financing facilities to Czechoslovak enterprises importing Finnish products; creating the best possible conditions for industrial co-operation; analyzing trends and prospects for industrial co-operation; providing information and guidance on general conditions, laws and regulations concerning such co-operation; and publishing and disseminating specialized information to help Finnish businessmen in their commercial contacts. In conclusion, the Czechoslovak delegate stated that the choice of means and their application were left at the discretion of the Czechoslovak authorities, and that these means would be applied in a manner fully consistent with Czechoslovak obligations under the provisions of GATT, including Article XXIV. The representative of Finland pointed out that the means mentioned by Czechoslovakia were only given as examples and that they were not consolidated in the Agreement. He also noted that the parties to the Agreement had deliberately left it to the discretion of the Czechoslovak party to make the decisions on the choice of means and their application. One member of the Working Party observed that differing answers had been given during the discussion by the delegate for Czechoslovakia

on the question as to what had been the compensations afforded by Czechoslovakia for the elimination of quantitative restrictions by Finland, and the interpretation of Article 9 of the Agreement in regard to this question had been ambiguous.

21. One member of the Working Party raised two additional questions. First, if Czechoslovak customs duties were applicable to imports from all sources, including other CMEA countries, and if the customs tariffs were the factor that controlled the level of imports, how could obligations under existing trade agreements which specified prices, quantities and sources be fulfilled; and how, in turn, was this related to the Czechoslovak import plan? Second, he enquired whether the Finnish delegation held the view that the means referred to in Article 9 of the Agreement related only to trade promotion and not to trade obstacles; whether it was the Finnish view, when agreeing to Article 9, that this did not involve removing obstacles to exports from Finland to Czechoslovakia; and whether the Finnish authorities were of the opinion that all the requirements of Article XXIV had been satisfied by the simple elimination of tariffs by Czechoslovakia and that no additional action was necessary.

22. The representative of Czechoslovakia said that contracting parties were entitled to seek consultations with his Government under Article XVII if they so desired, but he repeated that the Working Party was dealing with an Agreement submitted under Article XXIV, and that any issues raised should be in that context. His authorities were of the opinion that they had carried out the informational requirements set forth in Article XXIV:7(a). Addressing himself to the first of the questions raised in paragraph 21, he noted that whereas the CMEA was not a customs union, the customs tariff played an important rôle in the formation of prices and influenced the choice of supplier, both as to goods and services. The Czechoslovak plan determined values, volumes and product ratios in the various sectors, and was aimed at overall economic development and at maintaining external trade and payments equilibria. Both long- and short-term plans were based on economic and market research, and were financed through the various organizations and banks. There were no allocations on a country-by-country basis in the foreign trade sector, but only one overall plan. Czechoslovakia maintained no subsidies affecting foreign trade. Certain price adjustments were made in exceptional cases, but only to basic raw materials and commodities so as to influence levels of consumption internally. These adjustments could, moreover, be in both directions.

23. The representative of Finland, addressing himself to the second group of questions posed by a member of the Working Party in paragraph 21, said that Article 9 of the Agreement related to positive trade-creating measures having a bearing on the access of Finnish goods to the Czechoslovak market. His Government was of the opinion that, pursuant to Article XXIV of the General Agreement, the parties had agreed to remove all obstacles to their mutual trade.

24. A few members of the Working Party said that the obligations under Article 9 were one-sided, which resulted from the fact that the lowering of tariffs produced a residual disadvantage to one of the parties that had to be dealt with by additional efforts by the other. This resulted, in particular from the fact that the customs tariff had different functions in a market economy country and in a centrally-planned economy. They requested further enlightenment on this aspect of the problem. The representative of Finland stated that Article 9 had been introduced into the Agreement in order to bring about a balance of advantages and to ensure the fulfilment of the objectives of the Agreement, inter alia, the development of their mutual trade in a satisfactorily balanced manner. The representative of Czechoslovakia stated that Article 9 had been designed to provide positive means in carrying out the objectives set forth in Article 1 of the Agreement.

25. A member of the Working Party pointed to the language used in Article 9, where the parties had referred to means "in addition to customs duties", and said that it was difficult to believe that this alluded to trade promotion measures. Furthermore, Article 9 referred to "liberalization measures" taken by Finland under the Agreement, which would mean the reduction of customs duties and other trade obstacles that might exist. He referred to document L/4140/Add.13, where it had been stated by the Government of Czechoslovakia that the final prices charged to the consumer, of equivalent imported and domestically produced goods, were equal. He asked for an explanation as to how this could be the case under a fixed tariff when a foreign supplier offered a product at a substantially lower price than the domestic article, minus the customs duty.

26. Another member of the Working Party asked whether customs duties were refunded when products were imported from other CMEA countries. The representative of Czechoslovakia said that customs duties on imports from other CMEA countries were not refunded.

27. A member of the Working Party repeated his requests: (a) for an indication as to the official Czechoslovak publication or gazette containing figures for customs receipts and showing explicitly the portion attributable to duties paid on imports from other CMEA countries, and whether measures other than customs tariffs were applied to the latter; (b) how fulfilment of certain of the objectives set out in the plan, namely the goal of balanced foreign trade, and, more particularly, the price, quantity and source requirements specified with regard to imports from other CMEA countries, could be reconciled with the free play of a customs tariff, the dispositions and rôle of which were said to have remained unchanged since 1947; (c) how it was possible for a country to maintain an equilibrium in its balance of payments by means of a customs tariff; (d) in the light of the Czechoslovak Decree No. 326 of 18 November 1975 (replacing No. 301 of 19 November 1974) concerning mandatory limits for total imports from capitalist countries, how it was possible to claim that there were no import

quotas in Czechoslovakia; (e) if the internal prices were fixed by the Government, for instance in the case of raw materials, how it could be argued that those prices were influenced principally by the customs tariff; and (f) since the objectives set out in Article 1(b) were identical to those set out in the corresponding part of the similar agreements concluded by Finland with Hungary and with Bulgaria, why it was necessary to include the provisions of Article 9 only in the Agreement under examination, and why the obligation therein was imposed solely on Czechoslovakia. In his view, the essential question was whether the customs tariff in Czechoslovakia - regardless of whether customs duties might have a certain utility for accounting purposes - played an essential rôle in Czechoslovakia's foreign trade policy. The fact that Article 9 brought into play other "means provided by the Czechoslovak economic system" was evidence that such was not the case. Whereas he could admit the logic of the provision in question, this in itself would make it impossible for him to conclude that the Agreement was compatible with Article XXIV. He concluded his observations by recalling that his authorities had never expressed final opinions as to the compatibility of the Agreement with Article XXIV, and would not even be able to take a position on the issue until answers to his and other delegations' questions had been received and reflected upon.

28. The representative of Czechoslovakia said that with regard to Decree No. 326, Czechoslovakia used the convertible rouble in its trade with COMECON countries and, in its trade with other countries, was required to allocate the available foreign convertible currency so as to maximize the results under the plan. Although the terms of the Decree might appear to be translated literally as mandatory limits, these were in fact targets that were set in an effort to arrive at an international distribution of labour. The Decree would apply to Finland, since that country's currency was convertible. The representative of Finland said that his authorities were aware of the legislation in question, and expressed his conviction that the carrying out of the provisions of the Agreement would allow the Czechoslovak authorities to ensure that the currency regulations would not harm the trade under the Agreement. On the other hand, one delegate, relying on Decree No. 326¹ held the view that restrictions existed in Czechoslovakia. In effect, paragraph 5.1.3 of the Decree provided as follows:

"The mandatory targets of planned imports from socialist countries and the mandatory total ceilings for imports from capitalist countries and imports of specific goods were allocated, as regards the intermediate management purchasing agencies and the direct management organizations, by the relevant central body not later than fifteen days after the adoption of the plan."

Another member of the Working Party said that while his authorities could not be so certain about the matter, they, too, had doubts as to the matter of import restrictions raised by this Decree.

¹See Annex

29. The representative of Czechoslovakia reiterated that Czechoslovakia maintained no import restrictions applying to any country, and that this had been the case even when some other countries maintained discriminatory import restrictions affecting Czechoslovak exports. All foreign suppliers were treated equally. He said that figures for customs receipts were not published, and that in any event there was no separate reporting of duties collected on imports from CMEA or other Socialist countries, on which duties were levied in the same way as in the case of imports generally. With regard to Article 9, he urged members of the Working Party to study carefully his opening remarks, particularly with regard to trade promotion activities and the link between Article 9 and the objective of the Agreement as stated in Article 1. The parties were satisfied with the 30 per cent increase in their trade during 1975.

II. TRADE COVERAGE

30. One member of the Working Party stated that the fact that the existing trade in an entire sector, whether the industrial or, as in this case, the agricultural sector, was small at a certain period of time, was in itself no justification to exclude it from an agreement that was meant to comply with Article XXIV of the General Agreement. He pointed out that in some instances the trade in certain sectors within free-trade areas was small precisely because it was severely restricted.

31. Referring to the answer of Czechoslovakia to question No.15 in document L/4197, one member of the Working Party concluded that this answer was not compatible with what the representative of Czechoslovakia had stated earlier in response to questions on Decree No.326.

III. CUSTOMS DUTIES

32. Referring to the answer to question No.21 in document L/4197, saying that "In Czechoslovakia, 'no other restrictive regulation of commerce' exists", a member of the Working Party reiterated the view of his authorities that the Czechoslovak Decree No.326 contained trade restrictive rules. Accordingly, the answer to question No.21 seemed, in his eyes, to be incorrect.

IV. QUANTITATIVE RESTRICTIONS

33. One member of the Working Party stated that the Czechoslovak answer to question No.26 in document L/4197 was in contradiction to the Czechoslovak Decree No.326. Another member of the Working Party said that the replies to that question seemed to imply that a discriminatory application of quantitative restrictions might be appropriate under Article XXIV. His Government doubted whether the General Agreement, under any Article, permitted the use of discriminatory quantitative restrictions.

V. CONCLUSIONS

34. The parties to the Agreement, supported by two other members of the Working Party, were of the opinion that the Agreement was in full conformity with the provisions of Article XXIV.

35. The other members who spoke could not, on the basis of the available information, express a view on this question and requested that the Working Party should continue the examination at an appropriate time on the basis of additional information.

36. In the light of this situation, Finland and Czechoslovakia were prepared to pursue the examination within the Working Party at the request of members of the Working Party.

ANNEX*

Measures with a View to Ensuring the Implementation of the Operational State Plan for the Development of the National Economy in 1976, Adopted by Decision No. 326 of the Government of the Socialist Republic of Czechoslovakia of 18 November 1975

Instructions for the Appointment of the Operational State Plan Between the Various Administrative Levels and the Drawing-Up of Economic Plans

Part A

5. Special provisions regarding appointment

5.1 The Foreign Trade Plan

5.1.1 Within fifteen days as from the adoption of the Plan by the Government and in agreement with the Federal Foreign Trade Ministry, the relevant government body¹ shall apportion the export tasks between the suppliers of the intermediate management body² and the directly administered (managed) organizations which are distributed following the various fields of activities of the foreign trade organizations; exports shall be apportioned by the intermediate management bodies as between the various organizations under their authority within thirty days as from the adoption of the Plan by the Government.

5.1.2 Within four weeks as from the adoption of the Plan by the Government, the Federal Foreign Trade Ministry, in agreement with the central supplying bodies, shall allocate the mandatory export tasks as between the organizations which are entitled to carry out a foreign trade activity, distributed following the intermediate management bodies, and the directly managed organizations.

¹Under the Czechoslovak Law relating to national planning (No. 145/1970) published in the Official Gazette (Article 2, paragraph 2) the central bodies of the following: State administration central bodies, supreme co-operative and social organization bodies, regional national committees and the National Bank of Czechoslovakia. (Note by French translator)

²Under the Czechoslovak Law on national planning (No. 145/1970) published in the Official Gazette (Article 2, paragraph 2), the intermediate management bodies are the specialized general directorates and other specialized bodies, in particular the co-operative and social organization bodies and the national committees as regards the organizations which they manage. (Note by French translator)

* Reproduced at the request of the Working Party. Translation from Czechoslovak into French made by sworn translator.

5.1.3 Within fifteen days as from the adoption of the Plan by the Government, the relevant central body shall apportion the mandatory tasks under the Plan for imports from socialist countries and mandatory ceilings for aggregate imports from capitalist countries, and for imports of selected items, as between the purchasing agencies of the intermediate management body and of the directly managed organizations.

5.1.4 Within four weeks as from the approval of the Plan by the Government and after discussing with the foreign trade organizations, the intermediate management bodies and the directly managed organizations shall make known to their higher central bodies and to the Federal Foreign Trade Ministry the agreed allocation of the mandatory tasks and the import ceilings and their apportionment between the various foreign trade organizations.

5.1.5 Within thirty-two days following the approval of the Plan by the Government, the relevant central bodies, in agreement with the Federal Foreign Trade Ministry, shall resolve any differences which might have arisen during the negotiations under item 5.1.4 and shall apportion the mandatory tasks under the plan for imports from socialist countries, and the mandatory ceilings for imports from capitalist countries, between the purchasers of the intermediate management body and between the directly administered organizations, distributed following the various foreign trade organizations.

5.1.6 Within six weeks following the approval of the Plan by the Government, the Federal Foreign Trade Ministry (in agreement with the relevant central organizations distributed following the intermediate management bodies and the directly administered organizations), shall apportion the mandatory tasks for imports from socialist countries and the mandatory ceilings for imports from capitalist countries as between the organizations entitled to carry out foreign trade operations.

5.1.7 In apportioning the import and export tasks, the Federal Foreign Trade Ministry and the relevant central bodies shall ensure the carrying out of the Czechoslovak contractual commitments under international agreements including the specialization and co-operation agreements which are required and are technically agreed with foreign partners. The apportionment of the aggregate volume of the socialist countries' import and export plan is only of an orientational nature, pending the conclusion of agreements with socialist countries. When such agreements have been concluded, the Federal Foreign Trade Ministry shall submit to the Government, within a prescribed time-limit, a report incorporating the finalized relations between the various sectors of the Czechoslovak national economy and foreign trade, as regards the commitments entered into under the Protocol relating to the exchange of goods with socialist countries. Proposals shall be based on the negotiations between the Federal Foreign Trade Ministry and the central bodies (both suppliers and purchasers) and on the discussion held with the State Planning Commission. The adjustment of the Plan and the related change concerning the apportionment between the intermediate management bodies of the central economic

agencies and between the organizations entrusted with the task of implementing foreign trade decisions shall be made in conformity with the Government's decision. The economic organizations and the relevant sectors shall be under the obligation to ensure the carrying out of the tasks laid down under the Plan, consistent with the purposes of the trade policy of the Czechoslovak Socialist Republic.

5.1.8 Within the scope envisaged by the Federal Foreign Trade Ministry and the relevant central agency, the mandatory ceilings and the mandatory tasks in relation to imports shall not be fully apportioned between the intermediate management bodies within the prescribed time-limit.

5.1.9 As regards the ceilings for imports of machinery and plant for the construction of equipment, from capitalist countries, in respect of the year 1976, and within thirty days after approval of the Plan by the government, the relevant central bodies shall apportion between the intermediate management bodies (including, as appropriate, the investment organization) volumes corresponding with the investment ceilings in the following order:

- (a) imports in respect of which the National Bank of Czechoslovakia has released the necessary foreign exchange;
- (b) imports for non-completed constructions, which are regarded as mandatory tasks;
- (c) imports for constructions already started, which are regarded as mandatory tasks to the extent that the construction procedure so requires and in accordance with the construction system adopted;
- (d) imports intended for other constructions, not completed;
- (e) imports of machinery and plant not included in the construction budget and imports for other constructions being started to the extent that import is necessary and has been accepted by the supplying parties.

5.1.10 Imports of machinery and plant not included in the construction budget and imports of machinery and plant intended for constructions not exceeding Kcs 2 million of budgetary costs shall be apportioned only between physical deliveries which have been controlled by the higher central agency with a view to ensuring maximum efficiency.

5.1.11 Unused import ceilings (including percentage reserves to cover 1975 transfers for the purchase of products exhibited at fairs and exhibitions, averages, unscheduled imports, price changes, etc.) shall remain with the central agency which shall communicate their structure to the Federal Trade Foreign Ministry for information purposes. The central agencies shall apportion any unused import ceilings, as they arise, in accordance with ascertained needs and

requirements. The amount of the non-apportioned ceiling shall be communicated by the central agencies to the National Bank of Czechoslovakia and, as appropriate, to the main establishment. At the time of the apportionment of the State Plan, the central body may communicate, for information purposes, to the intermediate management bodies the maximum amount on which they can rely in relation with their intentions concerning the utilization of any unapportioned import ceilings.

5.1.12 Within fourteen days following the dates set forth under items 5.1.2 and 5.1.6 of these instructions, the Federal Foreign Trade Ministry, in agreement with the main suppliers' and purchasers' central bodies shall apportion indices of the Foreign Trade Territorial Plan as regards the USSR and Yugoslavia, between the organizations entitled to carry out the foreign trade activities.

5.1.13 Within the time-limit laid down for the apportionment of the Plan, the relevant central bodies shall transmit a copy of the apportionment between the intermediate management bodies also to the National Bank of Czechoslovakia, with the following breakdown:

- (a) exports to capitalist States, socialist countries, and the S.F.R. of Yugoslavia;
- (b) by imports from capitalist States, socialist countries and the S.F.R. of Yugoslavia, including the apportionment of the items selected.

5.1.14 In agreement with the National Bank of Czechoslovakia, and in conformity with the requirements of the relevant central supplier bodies, the Federal Foreign Trade Ministry shall determine the volume of imports of a non-investment nature from the capitalist State clearing area, taking into consideration the purposes of the trade policy. In apportioning the Plan between the lower level organizations, the relevant central bodies shall divide the import scheme following the intermediate management bodies and the foreign trade organizations of the Federal Foreign Trade Ministry, and the National Bank of Czechoslovakia.

5.1.15 The export volumes for the foreign trade organizations intended for selected clearing areas shall be determined by the Foreign Trade Minister, in agreement with the President of the National Bank of Czechoslovakia, so as to avoid the creation of undesirable assets.

5.2. The Foreign Exchange Plan

5.2.1 The National Bank of Czechoslovakia, with the preliminary agreement of the Federal Foreign Trade Ministry, shall establish the tasks under the Foreign Exchange Plan broken down following the organizations entitled to carry out foreign trade activities; the apportionment between the organizations entitled to carry out a foreign trade activity shall be effected by the Federal Foreign Trade Ministry within the time-limit laid down for the apportionment of export and import tasks.