

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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WORKING PARTY ON THE FREE TRADE AGREEMENTS BETWEEN
THE EFTA STATES AND THE CZECH REPUBLIC AND THE SLOVAK REPUBLIC

Questions and Replies

Contracting parties were invited (GATT/AIR/3340) to communicate to the secretariat any questions they might wish to put concerning the Free Trade Agreement between the EFTA States and the former Czech and Slovak Republic. In response to this request, a number of questions were received and were transmitted to the Parties to the Agreements between the EFTA States and the Czech Republic and the Slovak Republic. The questions and the replies which have been received are set out below.

1. Objective (Article 1)

1.1 Question

Can the Parties to the Free Trade Agreements confirm that it is their intention to establish full free trade areas? In this regard can the Parties provide a full plan and schedule for the reduction to zero of tariffs on substantially all the trade between the Parties to the respective Agreements?

1.1 Answer

The objective of the Agreements is to establish free trade areas in conformity with Article XXIV of the General Agreement. The full plans and schedules for the reduction to zero of tariffs on substantially all trade between the Parties are contained in the relevant articles of the Agreements as well as in the relevant Annexes and Protocols of the Agreements, which have been provided to the Contracting Parties.

2. Scope (Article 2)

2.1 Question

What percentage of trade between the EFTA States and the Czech Republic and the Slovak Republic is accounted for by:

- (a) Products falling within Chapters 25 to 97 of the Harmonised Commodity description and coding system. In this regard what percentage of trade between the EFTA States and the Czech Republic and the Slovak Republic is accounted for by the products listed in Annex I to the Agreements?
- (b) Products specified in Protocol A to the Agreements?

- (c) Fish and other marine products as provided for in Annex II to the Agreements?

2.1 Answer

- (a) Products falling in HS Chapters 25 to 97 account for 93.4 per cent of the total trade between the EFTA countries and the Czech Republic and the Slovak Republic (CSFR/1991 figures).

Products listed in Annex I account for 0.03 per cent of imports from the Czech Republic and the Slovak Republic (CSFR/1991 figures).

- (b) Products specified in Protocol A account for 1.86 per cent of the total trade between the EFTA countries and the Czech Republic and the Slovak Republic (CSFR/1991 figures).
- (c) Fish and other marine products as provided in Annex II account for 0.18 per cent of the total trade between the EFTA States and the Czech Republic and the Slovak Republic (CSFR/1991 figures).

2.2 Question

What percentage of trade between EFTA and the Czech Republic and the Slovak Republic is accounted for by the products not covered by the above?

2.2 Answer

Products not covered by the above (= agricultural products - Protocol A (HS 1-24) - Annex II + Annex I) account for 4.3 per cent of the total trade between the EFTA States and the Czech Republic and the Slovak Republic (CSFR/1991 figures).

2.3 Question

What are the intentions of the Parties to the Free Trade Agreements for bringing products not covered by Article 2 into the Free Trade Agreements?

2.3 Answer

A large number of those products not covered by Article 2 of the Agreements are basic agricultural products. These are, however, to a large extent covered in the bilateral agricultural arrangements, which have been concluded within the framework of the FTAs to provide for measures to facilitate trade in agricultural products. The intention of the Parties to the Free Trade Agreement are to foster, in so far their agricultural policies allow, harmonious development of trade in agricultural products. The few products listed in Annex 1 are permanently excluded.

2.4 Question

Could the Parties explain how they reconcile the omission of products falling within Chapters 1 to 24 of the Harmonized System with the requirement in GATT Article XXIV:8 (b) that duties and other restrictive regulations of commerce be eliminated on "substantially all the trade"?

2.4 Answer

In the Free Trade Areas between the EFTA States and the Czech Republic and the Slovak Republic duties and other restrictive regulations of commerce are eliminated on "substantially all trade" as required in Article XXIV:8(b).

A number of products of trade interest under the HS chapters 1 to 24 fall within the scope of the Agreements as defined in Article 2 and are covered by Protocol A of the Agreements (processed agricultural products), by Annex II (fish and other marine products). It would thus not be correct to state that "all products in the HS chapters 1 to 24 are omitted". Furthermore, it has to be noted with respect to the requirements contained in Article XXIV:8(b) that duties and other restrictive regulations of commerce be eliminated on "substantially all the trade" and not on "trade of substantially all products". Hence compliance with obligations under Article XXIV:8(b) has to be judged with regard to the entirety of the Agreements and the percentage of total trade on which obstacles are eliminated should as such be determined.

3. Rules of Origin (Article 3)

3.1 Question

Protocol B, Title 1, Article 1 (b) states that originating status will be conferred on products incorporating materials which have not been wholly obtained in a state Party to the Agreement, provided that such materials have undergone sufficient working or processing in that state "within the meaning of Article 5". Please confirm that Protocol B, Article 5 paragraphs 2 through 5 are the only operative provisions concerning third party inputs to products which may qualify for originating status under the FTA. For example, if a third country exported computer parts to Iceland for assembly into a finished product, would that product, when shipped from Iceland to the Czech Republic, have originating status for purposes of the FTA?

3.1 Answer

Title I of Protocol B contains all the provisions on the definition of the concept of "originating products". In order to examine whether third country computer parts could be used in the assembly of finished products in Iceland, it would be necessary to consult Annex II to Protocol B, which lays down particular process rules for particular products, and to take into account all the other provisions contained in Article 5 of Protocol B.

4. Customs Duties of a Fiscal Nature (Article 6)

4.1 Question

What is the basis of distinction between customs duties of a fiscal nature and other forms of customs duties? What sort of exceptions are made in Protocol C to the requirement to eliminate customs duties of a fiscal nature? How extensive are these exceptions?

4.1 Answer

Duties of a fiscal nature are non-discriminatory duties applied for revenue purposes on products which are not produced domestically. Protocol C refers to Iceland, Liechtenstein and Switzerland only. Other Parties to the Agreements do not apply duties of a fiscal nature. Due to the industrial structure

of Iceland, a large number of products is covered by Protocol C with regard to that State. For Liechtenstein and Switzerland only a few products are covered by Protocol C.

5. Customs Duties on Exports and Charges having Equivalent Effect (Article 7)

5.1 Question

What customs duties or duties having equivalent effect are presently applied on exports by the Parties to these Free Trade Agreements?

5.1 Answer

The provisions of Annex V concern Iceland, Liechtenstein and Switzerland only. The provisions allow Iceland to apply export duties, but no such duties are applied at present. The export duties in Liechtenstein and Switzerland were abolished on 1 January 1993.

6. Quantitative Restrictions on Exports and Imports and Measures having Equivalent Effect (Articles 8 and 9)

6.1 Question

In respect of Articles 8 and 9, what quantitative restrictions, and measures having equivalent effect, are currently applied by Parties to these Free Trade Agreements on imports and exports by the EFTA States and imports and exports by the Czech Republic and the Slovak Republic?

(What are the terms and conditions of Annexes VIII and IX?)

6.1 Answer

I. The following import restrictions are applied by the EFTA States and the Czech Republic and the Slovak Republic:

- (i) Quantitative restrictions on *lignite* shall be progressively abolished by Austria until the end of the transition period.
- (ii) Permanent quantitative restrictions apply in Iceland on *petroleum oils, brooms and brushes*.
- (iii) Quantitative restrictions will apply in Norway on *textile clothing and linen*. These restrictions will be abolished by 31 December 1997.
- (iv) Quantitative restrictions shall be progressively abolished by the Czech Republic and the Slovak Republic until the end of the transition period on *uranium or thorium ores, natural or enriched uranium, waste and scrap of paper or paperboard and ferrous waste and scrap*.

II. The following permanent export restrictions are applied by the EFTA States:

- (i) On *ferrous waste and scrap* by Austria, Finland, Liechtenstein, Norway, Sweden and Switzerland,

- (ii) On unwrought copper, copper waste and scrap and on aluminium waste and scrap by Austria, and
- (iii) on vessels and other floating structures for breaking up by Finland.

III. The Czech Republic and the Slovak Republic will apply export licensing for the purpose of monitoring exports on a number of basic products, such as natural sands, kaolin, pebbles, portland cement, coal, lignite, coke, petroleum oils, medicaments, fertilisers, raw hides and skins, fuel wood, sawn wood, wood pulp, unwrought precious metals, ferrous waste or scrap, steel ingots, flat-rolled iron or steel, bars, angles or tubes of iron or steel and waste and scrap of copper, aluminium, lead or zinc. Any export restriction on grounds of difficulties in the Czech and Slovak markets for any of the listed product shall be introduced by an *ad hoc* decision of the Czech Republic and the Slovak Republic of which the EFTA States shall be informed immediately.

This export licensing shall be abolished at the latest by the end of the fifth year after the entry into force of the Agreements.

6.2 Question

Could the Parties to the Agreement please confirm what GATT justifications are in place for import and export restrictions on products appearing in Annexes VI, VII, and VIII? What percentage of trade between the Parties is covered by these Annexes?

6.2 Answer

Annex VI:

The Austrian import restriction on lignite is maintained for energy security reasons and shall be progressively abolished by the end of the transitional period. Iceland maintains quantitative restrictions on petroleum oils for energy security reasons. Iceland also maintains quantitative restrictions on imports of brooms and brushes for social reasons, i.e. to protect the interests of blind people making these products in Iceland. There was no trade in these products between these respective parties to the Agreements and the CSFR in 1991.

Norway maintains quantitative restrictions on imports of certain textiles products, and these will be abolished by 31 December 1997. The specific modalities regarding the timetable for the gradual abolition will be subject to consultations between the States Parties concerned. The Norwegian imports in products covered by restrictions in Annex VI accounted for 3.83 per cent of total imports to Norway from the CSFR (1991).

Annex VII:

Both the Czech Republic and the Slovak Republic maintain quantitative restrictions on imports of uranium, waste and scrap of paper and paperboard and ferrous waste and scrap. These restrictions are maintained for security and environmental reasons and will be abolished by the end of the transitional period (30 June 2002).

Only 0.003 per cent of total EFTA imports to CSFR were covered in 1991 in the products listed in Annex VII.

Annex VIII:

The export restrictions on ferrous and non-ferrous waste and scrap are intended to safeguard the supply of input material. The exports from EFTA countries to the Czech Republic and the Slovak Republic in products listed in Annex VIII are extremely limited: in case of Austria 0.047 per cent of total exports, in case of Switzerland 0.001 per cent of total exports. The figures for Sweden are not available, since products listed (ex. chapter 72-73) are non-identifiable (goods covered by the Sweden-ECSC Agreement which are obviously used or which are likely to be used for manufacturing of new metal).

7. General Exceptions (Article 10)**7.1 Question**

Article 10 does not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of "protection of the environment". What is the scope of this term?

7.1 Answer

The Agreement does not define the term "protection of the environment", but the notion is the same as "protection of human, animal or plant life or health" as understood in Article XX of the General Agreement.

8. State Monopolies (Article 11)**8.1 Question**

What products are currently subject to state monopolies in the States Parties to these agreements? Have these been notified under Article XVII?

(What are the provisions of Protocol D?)

8.1 Answer

The Agreements do not contain any lists of state monopolies or products subject to state monopolies in the States Parties, with the exception of those state monopolies listed in Protocol D and to which the provisions of Article 11 do not apply. Since Protocol D is part of the Free Trade Agreement it has been notified together with the Agreement and its Annexes and Protocols to the Contracting Parties.

The question on a possible GATT notification of state monopolies in the States Parties should be dealt with in the appropriate fora, and it is not relevant in an Article XXIV review of the Agreements.

9. Information Procedure on Draft Technical Regulations (Article 12)**9.1 Question**

Can the States Parties to these Free Trade Agreements provide assurance that draft technical regulations and amendments thereto will be in accordance with the Agreement on Technical Barriers to Trade.

9.1 Answer

Draft technical regulations and amendments thereto will be in accordance with the Agreement on Technical Barriers to Trade.

10. Trade in Agricultural Products (Article 13)

10.1 Question

In what manner do the bilateral arrangements between the EFTA States and the Czech Republic and the Slovak Republic facilitate trade in agricultural products? If products falling within Chapters 1-24 are to be excluded from the FTA's, can the Parties to the Agreements confirm that these bilateral arrangements will be GATT consistent?

10.1 Answer

The bilateral arrangements abolish or reduce customs duties and charges having equivalent effect on a large number of products of trade interest to the Parties of the Agreement. The arrangements also contain review clauses, thus allowing to review the functioning and also the coverage of the arrangements.

10.2 Question

What agricultural commodities are currently traded between EFTA States on one hand and the Czech and Slovak Republics on the other? How will trade in these commodities be affected by the bilateral agreements on agriculture?

10.2 Answer

Trade data for 1992 is provided in the Attachment. Copies of bilateral agricultural arrangements have been provided to the GATT Secretariat. Detailed effects on individual commodities are clearly indicated in these arrangements.

10.3 Question

Why does the Agreement not apply to trade in bulk agricultural products such as grains, oilseeds, meats, dairy products, etc.?

10.3 Answer

Due to the different policies and trade regimes in agriculture in the EFTA States, the States Parties to the Agreements have concluded arrangements on a bilateral basis providing for measures to facilitate trade in agricultural products of trade interested to the Parties. However, reference to these arrangements is made in Article 13 of the Agreements, thus linking them with the other instruments negotiated within the framework of the Free Trade Agreements, which are all relevant instruments for creating the free trade areas (see also reply 5).

10.4 Question

Under what mechanism might the Czech and Slovak Republics apply variable import levies on processed agricultural imports from the EFTA countries as provided for in Protocol A?

10.4 Answer

The mechanism under which the Czech Republic and the Slovak Republic may apply variable levies is the same which applies to the EFTA countries and is contained in Article 2 of Protocol A. That Article stipulates that in order to take account of differences in the cost of the agricultural raw materials incorporated in the goods covered by Protocol A, the Agreements do not preclude the levying, upon import, of a variable component or fixed amount, or the application of internal price compensation measures; nor the application of measures adopted upon export. Such price compensation measures must not exceed the differences between the domestic price and the world market price of the agricultural raw materials incorporated into the goods concerned.

The provisions mentioned above are the same which apply in trade between the EFTA countries and between the EC and the EFTA countries. They are also included in all the other FTAs which the EFTA countries have concluded with third countries.

10.5 Question

Why does the Agreement not prohibit the use of export subsidies on agricultural trade between the Czech and Slovak Republics and the EFTA States? Do the EFTA States now subsidize any of their agricultural exports to the Czech and Slovak Republics or vice versa?

10.5 Answer

GATT does not prohibit the use of export subsidies on agricultural trade. The question of the reduction of export subsidies is currently under negotiation in the Uruguay Round and the Parties will commit themselves to the outcome of these negotiations.

10.6 Question

Could the Parties please indicate the percentage of their trade, between EFTA States on the one hand and the Czech and Slovak Republics on the other, in products falling within Chapters 1 to 24 of the Harmonized System? What percentage of trade between EFTA States and the Czech and Slovak Republics is covered by the separate bilateral agricultural agreements?

10.6 Answer

Trade, between the EFTA States on the one hand and the Czech Republic and the Slovak Republic on the other, in products falling within Chapter 1 to 24 of the HS account for 6.16 per cent (1991 figures/CSFR). The bilateral agricultural arrangements cover 2.1 per cent of the total trade between the EFTA States on the one hand and the Czech Republic and the Slovak Republic on the other (1991 figures/CSFR).

11. Internal Taxation (Article 14)**11.1 Question**

Can the Parties to the Agreements clarify what is meant by direct and indirect taxation for the purposes of the provisions of this Article.

11.1 Answer

Income tax or corporate profit tax are examples of direct taxation, whereas turnover tax and value added tax are examples of indirect taxation.

12. Payments (Article 15)**12.1 Question**

Article 15.3 allows the Czech and Slovak Republics to apply exchange restrictions, provided that they are applied in a "non-discriminatory" manner. Does "non-discriminatory" mean multilaterally or only within the context of the Agreement?

12.1 Answer

"Non-discriminatory" means that exchange restrictions will be applied multilaterally. Furthermore, it should be noted that Article 15.3 relates only to certain exchange restrictions connected with the granting or taking up of short and medium term credits to the extent permitted according to the Czech Republic and the Slovak Republic status under the IMF.

13. Rules of Competition concerning Undertakings (Article 18)**13.1 Question**

What criteria are to be applied in assessing whether actions prevent, restrict or distort competition, or whether actions by dominant undertakings constitute an abuse of their position? Are these considerations subject to specific legally based processes within the States Parties to these Free Trade Agreements?

13.1 Answer

No further criteria have been defined. The assessment of the conduct of undertakings is made on case-by-case basis, taking into consideration the effects of the competition and trade between the Parties.

14. State Aid (Article 19)**14.1 Question**

With reference to the criteria set out in Annex XII, can the Parties to these Agreements confirm that any action taken in accordance with paragraph 5 of Article 19 will be in accordance with the relevant provisions of the GATT?

14.1 Answer

Yes.

15. Dumping and Emergency Actions (Articles 20 and 21)

15.1 Question

Can the States Parties to these Free Trade Agreements give assurance that any action in respect of dumping or emergency actions (Articles 20 and 21) shall not attribute to third countries any injury resulting from imports from States Parties to the Free Trade Agreements, particularly where a commonly acceptable solution is agreed in accordance with Article 25 of the Free Trade Agreements?

15.1 Answer

No injury is attributed to third countries by any action in respect of dumping or emergency actions (Articles 20 and 21), not even in cases where a commonly acceptable solution is agreed in accordance with Article 25 of the Agreements.

15.2 Question

If a Party to this Agreement fails to take action that complies with the procedures laid out in Article 25, what are the remedies contemplated?

15.2 Answer

As regards antidumping measures, Article 20 provides that Parties to the Agreements may only take measures in accordance with the Agreement on Implication of Article VI of the General Agreement on Tariffs and Trade and with the procedure laid down in Article 25.

Article 25 provides also for the remedies in situations when any of the Parties has failed to fulfil its obligation under the Agreements (Article 31).

15.3 Question

Is the language in Article 21, including such terms as "serious injury", "serious disturbances" and "serious deteriorations" to be understood as GATT-consistent or GATT-plus? Could the Parties to the Agreement please clarify why there is no incorporation of GATT Article XIX and related instruments here?

15.3 Answer

The wording of Article 21 contains element of the language found in Article XIX of GATT. The notion "serious disturbances" has been taken over the relevant articles of the earlier agreements between the EFTA States and the European Community. It should be remembered that the Agreements cover only imports from the Parties concerned and thus they cannot be identical to the safeguard measures taken against all m.f.n. imports on the basis of Article XIX.

The character of the Free Agreements also explains why they do not contain specific reference to Article XIX of GATT. Moreover, the Preamble of the Agreements stipulates that no provision may be interpreted as exempting the Parties from their obligations under GATT.

16. Structural Adjustment (Article 22)

16.1 Question

Can the States Parties to the Free Trade Agreements advise, in respect of Article 22, what industries or sectors are or may be subject to measures to facilitate structural adjustment? What proportion of Trade between EFTA and the Czech Republic and EFTA and the Slovak Republic is represented by these products? Are imports from third countries subject to any restrictions related to structural adjustment and if so, under what provision of the GATT are such measures justified?

16.1 Answer

These measures may concern infant industries or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems. The maximum coverage of trade is defined in Article 22. No measure against third countries can be based on this Article.

17. Re-export and Serious Shortage (Article 23)

17.1 Question

Can the States Parties to these Free Trade Agreements provide assurance that any export restrictions applied will be in accordance with the requirements of Article XI of the GATT?

17.1 Answer

Any export restrictions, if not based on Article XX of the General Agreement, are applied in accordance with the requirements of Article XI of the GATT.

18. Balance-of-Payments Difficulties (Article 24)

18.1 Question

In endeavouring to avoid the imposition of restrictive measures for balance-of-payments purposes, as required under Article 24:2 of these Free Trade Agreements, can the States Parties to these Agreements give assurance that the interests of third parties will not be prejudiced. In this regard it is noted that Article XXIV:8(b) of the GATT permits the application of measures for balance-of-payments purposes within free trade areas.

18.1 Answer

Article 24 provides that any measures for balance-of-payments purposes will be applied in accordance with the conditions established under the GATT.

19. Evolutionary Clause (Article 29)

19.1 Question

Could the parties to the Agreement give an indication of likely "fields" for future coverage by the FTA? Will the Agreement be modified under this clause to incorporate a Uruguay Round result in areas not currently covered by the FTA?

19.1 Answer

The fields for future depending and extension of the coverage of the Agreements may be defined by the Parties within the objectives of the Agreements as set forth in Article 1. The Parties intend to comply with the rules and disciplines arising from the Uruguay Round.

ATTACHMENTEFTA COUNTRIES' TRADE IN AGRICULTURE WITH THE CSFR, 1992

(Sorted by importance of total EFTA Imports and Exports)

(The products cover HS 1 to 24)

In '000 U.S. dollar

SITC Rev.3	Description (shortened)	Imports + Exports						
		Austria	Finland	Iceland	Norway	Sweden	Switzer	EFTA
	TOTAL	117,480	18,232	437	3,794	18,713	21,477	180,124
112	Alcoholic beverages	5,697	11,555	108	42	4,848	2,029	24,278
111	Non-alcoholic beverages	15,855	0	13	0	5	7	15,879
048	Cereal preparations	7,856	6	21	378	1,441	3,185	12,887
057	Fruit and nuts	11,989	90	2	0	25	134	12,240
098	Edible products n.e.s.	10,101	656	0	115	239	621	11,731
012	Other meat	5,528	73	0	102	0	2,904	8,608
4	Animal and vegetable oils, fats and waxes	3,929	8	37	9	2,301	671	6,955
058	Fruit preserved	3,901	599	0	0	17	2,047	6,564
29	Crude animal and vegetable materials	4,528	42	0	0	143	1,723	6,436
022	Milk, cream, yogurt	5,471	505	0	0	317	36	6,329
081	Feeding stuff for animals	5,498	0	0	0	251	124	5,872
073	Chocolate	1,470	2,161	0	14	1,299	828	5,770
034	Fish, fresh, chilled or frozen	2,069	27	128	2,252	266	280	5,022
017	Meat prepared or preserved	2,048	3	0	0	2,511	25	4,587
061	Sugar	4,162	0	0	12	206	144	4,523
043	Barly	3,627	0	0	0	0	54	3,681
025	Eggs	1,826	0	0	0	8	1,611	3,445
072	Cocoa	315	0	0	0	2,991	105	3,411
024	Cheese	1,970	350	0	139	684	237	3,380
045	Other cereals	58	0	0	0	33	2,729	2,820
054	Vegetables	1,776	9	0	18	189	539	2,532
122	Tobacco, manufactured	1,995	0	0	7	289	39	2,329
001	Live animals	1,983	0	0	0	168	117	2,267
011	Meat of bovine animals	454	1,653	0	146	0	0	2,253
062	Sugar confectionery	1,596	331	7	69	154	40	2,196
023	Butter	1,855	162	0	0	1	0	2,018
121	Tobacco, unmanufactured	938	0	0	8	0	864	1,810
044	Maize	1,739	0	0	0	3	0	1,742
071	Coffee	1,431	0	0	0	1	27	1,458
056	Vegetables prepared or preserved	983	0	0	60	236	178	1,457
059	Fruit juices	1,380	1	0	0	0	36	1,416

SITC Rev.3	Description (shortened)	Imports + Exports						
		Austria	Finland	Iceland	Norway	Sweden	Switzer	EFTA
22	Oil seeds and oleaginous fruits	1,099	0	0	9	11	137	1,256
075	Spices	1,149	0	0	1	0	6	1,157
037	Fish, Crustaceans n.e.s.	386	1	47	336	4	0	774
091	Margarine	370	0	0	0	35	0	405
074	Tea and mate	344	0	0	0	0	0	344
035	Fish, dried, salted, smoked, in brine	1	0	41	77	21	0	140
036	Crustaceans, molluscs etc.	67	0	33	0	3	0	103
042	Rice	30	0	0	0	0	0	30
046	Meal of wheat	0	0	0	0	12	0	12
047	Other cereal meals and flours	4	0	0	0	1	0	5
041	Wheat	2	0	0	0	0	0	2
016	Meat salted, in brine, dried or smoked	0	0	0	0	0	0	0

Source: UN COMTRADE