

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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AGREEMENT BETWEEN FINLAND AND POLAND

Report of the Working Party

1. At the meeting of the Council on 17 May 1978 the CONTRACTING PARTIES were informed that Finland and Poland had entered into an Agreement, which was to provide fair conditions of competition on the markets of the parties to the Agreement and to promote a dynamic and harmonious development of their mutual trade and economic relations. The Agreement had entered into force on 1 April 1978.
 2. In accordance with the notification procedures, the parties to the Agreement had transmitted to the secretariat the text of the following legal instruments, which had been circulated to contracting parties with document L/4652:
 - Agreement between the Republic of Finland and the Polish People's 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 17 May 1978 a Working Party was established 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 the Republic of Finland and the Polish People's Republic on the reciprocal removal of obstacles to trade; and to report to the Council." (L/4669/Rev.2)
 4. The Working Party met on 26 and 27 September 1979 and 18 January 1980 under the chairmanship of Mr. P.R. Barthel-Rosa (Brazil). It had available the text of the Agreement, as well as the questions submitted by contracting parties and the replies provided by the parties to the Agreement (L/4786). The Working Party also had recent trade statistics furnished by the parties to the Agreement and circulated in documents L/4830 and Addenda 1 and 2.
- I. General considerations
5. In an introductory statement, the representative of Poland referred to the Preamble of the Agreement, which stated the desire of the parties to the Agreement to solve, in a fair and equal way, the problems arising from the

contemporary European integration processes to the commercial and economic relations between them, and to do so in accordance with their international obligations. Against this background, negotiations between Finland and Poland had been started on the initiative of Finland, with a view to reaching an Agreement on the reciprocal removal of obstacles to trade between the two countries. From the outset, the negotiations had been based on two principles, the first being reflected in the text of Article 1 of the Agreement, and the second being that the resulting arrangement would have to be strictly consistent with the provisions of the General Agreement on Tariffs and Trade concerning the formation of free-trade areas. The Agreement had been signed on 29 September 1976 and had entered into force on 1 April 1978. The last stage of duty reductions would be effected by both partners on 1 January 1980. With regard to some sensitive items, this final reduction would take place on 1 January 1985. In the Agreement, both parties had undertaken to eliminate progressively the obstacles to substantially all their trade, in accordance with the provisions of the General Agreement concerning the formation of free-trade areas. In the view of Poland and Finland, the Agreement fulfilled all the requirements of Article XXIV of the General Agreement, covered substantially all their mutual trade and included a precise timetable for the elimination of customs tariffs.

6. In an introductory statement, the representative of Finland associated his delegation with the views expressed by the representative of Poland, and emphasized that Finland had put two preconditions on the results from the negotiations between the parties, namely that the Agreement had to be based on reciprocity of concessions and obligations and that its provisions had to be consistent with Article XXIV. Finland had been conscious of the technical difficulties arising from the differences in the foreign trade régimes of the parties to the Agreement, who had nevertheless succeeded in striking a balance with respect to their mutual obligations under Article XXIV.

7. One member of the Working Party recalled that at the meeting of the GATT Council of Representatives on 17 May 1978, when Poland had introduced the Agreement, his delegation had made a statement referring to Article 9 of the Agreement, under which Poland had undertaken to administer its foreign trade régime in conformity with the principles of free-trade agreements. It had been noted that in the centrally-planned economy countries the tariff played a minor rôle, and that in that respect Poland had introduced an experimental tariff as from 1 January 1976. It had been pointed out that the experimental tariff ought to be examined, and that view could be considered as the starting point for the deliberations of the Working Party.

8. One member of the Working Party recalled his authorities' doubts as to the meaningfulness of such an agreement with respect to the provisions of the General Agreement, especially Article XXIV. He recognized the growing importance of trade between countries with different economic systems, and could understand the Parties' desire to establish trade links; but this was not tantamount to sharing their views that the Agreement fully met the requirement of Article XXIV. Referring to the Protocol for the Accession of Poland to GATT¹, he said that the annual quantitative import commitment had not been fulfilled by Poland. This made it difficult to see how the elimination of tariffs from products originating in Finland could lead to a free-trade area with Poland, and illustrated the difficulty in assessing whether the latter country was meeting the commitment which had been undertaken when joining GATT. Noting that the Agreement between the parties had been in force for somewhat more than one year, he said that the compatibility of the Agreement with Article XXIV could not be judged adequately until more information had been made available by the parties concerning the manner in which the Agreement was to be implemented by Poland, and concerning their mutual trade under the Agreement.

9. One member of the Working Party said that his delegation was aware of the need to explore the methods by which trade relations could be enhanced between market-economy countries and centrally-planned economy State-trading countries. He said, however, that his delegation continued to have doubts of principle, which were shared by another member of the Working Party, as to whether agreements such as the one under examination could be fully compatible with the requirements of Article XXIV.

10. Another member of the Working Party drew attention to the fact that some provisions of the Agreement, including Article 9, contained text which reflected the parties' intentions in terms similar to those found in the General Agreement itself. Nevertheless, in view of the differences in the economic systems of the parties to the Agreement, his authorities had some doubt as to the meaning of those provisions, in particular in the light of the possibilities for their effective implementation. His authorities continued to have doubts as to whether agreements such as the one under examination could be fully compatible with the provisions of Article XXIV of the General Agreement.

11. One member of the Working Party expressed surprise that some other members would, in their preliminary statements, challenge the compatibility of the Agreement under Article XXIV before even having started the examination

¹BISD 15S/46

which the Working Party had been called upon to make. He said that he could not accept any approach which would question a priori the compatibility of the Agreement with the provisions of the General Agreement, on the basis that the parties to the Agreement were of different economic and social systems. He stressed that this fact had no relevance to the contractual framework of the GATT. The sole task before the Working Party was to examine, in accordance with its terms of reference; whether the Agreement met the provisions of the General Agreement. He added, furthermore, that his delegation would oppose any generalization of individual cases, their not being totally identical. He pointed out that in spite of the same social and economic system of some contracting parties, their foreign trade regulations were not necessarily identical. He urged the members of the Working Party to adhere strictly to the examination of the case before it.

12. One member of the Working Party 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 the majority of countries were quantitative and exchange restrictions. Non-tariff barriers notified during the recently concluded multilateral trade negotiations showed that customs tariffs were not the exclusive instrument of trade policy. The rôle of customs tariffs should therefore not be over-estimated when considering the question of compatibility of the free-trade area with Article XXIV.

13. In response, another member of the Working Party acknowledged that other trade barriers had existed when the General Agreement was being negotiated, but pointed out that the drafters had indicated a clear preference for customs tariffs as the sole measure to be applied at the border. Other measures were to be only temporary in nature, such as those provided for in Articles XI to XIV.

14. The representative of Finland said that in the view of his delegation it would be inappropriate for the Working Party to deal with the philosophy of trade relations among countries with different economic systems, and urged the members of the Working Party to focus their attention on the provisions and the operation of the Agreement under examination.

15. The representative of Poland expressed reservations in respect of certain statements that had been made by other delegations challenging a priori the possibility of agreements under Article XXIV between countries having different economic systems. He recalled that at the time of the accession of Poland to GATT in 1967, no contracting party had expressed any reservation as to the capacity of Poland to conclude a free-trade agreement. Juridically, the Polish concessions were in the form of an import commitment

of a global character towards all the contracting parties. He recalled that when Poland had joined the GATT, his delegation had referred to the possible introduction of a customs tariff, which had in fact taken place as of 1 January 1976. It was on the basis of its customs tariff that Poland had made concessions to Finland in the framework of the Agreement. With reference to Article 9, his authorities had no intention of implementing that provision in any manner that would affect Polish concessions under the Agreement. The terms of that Article reflected the parties' having sought balanced solutions, as in all negotiated arrangements. As for the Polish customs tariff, he noted that no contracting party had sought to renegotiate with Poland as a result of the introduction of the tariff.

16. One member of the Working Party referred to his earlier statement, as reflected in paragraph 7 of this Report, and expressly reserved the right of his delegation to revert to the issue of the Polish customs tariff in the context of the examination of the present Agreement, in the light of the declaration made by his delegation to the GATT Council in May 1978.

II. Trade coverage

17. Referring to the Polish reply to Question 4(a) in document L/4786, one member of the Working Party enquired as to the consequences if Poland were to fail to meet its import commitments in respect of products from other centrally-planned economy State-trading countries. Another member of the Working Party also referred to that reply in document L/4786, and asked whether for Finnish exporters the Agreement would lead to improved conditions of competition in the Polish market.

18. In reply, the representative of Poland noted that the terms of reference of the Working Party related to the Agreement, and not to an examination of the trade relations between Poland and other centrally-planned economy State-trading countries. He also recalled that when Poland had joined GATT, there was never any indication that those relations were in any way contrary to the General Agreement.

19. One member of the Working Party recalled his authorities' long-held position, as expressed in earlier working parties, that the mutual elimination of customs duties could not be said to result in a free-trade area when an entire sector, notably agricultural products, had been omitted. He said that while the Agreement covered a large percentage of the parties' mutual trade, it was evident that the remaining barriers to agricultural imports inhibited trade in that sector. He asked that the parties furnish statistics showing the number and percentage of four-digit items in CCCN Chapters 1-24 and 25-99 covered by the Agreement.

20. In reply, the representative of Finland referred to his authorities' reply to Question 7, in Annex I of document L/4786, and indicated that the figure for 1978 would be 95.8 per cent, with agricultural trade approximately 2 per cent. He noted that the special nature of trade in agricultural products was widely recognized, and said that the product coverage under the Agreement had been based on each party's respective agricultural policies.

21. One member of the Working Party referred to document L/4830/Add.2 and said that while imports by Finland from Poland had grown by 40.6 per cent in 1977 and by 7.1 per cent in 1978, imports by Poland from Finland had declined by 18.1 per cent in 1977 and by 4.9 per cent in 1978. He said that these figures would tend to indicate that Poland had not increased its imports from Finland.

22. In reply, the representative of Poland noted that the first stage of tariff reductions under the Agreement had taken effect on 1 January 1978, and the second stage one year later. Since the parties had only entered into the initial stages of their implementation of the Agreement, it was too early to draw conclusions as to the impact of the Agreement on trade flows. He added that even in the case of similar agreements which had achieved the total elimination of customs duties, there were still fluctuations in trade due to economic factors outside the framework of such agreements.

23. The representative of Finland, addressing his remarks to the same issue, shared the view expressed by the representative of Poland, and added that when examining this and similar agreements which his country had concluded with centrally-planned economy State-trading countries, Finland had based its argumentation on a pragmatic approach, i.e., on the functioning of the agreements. His delegation was prepared to concede that Finnish trade with Poland had not developed as well as had been hoped in recent years for various reasons, and that more time would be needed for the parties to demonstrate the positive effects of the Agreement on their trade.

24. One member of the Working Party noted that a continuous and balanced increase of trade between the parties was not a criterion for the establishment of a free-trade area under Article XXIV, which set out the manner in which the parties were to trade with each other, but did not oblige them to do so. As in the case of the Generalized System of Preferences, possibilities were created which countries were free to use or not to use, at their own discretion.

25. The representative of Poland agreed with the views reflected in the preceding paragraph. In his view, since the development of trade was affected by many factors, any evaluation of the Agreement on the basis of statistical data would be inappropriate and could lead to erroneous conclusions.

26. The member of the Working Party who had raised the issue reflected in paragraph 21 expressed the opinion that the trade statistics could nevertheless help the Working Party to determine whether or not the conditions leading to a free-trade area had in fact been established, and enquired as to whether Finland was satisfied with those conditions as provided for in the Agreement.

27. The representative of Finland stressed that a distinction had to be made between the conditions created by the provisions of the Agreement and its actual functioning, according to its objectives. As to the former aspect, his authorities were satisfied, while as to the latter, it was their hope and belief that the trade between the parties to the Agreement would develop more favourably in the future.

28. The representative of Poland pointed out that the Agreement provided for a Mixed Commission to examine any problems that might arise, and to ensure that the objectives of the Agreement were being fulfilled, taking account of the complex issues involved.

III. Customs duties

29. One member of the Working Party said that it was difficult to measure the impact of a reduction of customs duties in the case of imports by a centrally-planned economy State-trading country. He recalled that in the course of the ninth annual review under the Protocol of Accession of Poland, several contracting parties had expressed the view that in due course the Polish customs tariff should be thoroughly examined in the GATT.¹ Furthermore, on the same occasion the Polish delegation had expressed its readiness to submit the Polish customs tariff to examination by the contracting parties.² In the opinion of this member, it was impossible to proceed very far with an examination of the Agreement until a working party had terminated such an examination of the Polish customs tariff.

30. The representative of Poland said that the present Working Party should follow the terms of reference, which were very clear and which called for an examination of the Agreement under the provisions of Article XXIV. His delegation reserved its position in respect of the view reflected in the preceding paragraph.

¹L/4483, paragraph 28; BISD 24S/146

²Idem, paragraph 29

31. One member of the Working Party referred to the reply by Poland to Question 24 in document L/4786 and asked for information concerning the special coefficient for the conversion of foreign currency into zlotys. He also enquired whether the Polish customs tariff applied to imports from other centrally-planned economy State-trading countries.

32. Another member of the Working Party asked whether the special coefficient was the same for all countries trading with Poland.

33. The representative of Poland referred to the large amount of information which his authorities had furnished in the replies to contracting parties' questions, as set out in document L/4786, and said that the parties had provided the Working Party with sufficient information to carry out its task. This was notably the case in respect of the reply to Question 24.

34. One member of the Working Party, recalling that some members had cautioned against prejudging the Agreement, said that his delegation had some specific questions concerning customs duties under the Agreement, but that it would be difficult to proceed further with the examination unless certain additional information was made available.

IV. Rules of origin

35. One member of the Working Party expressed the view of his authorities that rules of origin could tend to serve as trade barriers in some circumstances, and asked how the rules of origin set out in Protocol No. 3 related to those under other similar agreements.

36. Noting that rules of origin had been discussed in the context of earlier working parties, the representative of Finland said that the rules of origin in question were rather similar to those in other free-trade agreements which Finland had made, for instance with the European Economic Community and with the European Free Trade Association.

V. Quantitative restrictions and other measures

37. One member of the Working Party noted that the reply by Poland to Question 31(a) in document L/4786 indicated that Poland had not applied restrictions to imports from Finland, and asked whether Finland had enjoyed a privileged position in the Polish market prior to the entry into force of the Agreement.

38. In reply, the representative of Poland said that before entering into the Agreement, Finland had been on an equal footing with other contracting parties, and that Poland had not applied restrictions to imports from Finland or any other contracting parties.

39. One member of the Working Party noted that the reply by Poland to Question 31(b) indicated that the "other measures" referred to in Article 1(b) of the Agreement, could not be exhaustively specified, but that any measures facilitating the development of trade might come into question. He asked for an inventory, not necessarily exhaustive, of the "other measures" that might be employed by Poland.

40. In reply, the representative of Poland said that each party was free to choose the "other measures". These were not intended to be trade policy measures but rather trade promotional measures, broadly speaking, such as trade fairs and exhibitions, closer co-operation between chambers of commerce, organization of training courses, etc., which would not come under the GATT rules, in any event. Accordingly, the parties had not deemed it necessary to draw up such an inventory.

41. One member of the Working Party referred to an article in a business periodical which had appeared in his country, and cited a passage concerning Polish import licence requirements, foreign exchange measures and "counter-trade" and "buy-back" practices which exporters in his country might expect to encounter. He asked whether Poland accorded Finnish exporters special treatment in respect of the latter practices, under the Agreement.

42. The representative of Poland said that his delegation was not prepared to engage in a discussion on the basis of publications other than those issued by his authorities when examining Polish foreign trade practices. He stated that while there were objective limitations on the import possibilities of his country, no restrictions were imposed on imports from Finland or from contracting parties in general. With respect to "counter-trade" practices, there were no official Polish regulations dealing with this. In individual transactions, the trading partners were completely free to arrive at mutually satisfactory arrangements when dealing with one another.

VI. Other issues

43. Referring to the reply by Poland to Question 49 in document L/4786, one member of the Working Party asked whether some imports by Poland were subject to a decision which was centralized.

44. The representative of Poland replied that in his country's planning system there were no indicators in respect of imports which could be considered as limitations thereon. He said that certain items in the Plan covered minimum imports to protect essential sectors of the economy. In those cases an indicator was used, which applied to all countries.

45. One member of the Working Party sought additional information as to the methods by which Poland would carry out the provisions of Article 9 of the Agreement.

46. The representative of Poland said that Article 9 should not be seen as an intention to apply other measures, but rather as an assurance that there would be no interference with the reduction of customs duties under the Agreement.

47. The representative of Finland added that Article 9 was meant to guarantee that there would be reciprocity of concessions between the parties, and that it was for Finland to decide any action that might be needed under the provisions of the Agreement.

48. Referring to the first part of Question 52 in document L/4786, one member of the Working Party asked what changes had been made in Polish legislation on economic matters to enable that country to carry out a free-trade policy of the kind envisaged in the Agreement.

49. The representative of Poland replied that the Polish concessions consisted of the gradual reduction and final elimination of customs duties, implemented by regulations which would necessarily be amended to reflect the changes and published in conformity with Article X of the General Agreement.

Conclusions

50. Some members of the Working Party were of the opinion that additional information and data were needed before any final judgment could be made as to the compatibility of the Agreement with the General Agreement. In their view, another meeting of the Working Party would be necessary. One of these members was of the opinion that in order to obtain the necessary information and data, the Working Party should not meet before a working party had terminated a thorough examination of the Polish customs tariff.

51. The parties to the Agreement, supported by some other members of the Working Party, considered that all necessary information had been provided and that the compatibility of the Agreement with the General Agreement had been fully demonstrated.

52. The Working Party agreed to reconvene at a future date, but did not reach agreement as to the appropriate time for such a future meeting. One member of the Working Party was of the opinion that such a meeting should not take place before a working party had terminated a thorough examination of the Polish customs tariff. Some other members were of the opinion that it would be desirable to have more information concerning the Polish customs tariff and its rôle, in order to help the Working Party to continue its examination of the Agreement. One party to the Agreement affirmed the position, shared by certain other delegations, that an examination of the Polish customs tariff lay outside the mandate of the Working Party and was not pertinent to the question at hand, especially in view of the fact that the Polish customs tariff had been published. The Working Party agreed to submit these matters to the Council for appropriate action.