

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
Spec(93)58
9 November 1993

(93-1893)

WORKING PARTY ON EFTA-TURKEY FREE TRADE AGREEMENT

Draft Report

1. The Working Party was established by the Council at its meeting of 30 April 1992 with the following terms of reference: "to examine, in the light of the relevant provisions of the General Agreement, the EFTA-Turkey Free Trade Agreement, and to report to the Council".
2. The Working Party met on 5 April, 4 June, 29 June and 4 November 1993 under the Chairmanship of Ambassador K. Kesavapany (Singapore). The terms of reference and membership of the Working Party appeared in L/7051/Rev.1.
3. The Working Party had before it the following documentation:
 - (i) Communication from Iceland on behalf of the EFTA countries and Turkey (L/6989)
 - (ii) Text of the Agreement (L/6989/Add.1)
 - (iii) Questions and replies (L/7186 and Adds.1 and 2).

I. General Statements

4. In an introductory statement the representative of Austria, speaking on behalf of the EFTA states and Turkey, stated that economic relations between Turkey and the EFTA states had grown steadily over the past several years, resulting in total trade of \$1.8 billion for 1990. In addition, both Turkey and EFTA were involved in the economic integration process taking place in Europe, with Turkey aiming to establish a customs union in the context of the Association Agreement with the European Communities by 1995, and some of the EFTA states enhancing their ties with the European Communities through the European Economic Area. It was appropriate, therefore, for Turkey and the EFTA states to seek closer economic relations between themselves and in this way promote the harmonious development of economic relations between their countries through the expansion of reciprocal trade.

5. The Agreement covered trade in industrial goods, including fish and processed agricultural products. Upon entry into force of the Agreement, the EFTA states abolished all duties on imports of Turkish origin, with the exception of a few products for which duties would be progressively eliminated. Turkey would gradually eliminate duties on imports from EFTA states, with a few exceptions, over a transitional period which would last until the end of 1995. The Agreement also contained provisions on, *inter alia*, competition, state aid, government procurement and intellectual property rights. An evolutionary clause allowed the expansion of the scope of the Agreement to areas not currently covered. The Parties to the Agreement had the intention of adjusting all relevant provisions of the Agreement in the light of the rules and disciplines resulting from the Uruguay Round. Under the Agreement a Joint Committee comprising representatives of each member state was established to ensure the proper implementation of the Agreement and to review the possibility of further developing

relations between the EFTA states and Turkey. It would also serve as a forum for consultation and the exchange of information between Parties to the Agreement.

6. The representative of Austria went on to say that because the EFTA states had no common agricultural policy, trade in agricultural products was covered by separate bilateral arrangements between each EFTA state and Turkey in accordance with Article 11 of the Agreement. The scope of these arrangements extended to most agricultural products of major importance to the parties concerned. Together, the Agreement and the bilateral agricultural arrangements covered over 90 per cent of all trade between the EFTA states and Turkey in 1991, thus fulfilling the requirement under Article XXIV:8(b) that duties and other restrictive regulations of commerce be eliminated on "substantially all the trade".

7. One member expressed the hope that the Agreement would attain its stated objectives, noting in particular the Parties' commitment in Article 1 to the harmonious development and expansion of world trade. Another member said that his country supported efforts of integration in Europe and continued to support agreements that met the GATT requirements.

8. One other member stated that regional agreements were established under Article XXIV, which itself was a derogation from the m.f.n. principle of GATT. The rise in the number of agreements establishing customs unions and free-trade areas led to an increase in the number of exceptions to the m.f.n. principle, which could alter the nature of the multilateral trading system. He added that regional economic integration was most active in Europe, pointing to the EFTA-Turkey Agreement as a further example of this activity. Since Europe was a major area of world trade, the further development of integration in this region had a significant effect on the multilateral trading system in general. Regional integration agreements should be fully compatible with the GATT principles and rules. They should not lead towards exclusive and restrictive regional blocks and should contribute to the expansion of global trade.

9. The representative of a group of countries supported the Agreement in view of the triangular relationship this group had with both the EFTA states and Turkey. The present Agreement was a logical evolution of the situation that already existed in Europe and therefore had to be seen in its geopolitical perspective, where the European Community aimed to further its integration with the EFTA states and Turkey through the Agreement on the European Economic Area and the European Community - Turkey Association Agreement respectively. Some other members who had recently concluded similar free trade agreements with the EFTA states supported the Agreement and expressed interest in its examination by the Working Party.

10. One member expressed concern that trade between his country and the Parties to the Free Trade Agreement might be adversely affected by the Agreement. Bilateral trade between his country and Turkey was worth \$3.8 billion in 1992 while bilateral trade between Turkey and the EFTA states in products covered by the Free Trade Agreement reached \$1.9 billion for the same period. One other member said that the EFTA states were the fourth largest market for his country and that the Turkish market was equally growing in importance.

11. One member requested statistical data on the percentage of total trade of each Party to the EFTA-Turkey Free Trade Agreement presently covered by the various preferential agreements to which it was a party. One other member said that given the proliferation of free-trade area arrangements to which EFTA countries were party, transparency was necessary on the trade coverage of the whole

range of different free trade agreements where the same contracting parties were parties, as understanding the whole would facilitate a better understanding of the trade effects of the constituent parts, such as the Agreement under review of this Working Party. Several other members also supported this request for information.

12. The representative of Austria, speaking on behalf of the EFTA states said that it was difficult to obtain such statistical data with respect to trade of individual Parties with certain partners.

13. There was a divergence of views on whether the request for data on an individual Party's share of the trade coverage of other free trade agreements where they were also parties fell within the scope of the mandate of the Working Party. Some members of the Working Party stated that transparency was key to the effectiveness of the Working Party, and that some issues they had raised were in need of further clarification. Members who did not support the request felt that the information requested would be more appropriately addressed in other fora. The Parties to the Agreement believed that they had adequately responded to the questions falling within the scope of the mandate of the Working Party.

14. One member questioned the effect of the Waiver granted to Turkey under Article II of the General Agreement on the operation of the present Agreement. The representative of Turkey stated that an extension of the Waiver from Article II had been necessary in order to make certain adjustments to the tariff schedule following the introduction of the Harmonised System Nomenclature in his country. Turkey had concluded its consultations with some of its major trading partners relating to this matter. The Waiver in question had no effect on the Free Trade Agreement with the EFTA states. Turkey did not intend to request a new extension of the waiver from Article II and would observe the provisions of the General Agreement as well as the outcome of the Uruguay Round of Trade Negotiations in this respect.

15. Several members maintained that trade between the Parties to the Agreement should not have an effect on principal supplier rights in terms of Article XXVIII negotiations. They sought confirmation that the Parties to the Agreement would base their determination of principal supplier rights under Article XXVIII of the GATT on m.f.n. trade as stated in the Understanding on the Interpretation of Article XXVIII in the Draft Final Act (MTN.TNC/W/FA). Other members stated that the determination of principal rights should be conducted in accordance with the present practice of the General Agreement and in the light of the results of the Uruguay Round negotiations.

II. Examination of specific points relating to the Free Trade Agreement

16. The Working Party proceeded with a detailed examination of the provisions of the Free Trade Agreement taking into account the questions and answers circulated in documents L/7186 and Add. 1 and 2.

Scope of the Agreement

17. One member asked whether Parties would envisage extending the coverage of the Agreement to the products within HS Chapters 25-97 currently excluded from the Agreement since Parties claimed that trade in such products was virtually non-existent. His delegation considered that Parties could not justify the exclusion of certain products from a free-trade agreement simply because their trade in such products was minimal under normal trading patterns. Several members held the view that the

incomplete scope of the Agreement with regard to agricultural products raised questions about its consistency with Article XXIV:8(b). Other members noted that the compatibility with Article XXIV:8(b) should be assessed in the light of the Agreement in its entirety and not only in the context of one or more parts of it. The percentage of trade on which obstacles had been eliminated by the Agreement should therefore be considered as determining whether the provisions of Article XXIV:8(b) had been respected.

Customs duties and charges on imports

18. In response to a question by one member on the schedule for the phasing out of customs duties on the products listed in Annexes II to V of the Free Trade Agreement, the representative of Turkey stated that all customs duties between the two parties would be eliminated by the end of 1995. However, the schedule of phasing out was not specified for each year. The timeframe for the removal of customs duties of a fiscal nature was set out in Annex VI.

Quantitative restrictions and measures having equivalent effect

19. One member noted the absence of a timetable for the removal of the quantitative restrictions applied by some EFTA states to Turkey under Article 7 and in Annex VIII. She asked how the Agreement complied with the requirement to remove quantitative restrictions on "substantially all the trade" in Article XXIV:8(b). The representative of Austria stated that the trade effect of quantitative restrictions which were retained in certain EFTA countries for reasons of energy security was negligible, particularly with respect to third parties. The same member stated that while products subject to quantitative restrictions were not of significant interest to her country in terms of current access opportunities to the markets of the EFTA states, the observance of the rules and principles of the General Agreement was nevertheless important. The representative of a group of countries noted that third parties' interests were protected by Articles 7 and 8 of the Agreement which paralleled GATT rules and specified that the Agreement did not exempt the Parties from their obligations under other international agreements.

Non-economic reasons for restrictions

20. In response to a question from one member, the representative of Turkey stated that his country would consider membership of the MTN Agreements, including the Agreement on Technical Barriers to Trade, in the light of the outcome of the Uruguay Round.

Trade in agricultural products

21. One member questioned the extent to which the Agreement fulfilled the requirement in Article XXIV:8(b) since agriculture, a major sector of trade, had been excluded from its coverage. Trade in agricultural products between Turkey and the EFTA states accounted for 12 per cent of their total bilateral trade, which was a significant figure. Furthermore, this member stated that at least 50 per cent of agricultural trade between Turkey and the EFTA states had not been covered by the bilateral agricultural arrangements. While Article XXIV:8(b) did not define "substantially all the trade" to cover all existing trade between parties, it did not allow the exclusion of whole sectors from free-trade agreements. The agricultural sector accounted for 25 per cent of the tariff structure and was of major significance to many economies in the global trading system. Joined on the above points by several other members, the same member asked whether the Parties had any intention to expand the scope

of the coverage of the bilateral arrangements, since in Article 11 of the Agreement, the Parties declared their readiness to foster the harmonious development of trade in agricultural products in so far as their agricultural policies allowed.

22. The same member further noted that the fact that EFTA states did not have a common agricultural policy could not be construed as permitting the automatic exclusion of the agriculture sector from free trade agreements concluded by them. Consistency with Article XXIV:8(b) was just as essential for free-trade areas as Article XXIV:8(a)(i) was for customs unions. Another member questioned whether the provisions on trade liberalization between Parties in the Agreement would be extended to the agricultural products currently excluded.

23. The representative of Austria, speaking on behalf of EFTA states, noted that the agricultural sector did not represent a major trading sector in all countries. He reiterated that EFTA did not have a common agricultural policy. In terms of Article 11 bilateral arrangements between individual EFTA states and Turkey were concluded under the framework of the Free Trade Agreement. He noted that views on what constituted a "major sector" or "substantially all the trade" to be covered by free trade agreements differed among contracting parties. The representative of a group of countries said that the exclusion of the agricultural sector from the scope of free trade agreements should not imply that the Agreement was inconsistent with Article XXIV. The representative of a group of countries, supported by Parties to the Agreement, noted that Article XXIV:8(b) required the obstacles to be eliminated "on substantially all trade" and not "on trade in substantially all products". In any case, this notion meant less than all trade. In his view, this gave latitude to the parties of a free-trade area in respect of some products and did not preclude the exclusion of a sector of economic activity provided that the overall trade coverage of the agreement met the criterion laid down in Article XXIV.

Public procurement

24. In response to a request by one member for clarification on the treatment of third parties in respect of public procurement, the representative of Austria stated that since Turkey was not a party to the Agreement on Government Procurement, the rules on public procurement were being developed in the Joint Committee. Such rules would ensure reciprocity and would also take into account developments on this issue in the context of GATT.

State aid

25. With reference to Article 18 of the Agreement, one member said that transparency on the application and extent of state aid was important to all trading partners. Parties to the Agreement should ensure that contracting parties were promptly notified of the application of all such measures.

Emergency action and procedures for the application of safeguard measures

26. One member noted that the provisions in the Agreement did not define the nature of the "appropriate measures" that could be taken by the Parties by way of emergency action. Another member questioned whether Parties could take such measures on a selective basis. The representative of Austria explained that any emergency action under the Agreement would be limited to products originating in Parties to the Agreement. On the other hand, he reiterated his view that GATT Article XXIV allowed the non-application of safeguard action between Parties to a free trade agreement.

27. One member noted that, notwithstanding the affirmation by the Parties that the provisions of Article XIX were observed in the application of safeguard measures by individual Parties (Answer 1.2 in document L/7186/Add.2), the procedures laid out in Article 23 could be interpreted to allow Parties to apply safeguard measures on a selective basis, a practice which would be inconsistent with the provisions of Article XIX. In response, the representative of Austria recalled that contracting parties held differing views as to whether Article XXIV entitled a party to a free trade agreement to exempt imports from other parties in the application of safeguard action. The representative of a group of countries supported the views of the Parties to the Agreement in this regard.

28. In reply to a question by another member regarding the procedure for the application of safeguard measures, the representative of Austria confirmed that the provisions of Article 23 did not envisage a snapback mechanism whereby certain narrowly defined criteria would be used to trigger the imposition of a temporary duty on a given product.

Balance of payments difficulties

29. In response to a request by one member, the representative of Turkey stated that the Mass Housing Fund levy was the only balance-of-payments related measure currently being applied by his country and that this would be abolished within the coming years. The Mass Housing Fund levy, charged on a non-discriminatory basis, was also applied to imports from the EFTA states.

30. By way of concluding remarks, the representative of Turkey, speaking also on behalf of EFTA states, stated that the Parties to the Agreement were fully committed to the principles of the GATT and had been advocating the strengthening of the multilateral trading system and its rules over the years, not least during the Uruguay Round. Free trade and closer integration between the economies, based on the GATT principles, were the backbone for improving the living standards and growth of their economies. This had clearly been proved by the experience of the EFTA countries, by the experience of Turkey in its association with the European Communities over the past thirty years and by numerous other free trade agreements. Free Trade Agreements between EFTA states and Turkey, as well as other free trade agreements recently signed by EFTA states were thus based on this experience and were expected to generate trade not only between the parties to the Agreements, but also with other contracting parties. In the light of the process of economic integration taking place in Europe and the Parties' respective relationships with the European Communities, the present Free Trade Agreement had an aspect of complementarity. The Free Trade Agreement between EFTA states and Turkey was a fully-fledged free trade agreement with complete schedules, eliminating duties and other barriers on substantially all trade between the Parties and as such meeting the requirements under Article XXIV. Parties were confident that the EFTA-Turkey Free Trade Agreement would attain its objectives, not only in enhancing the liberalization of trade and furthering the economic co-operation among its signatories, but also in contributing to the expansion of world trade.

III. Conclusions of the examination of Agreement in the light of the relevant provisions of the General Agreement

31. The Working Party welcomed the information on the Agreement provided by the Parties in accordance with Article XXIV:7(a).

32. The Working Party noted that the Free Trade Agreement between the EFTA states and Turkey was part of a wider process of trade liberalization and economic integration in Europe. It was noted that the EFTA states had recently concluded agreements with a number of other countries and that both Parties to the present Agreement were actively engaged in enhancing their ties with the European Communities.

33. The Working Party noted that through the development of closer economic relations in the context of the present Agreement, the Parties sought to create conditions for further expansion of trade between them. The Working Party furthermore noted that the Parties gave their assurances that the Free Trade Agreement between them would not stand in the way of further multilateral liberalization.

34. The Working Party noted that the Parties had eliminated duties and quantitative restrictions on most industrial products originating in other Parties with the entry into force of the Agreement. The duties and quantitative restrictions on the remaining products would be progressively eliminated, with very few exceptions, over a transitional period not exceeding four years.

35. Nevertheless, several members expressed concern that trade in unprocessed agricultural products had been dealt with by a set of bilateral arrangements between the individual EFTA states and Turkey. These members further noted that the above-mentioned arrangements did not appear to be leading to free trade in unprocessed agricultural products within a reasonable time-frame. They had doubts, therefore, as to the consistency of the Agreement with the definition of a free-trade area in Article XXIV:8(b) and as to whether it covered "substantially all the trade" between the Parties.

36. Other members said that the criterion laid down in article XXIV was that obstacles be eliminated on "substantially all the trade" between the parties and not "trade in substantially all products or sectors". These members believed that this gave latitude to the parties in respect of some products or sectors and did not preclude the exclusion of a sector of economic activity such as agriculture. In the present case, the percentage of trade on which obstacles had been eliminated by the agreement made it clear that the criterion had been met.

37. In addition, the Parties to the Agreement drew attention to the fact that separate bilateral arrangements were concluded due to the different policies and trade regimes in agriculture among EFTA states. In their view, such arrangements were concluded under the framework of the Free Trade Agreement between the Parties and they covered a number of products of major importance to the Parties concerned. At the time of its entry into force, the coverage of both the Agreement and the bilateral agricultural arrangements was well over 90 per cent of total trade between EFTA states and Turkey. The Parties to the Agreement, and a number of other members, therefore held the view that the requirements under Article XXIV had been fulfilled.

38. Some members concluded that there were questions about the full consistency of the EFTA-Turkey Free Trade Agreement with respect to the relevant provisions of the General Agreement, including Article XXIV, and therefore reserved their GATT rights.

39. The Parties to the Agreement are invited, in accordance with the decision of the CONTRACTING PARTIES (BISD 18 S/38), to furnish biennial reports on the operation of the Agreement, the first such report to be submitted in 1995.