

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
Spec(93)59
18 November 1993

(93-1970)

WORKING PARTY ON THE FREE TRADE AGREEMENTS
BETWEEN NORWAY AND ESTONIA, LATVIA AND LITHUANIA

Draft Report

1. The Working Party was established by the Council at its meeting on 4-5 November 1992 with the following terms of reference: "to examine, in the light of the relevant provisions of the General Agreement, the Free Trade Agreements between Norway and Estonia, Norway and Latvia, and Norway and Lithuania, and to report to the Council".
2. The Working Party met on 3 June, 5 July, 15 September and 8 November 1993 under the Chairmanship of Ambassador J. Seade, Deputy Director-General. The terms of reference and membership of the Working Party appeared in L/7133/Rev.1
3. The Working Party had before it the following documentation:
 - (i) Communication from Norway (L/7104);
 - (ii) Texts of the Agreements (L/7104/Add.1);
 - (iii) Questions and replies (L/7266).

I. General Statements

4. In an introductory statement the representative of Norway stated that the major objective of the Agreements was to provide trade and market access to Estonia, Latvia and Lithuania, and thereby support the integration of the Baltic countries, following their transition to market economies, into the European and world economies. The establishment of closer economic ties between Norway and Estonia, Latvia and Lithuania by removing barriers to trade between them, creating fair conditions of competition and encouraging co-operation was a further objective. The Free Trade Agreements between Norway and the Baltic countries would also contribute to the harmonious development and expansion of world trade. The Free Trade Agreements between Norway and Estonia, Latvia and Lithuania were concluded in June 1992 and were being provisionally applied since 1 July 1992. They entered into force following their acceptance in August 1993.
5. Each of the Free Trade Agreements covered trade in industrial goods, including fish and processed agricultural products. Products in HS Chapters 1-24 were covered in separate Protocols between Norway and each of the Baltic countries. The Agreements also contained, *inter alia*, provisions on state aid, public procurement and intellectual property rights. An evolutionary clause allowed the extension of the scope of the Agreements to areas not currently covered by the Agreements. The Joint Commissions established under the Agreements ensured that each Agreement was properly implemented and these Commissions also kept under review the possibility of further liberalization of trade between Norway and the Baltic countries.

6. In closing his introductory remarks, the representative of Norway noted that since 1 July 1992, all duties on imports and exports of products covered by the Free Trade Agreements had been abolished, with the result that approximately 99 per cent of total trade between Norway and the Baltic countries was now covered by the Free Trade Agreements and the Agricultural Protocols. The requirement in Article XXIV:8(b) that duties and other restrictive regulations of commerce be eliminated on "substantially all the trade" was therefore fulfilled.

7. One member stated that his government supported the transition of the Baltic countries to market economies. These Agreements were a further step towards their integration into the world economy. Another member recognised the political, social and economic rationale for the Agreements and supported the Baltic countries in their efforts towards trade liberalization as well as the efforts of contracting parties to assist them. Even though her country's trade with the Baltic countries was small her delegation considered that an examination of the GATT consistency of these Agreements was necessary.

8. The representative of a group of countries said that his delegation supported these Free Trade Agreements and Agricultural Protocols, seeing in them an appropriate response by Norway to the economic, social and political situation of the Baltic countries. A special relationship existed between this group of countries and the countries signatories to these Agreements since Norway was a prospective member of this group. In view of the triangular relationship this group had with both the Nordic and Baltic Countries, the present Agreements were a logical evolution of the geopolitical situation now existing in Europe.

9. Another member expressed his delegation's satisfaction with the Free Trade Agreements concluded by Norway with the three Baltic States welcoming them as a building block in the regional integration process in Europe. His delegation recognised the rationale agreed within the context of European Free Trade Association for such agreements, which was to respond to economic difficulties as well as social and political problems currently encountered by economies in transition in general and the Baltic countries in particular. He went on to say that his delegation considered it fundamental that regional trade agreements concluded within the framework of European integration were in keeping with the obligations under the General Agreement for these types of arrangements and in particular with Article XXIV. The examination of free trade agreements in the Working Parties should focus essentially on two aspects: that the free trade agreements did not create obstacles to trade of third parties but rather encouraged the growth of trade; and that the agreements covered "substantially all the trade" between the parties. His delegation considered that the Agreements between Norway and the Baltic States fulfilled those requirements in Article XXIV, and in particular paragraphs 4 and 8(b).

10. One other member expressed his delegation's continuing support for trade integration agreements in Europe provided they were consistent with the GATT requirements. Furthermore, his authorities encouraged the development of appropriate trade rules and policies by the governments of the Baltic countries which would allow the creation of market economies and the integration of these countries into the multilateral system represented by GATT. He went on to say that the retention of the margins of preference offered in free trade agreements could cause problems for the Baltic countries when they began the negotiations of the Protocols of Accession to the GATT. Their ability to conduct tariff negotiations for their accession should not be hindered by the existing preferences offered to Norway through these Agreements. The representative of Norway stated that no provision existed in the Free Trade Agreements that would prevent the Baltic countries from making tariff concessions to third parties.

11. The same member noted that the application by Norway to become a member of the European Communities could give rise to a situation where overlapping tariff preferences were being granted by Norway to the Baltic countries and to the European Communities. He asked whether these Protocols allowed Norway to grant preferences to the European Communities, for example, on agricultural products in the context of the European Economic Area.

12. One member noted that Article 1 of the Free Trade Agreements between Norway and the Baltic countries stipulated that members states would "gradually" establish a free-trade area. He pointed out that any interim agreement leading to a free-trade area should include a plan and schedule for the formation of such a free-trade area within a reasonable length of time which, in his opinion, should not exceed ten years.

II. Examination of the provisions of the Free Trade Agreements

13. 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 document L/7266.

14. With regard to the scope of the Agreements, several members noted that agriculture had been covered under separate arrangements. The exclusion of agriculture, an important area of trade, from liberalization would mean that the requirement in Article XXIV:8(b) that duties and other restrictive regulations of commerce be eliminated on "substantially all the trade" would not be fulfilled. In the view of these members such conformity with Article XXIV was not measurable solely in terms of an overall level-of-trade threshold. Even though there was at this time only a small amount of trade in agricultural products between the Parties, this could change in the future, and was not in itself a valid basis for excluding agriculture from across the board liberalization under the free trade area agreements.

15. The representative of a group of countries supported by some other members noted that Article XXIV:8(b) required the obstacles to be eliminated "on substantially all the trade" and not "on trade in substantially all products". In any case, this notion meant less than all trade. In his opinion 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:8(b).

16. In response to a question on the share of the total bilateral trade between Norway and the Baltic countries accounted for by agricultural products, the representative of Norway said that according to preliminary figures for 1992, the proportion of imports accounted for by agricultural products, excluding fish and other marine products, between Norway and Estonia was 0.5 per cent and between Norway and Lithuania 0.3 per cent. In 1992, there was no import of agricultural products from Latvia. In total, the Free Trade Agreements, together with the Agricultural Protocols, accounted for approximately 99 per cent of the trade between Norway and the Baltic countries. Some members noted, however, that the coverage of agricultural products within the bilateral protocols was on a selective and in some cases on a non-reciprocal basis.

17. In response to another question on whether Norway would seek reciprocal tariff reductions from Estonia, Latvia and Lithuania in exchange for its tariff reductions on agricultural products, the representative of Norway confirmed that Norway's bilateral Agricultural Protocols with Estonia and Latvia contained unilateral concessions, while Norway's Agricultural Protocol with Lithuania also included concessions by Lithuania for certain specific agricultural products. In addition, he noted that the unilateral concessions were intended to be temporary.

18. One member drew attention to the treatment of rules of origin, noting that duties and other regulations of commerce which included rules of origin, should not be made higher or more restrictive with the formation of a free trade agreement. The representative of a group of countries sought assurance that the rules of origin in force in the Baltic countries were effective, well considered and equivalent to the system existing within the EFTA Agreement.

19. In response to concerns expressed by some members regarding quantitative restrictions on exports applied by Norway, the representative of Norway explained that residual export restrictions on certain iron products, listed in Annex II of the Agreements were applied "erga omnes" and justified under Article XX(i). Norway would consider abolishing these restrictions after the entry into force of the European Economic Area Agreement. On the question of Latvia's restrictions on exports of certain products, e.g. limestone, some wood products and ferrous waste and scrap, he said that Latvia would apply restrictions on these scarce products over a transitional period.

20. The representative of Norway further explained that Article 7 in each of the Agreements contained a general safeguard clause that permitted the possibility of using restrictions or prohibitions in order to protect, for example, the environment and would only be invoked after the discussions of the rationale for the action in the respective Joint Committees.

III. Conclusions of the Examination of the Free Trade Agreements in the light of the relevant provisions of the General Agreement

21. The Working Party welcomed the information provided by Norway in accordance with Article XXIV:7(a).

22. There was wide sympathy within the Working Party with regard to the rationale for the Agreements which were seen as an appropriate response by Norway to the economic, social and political situations in the Baltic countries, given the geographical proximity of these countries and the need to strengthen the traditional trade and economic links between them and Norway.

23. The Working Party also noted that the Agreements would consolidate favourable conditions of market access already provided by Norway to the Baltic countries and thus would encourage the emerging economic liberalization in these countries and facilitate their transition towards market economies.

24. The Working Party recognized that the Agreements would provide a framework of rules for the conduct of trade between Norway and the Baltic countries, thereby supporting the underlying objective of the Agreement to contribute to the process of integrating these countries into the European and world economies.

25. The Working Party noted the confirmation by the delegation of Norway that the tariff preference granted in the Agreements would not limit the ability of the Baltic countries to conduct tariff negotiations in the context of their protocols of accession to the General Agreement.

26. The Working Party welcomed that, with respect to products covered by the Free Trade Agreements, all duties and charges of equivalent effect, as well as quantitative restrictions and measures of equivalent effect, except for a few minor export restrictions that would continue to be applied by Norway and Latvia, had been eliminated with the entry into force of the Agreements.

27. The Working Party noted that the Agreement contained provisions on dumping and state aid and also provided a framework for the elaboration of rules on competition, public procurement, intellectual property rights, services and investment within a specified time-frame.

28. The Working Party also noted that the agricultural sector was covered in separate Protocols between Norway and the Baltic countries. Several members of the Working Party expressed concern that the agricultural sector was excluded from the Agreements which meant, in their view, that the requirement in Article XXIV:8(b) that duties and other restrictive regulations of commerce be eliminated

on "substantially all the trade" was not fulfilled. These members concluded that there were questions about the consistency of these Agreements with Article XXIV. In this regard three members of the Working Party reserved their rights under the General Agreement. Other members noted that the compatibility with Article XXIV:8(b) should be assessed in the light of the Agreements in their entirety and not only in the context of one or more parts of them. The percentage of trade on which obstacles had been eliminated by the Agreements should therefore be considered as determining whether the provisions of Article XXIV:8(b) have been respected. These members considered that, in the light of the trade data presented, the requirements in Article XXIV:8(b) were fully met.

29. The Working Party agreed that the Free Trade Agreements were generally in conformity with the relevant provisions of the General Agreement in so far as they did not raise barriers to the trade of third parties and eliminated obstacles to trade between the Parties to the Agreements. However, some other members considered that the selective and non-reciprocal treatment of agricultural trade under the Agreements detracted from full conformity of the Agreements with the General Agreement.

30. Norway is invited in accordance with the decision of the CONTRACTING PARTIES (BISD 18S/38), to furnish biennial reports on the operation of the Agreements, the first such report to be submitted in 1995.