AGREEMENT BETWEEN FINLAND AND CZECHOSLOVAKIA

Meeting of the Working Party held on 1-3 October 1975

Note by the Secretariat

1. At the meeting of the Council on 21 October 1974 (C/M/100) the CONTRACTING PARTIES were informed that on 19 September 1974 Finland and Czechoslovakia had signed an Agreement on the reciprocal removal of obstacles to trade, taking into consideration the provisions of Article XXIV of the General Agreement.

2. In accordance with the notification procedures, the parties to the Agreement transmitted to the secretariat the texts of the following legal instruments, which were subsequently circulated to contracting parties with document L/4138/Add.1:

- Agreement between the Republic of Finland and the Czechoslovak Socialist Republic on the reciprocal removal of obstacles to trade, together with the Protocols and Annexes forming integral parts thereof.

3. At the meeting of the Council on 3 and 7 February 1975 (C/M/103) a Working Party was set up with the following terms of reference:

"To examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement between Finland and Czechoslovakia signed on 19 September 1974; and to report to the Council."

4. The Working Party met on 1-3 October 1975 under the chairmanship of Ambassador G.L. Eastorbrook-Smith (New Zealand). It had available the text of the Agreement, and the replies by the parties to questions asked by contracting parties (L/4197).

5. The representative of Finland made an opening statement, annexed hereto, the text of which was originally distributed in document Spec(75)32.

6. The representative of Czechoslovakia made an opening statement, annexed hereto, the text of which was originally distributed in document Spec(75)33.
7. One member of the Working Party recalled that at the February 1975 meeting of the Council (C/M/103), his delegation had expressed doubts as to the compatibility with Article XXIV of a free-trade area in which one country had a centrally planned economy. In that system the customs tariff was only one element of foreign trade policy, and frequently a minor one. His authorities continued to have doubts in this respect.

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

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

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

11. In reply, the representative of Czechoslovakia recalled his earlier statement and noted that his country was in the position of a third country with respect to the trade arrangements that had been mentioned. This meant that his country's
exports faced customs duties that had in some instances harmed Czechoslovakia's foreign trade pattern. He assured the two Working Party members who had spoken that the parties to the Agreement did not intend that any trade distortion result from it. One of those members said that he had no doubts about the parties' good intentions, but hoped that they would be borne out by the results of the Agreement. The representative of Finland assured him that there was no intention to create trade barriers or to diminish trade between that country and Finland, which hopefully would increase.

12. Referring to the Czechoslovak answer to question No. 4, one member of the Working Party requested information as to how the Czechoslovak import plan reflected import commitments to other Council for Mutual Economic Aid (CMEA) countries, which his authorities understood to involve fixed quantities and set prices. He also asked whether these import commitments could be fulfilled without the introduction of any restrictive elements in the plan. The Czechoslovak representative was of the opinion that this question dealt with matters of a bilateral nature, which had no relevance to the discussion in the Working Party.

13. Another member of the Working Party stressed that he could not share this point of view, and said that this and similar questions were of utmost importance for the Working Party. Accordingly, he wanted precise information as to: (a) the date when Czechoslovakia had introduced a customs tariff; (b) the exact amount of duties collected in 1972, 1973 and 1974; (c) the countries from which imports were subject to customs duties; and (d) which countries, if any, were exempted from paying customs duties, and why. He quoted from a number of Czechoslovak laws and decrees which, in his view, permitted the use of a series of different trade policy instruments allowing for detailed governmental regulation of Czechoslovak foreign trade. With this in mind, he sought precise information about the economic system in Czechoslovakia, including its planning system. He wanted in particular to know more about the Czechoslovak subsidy system and about the formation of Czechoslovak export prices.

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

15. A member of the Working Party, referring to paragraph 9 of the Agreement,
asked which means, in addition to customs duties, had a bearing on the access of
Finnish goods to the Czechoslovak market. He asked, furthermore, how Finland,
when concluding the Agreement, could have entrusted the exclusive use of those
means to the Czechoslovak side. He also wanted to know how these means should be
viewed in the context of Article XXIV. The representative of Finland replied that
the Finnish Government, before concluding the Agreement, had informed itself of
the means mentioned in Article 9 of the Agreement, and had thereby become convinced
of the compatibility of the Agreement with Article XXIV.

16. A member of the Working Party observed that the information submitted in
document L/4140/Add.13 was insufficient for the examination at hand. He repeated
that it had to be demonstrated that the customs tariff was in fact the main
instrument in the Czechoslovak foreign trade policy. Thus far he had received
the impression that the planning system was the main instrument in this respect.
He also wanted assurances as to the treatment of imports from other CMEA countries
in the light of information obtained in other bodies to the effect that they were
not subject to customs duties. In this connexion another member of the Working
Party asked whether the representative of Czechoslovakia would dispute the
assertion, as to the non-application of customs duties to goods from other CMEA
countries, contained in the second paragraph of the answer to question No. 20
concerning the Agreement between Finland and Bulgaria (L/4196).
17. Another member of the Working Party supported the views of the previous speaker. He was also interested to know more about the nature of the new arrangements for reduction of trade barriers between the two parties, in order to see if the criteria of Article XXIV were met and to assess the effect on trade with third countries. He wanted information about the means referred to in Article 9 of the Agreement and about the obstacles to trade that would not be applied in relation to Finland but which would remain in force as to other countries. He also requested information about whether the CMEA countries were given more favourable treatment than other third countries.

18. The representative of Czechoslovakia stated that there existed no other obstacles to trade in his country than customs duties, and that these duties applied to all countries' exports to Czechoslovakia. He stated, furthermore, that there were no subsidies whatsoever affecting Czechoslovak foreign trade. Referring to document L/4196/Add.13, he explained that in the fulfilment of their tasks defined in the import plan, the foreign trade organizations were totally independent as regards the choice of imports. There was no country-by-country allocation for imports in the plan. Only commercial considerations were decisive in that respect. Answering a question of one member of the Working Party who had referred to the reply to question No. 20 in document L/4196, he stressed that different trade policy instruments were used by the CMEA countries in their trade with each other. He repeated that the Czechoslovak tariff applied also to imports from other CMEA countries. As regards the means mentioned in Article 9 of the Agreement, he explained that these referred, inter alia, to trade promotion and industrial co-operation, which had no relevance to the provisions of the General Agreement.

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

20. The representative of Czechoslovakia said that contracting parties were entitled to seek consultations with his Government under Article XVII if they so desired, but he repeated that the Working Party was dealing with an Agreement
submitted under Article XXIV, and that any issues raised should be in that context. His authorities were of the opinion that they had carried out the informational requirements set forth in Article XXIV:7(a). Addressing himself to the first of the questions raised in paragraph 19, he noted that whereas the CMEA was not a customs union, the customs tariff played an important rôle in the formation of prices and influenced the choice of supplier, both as to goods and services. The plan determined prices, volumes and product ratios in the various sectors, and was aimed at overall economic development and at maintaining external trade and payments equilibria. Both long and short-term plans were based on economic and market research, and were financed through the various organizations and banks. There were no allocations on a country-by-country basis in the foreign trade sector, but only one overall plan. Czechoslovakia maintained no subsidies affecting foreign trade. Certain price adjustments were made in exceptional cases, but only to basic raw materials and commodities so as to influence levels of consumption internally. These adjustments could, moreover, be in both directions.

21. The representative of Finland, addressing himself to the second group of questions posed by a member of the Working Party in paragraph 19, said that Article 9 of the Agreement related solely to trade promotion efforts. Other articles dealt with trade obstacles; but none could be raised under Article 9. His Government was of the opinion that, pursuant to Article XXIV of the General Agreement, the parties had removed all obstacles to their mutual trade.

22. A few members of the Working Party said that the obligations under Article 9 appeared one-sided, which gave rise to the presumption that the lowering of tariffs by both parties still left a residual disadvantage to one of them that had to be dealt with by additional import promotion efforts by the other. This would indicate that the customs tariff had a different function in Finland than in Czechoslovakia. They requested further enlightenment on this aspect of the problem. The representative of Czechoslovakia replied that Article 9 had been designed to provide positive means to go beyond the other provisions of the Agreement in carrying out the objectives set forth in Article 1(b). Article 9 did not involve commercial policy and lay outside the scope of Article XXIV. It was recognized in Article XVII:3 that State-trading enterprises might be operated so as to create serious obstacles to trade; but no complaint had been made to his Government in this regard.

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

24. Another member of the Working Party asked whether customs duties were refunded when products were imported from other CMEA countries. He also asked whether there were instances when one CMEA country charged customs duties when another did not. The representative of Czechoslovakia said that customs duties on imports from other CMEA countries were not refunded.

25. A member of the Working Party repeated his requests: (a) for an indication as to the official Czechoslovak publication or gazette containing figures for customs receipts and showing explicitly the portion attributable to duties paid on imports from other CMEA countries, and whether measures other than customs tariffs were applied to the latter; (b) for a clarification as to the apparent divergence of view between the Czechoslovak and Bulgarian authorities on the question of whether customs duties were charged on imports from other CMEA countries, taking account of the precision with which the Bulgarian position had been made known in GATT and elsewhere, as had the views of other CMEA countries; (c) how fulfilment of certain of the objectives set out in the plan, namely the goal of balanced foreign trade, and, more particularly, the price, quantity and source requirements specified with regard to imports from other CMEA countries, could be reconciled with the free play of a customs tariff, the dispositions and rôle of which were said to have remained unchanged since 1947; (d) how it was possible for a country to maintain an equilibrium in its balance of payments by means of a customs tariff; (e) in the light of the Czechoslovak Decree No. 301 of 19 November 1974, concerning mandatory limits for total imports from capitalist countries, how it was possible to claim that there were no import quotas in Czechoslovakia; (f) if the internal prices were fixed by the Government, for instance in the case of raw materials, how it could be argued that those prices were influenced principally by the customs tariff; and (g) since the objective set out in Article 1(b) were identical to those set out in the corresponding part of the similar agreements concluded by Finland with Hungary and with Bulgaria, why it was necessary to include the provisions of Article 9 only in the Agreement under examination, and why the obligation therein was imposed solely on Czechoslovakia. In his view, the essential question was whether the customs tariff in Czechoslovakia - regardless of whether customs duties might have a certain utility for accounting purposes - played an essential rôle in Czechoslovakia's foreign trade policy. The fact that Article 9 brought into play other "means provided by the Czechoslovak economic system" was evidence that such
was not the case. Whereas he could admit the logic of the provision in question, this in itself would make it impossible for him to conclude that the Agreement was compatible with Article XXIV. He concluded his observations by recalling that his authorities had never expressed doubts as to the compatibility of the Agreement with Article XXIV, and would not even be able to take a position on the issue until answers to his and other delegations' questions had been received and reflected upon.

26. A member of the Working Party said that his earlier questions, like those of some other delegations, had not yet been answered by the parties to the Agreement. Contrary to the view expressed by the representative of Czechoslovakia, he considered that his and the other questions were not irrelevant and were aimed at acquiring an understanding of how the system worked, particularly with regard to Finnish exports to Czechoslovakia. In this light, he asked the following hypothetical question: The Czechoslovak import plan provided for imports of 100 units of commodity "A" in a given year. The trade agreements negotiated with the various CMEA countries provided for imports of 75 units from those countries. However, Finland now had the benefit of a lower tariff than the CMEA countries, and as a result was in a position to offer 100 units, when the tariffs were taken into account, at a lower price than the CMEA countries. What then happened? Could Finland then export 100 units of commodity "A" to Czechoslovakia?

27. The representative of Czechoslovakia repeated his view that questions of a general nature pertaining to the Czechoslovak economic system were irrelevant to the task of the Working Party, and said that his delegation had shown a maximum of good-will in answering the multitude of questions that had been put to it. He reiterated that Czechoslovakia maintained no import restrictions applying to any country, and that this had been the case even when some other countries maintained discriminatory import restrictions affecting Czechoslovak exports. All foreign suppliers were treated equally. He said that figures for customs receipts were not published, and that in any event there was no separate reporting of duties collected on imports from CMEA or other Socialist countries, on which duties were levied in the same way as in the case of imports generally. With regard to Article 9, he urged members of the Working Party to study carefully his opening remarks, as set forth in document Spec(75)33 (annexed), particularly with regard to trade promotion activities and the link between Article 9 and the objective of the Agreement as stated in Article 1. The parties were satisfied with the 30 per cent increase in their trade during the first eight months of 1975.

28. At the request of the representative of Czechoslovakia, the Working Party agreed to continue the discussion at a further meeting, the date of which would be determined by the Chairman in consultation with delegations.
ANNEX I

AGREEMENT BETWEEN FINLAND AND CZECHOSLOVAKIA

Opening Statement by the Representative of Finland

Thank you for the opportunity to offer some opening remarks about the Agreement between Finland and Czechoslovakia on the reciprocal removal of obstacles to trade.

The preamble of the Agreement states the desire of the signatories to the Agreement to solve in a fair and equal way the problems arising from the contemporary European integration processes and to do this in accordance with their international obligations.

The region of Europe is the main market for Finnish exports and also the main source of Finnish imports. When the process of regional integration in Western Europe led to an enlargement of the European Economic Communities Finland had to secure its competitive position through a free-trade agreement with the European Communities. To avoid the consequential and foreseeable distortions in our trade with the European socialist countries Finland invited these countries to enter into negotiations on similar arrangements.

Let me emphasize again very clearly - as I have done in the two other working groups - that we have put two preconditions for these agreements. The first and the most important was that they should be strictly consistent with our international obligations and notably Article XXIV of the GATT. The second was that the agreements should be based on mutual advantage.

After these general explanations of the background of the Agreement between Finland and Czechoslovakia, I should like to make a few remarks concerning the Agreement itself.

Articles II-IV deal with the elimination of tariffs. In our view the provisions comply fully with the provision of GATT. They include methods and a time-table for the elimination of tariffs on substantially all the trade. With a few exceptions the time-table and the product coverage of the normal and the slower timetable for the elimination of tariffs are the same as in the similar agreements concluded by Finland.

The other restrictions save for products included in Protocol 4 of the Agreement have been eliminated upon the entry into force of the Agreement.

1 Originally circulated as Spec(75)32.
As to the safeguard clauses the signatories have expressed the view that these clauses will only be resorted to in exceptional circumstances and on a temporary basis. The existence of safeguard clauses is in the nature of these kind of agreements and does in our view in no way affect the determination of the signatories of the Agreement to apply it in accordance with their obligations under the General Agreement.

I should like to conclude by saying that in our view the Agreement complies fully with Article XXIV in that it eliminates tariffs and other restrictive regulations of commerce and in that its provisions cover substantially all the trade.
ANNEX II

AGREEMENT BETWEEN FINLAND AND CZECHOSLOVAKIA

Opening Statement by the Representative of Czechoslovakia

On behalf of the Czechoslovak delegation I should like to offer you also some introductory remarks concerning the Agreement between Czechoslovakia and Finland, which is to be discussed in this Working Group now.

The Finnish representative in his opening statement referred to the preamble of the Agreement and mentioned a.i. certain problems which may arise "from the contemporary European economic integration processes" to the commercial and economic relations between Czechoslovakia and Finland.

Which are these problems?

The effects of the operation of customs unions and free-trade areas in Europe which bring Czechoslovakia in the position of a third country having to overcome tariff barriers, and in some countries even discriminatory quantitative restrictions. Such obstacles - no doubt - hinder the normal development of mutual trade relations with the respective countries, and result even in serious distortions of the pattern of trade.

Czechoslovakia supported, therefore, in the preparatory stage of the multilateral trade negotiations suggestions presented by some other contracting parties to eliminate completely tariffs in industrial countries.

Such a solution would have eliminated the unfavourable effects on a most-favoured-nation basis. Since it seems that such expectations are far from being put into effect in a foreseeable future, Czechoslovakia appreciated the offer made by Finland to negotiate a free-trade area agreement between our two countries. In such a way the aforementioned difficulties would be overcome at least on a bilateral basis between Czechoslovakia and Finland.

In this respect the motivation of the Finnish Government mentioned in the statement of the Finnish representative is to be considered as a very positive approach towards the solution of trade problems and as evidence of the neutral policy of Finland.

Originally circulated as Spec(75)33.
The Agreement between Czechoslovakia and Finland fulfils - in our view - all the requirements of Article XXIV of GATT. It covers substantially all the trade, includes a precise timetable for the elimination of tariffs and in no way is to be considered as an interim agreement. In addition this Agreement removes the remaining quantitative restrictions of Czechoslovak exports to Finland, while some other European countries are still applying discriminatory restrictions against imports from Czechoslovakia.

In the spirit of this Agreement Czechoslovakia - in addition to the elimination of tariffs - intensifies the promotion of imports from Finland by organizing the activity of working groups of specialists, meetings of scientists and specialists in various fields of economic and industrial co-operation and supports all other promotional activities which may contribute and result in an enlarged knowledge of the Finnish export possibilities. These means provided by the Czechoslovak economic system have already proved to be successful taking into account the fact that Finnish exports to Czechoslovakia in the first eight months of the validity of this Agreement increased by more than 30 per cent - in spite of the general recession in the Western markets - in comparison with the same period of 1974.

The Czechoslovak delegation is also prepared to answer any questions concerning this Agreement with regard to the relevant provisions of GATT and expects that the examination of the Agreements will meet with positive results.