AGREEMENT BETWEEN FINLAND AND THE GERMAN DEMOCRATIC REPUBLIC

Meeting of the Working Party held on 8 and 9 February 1977

Note by the Secretariat

1. At the meeting of the Council on 2 June 1975 (C/M/106) the CONTRACTING PARTIES were informed that Finland and the German Democratic Republic had signed an Agreement on the reciprocal removal of obstacles to trade, taking into account the provisions of Article XXIV of the General Agreement.

2. In accordance with the notification procedures, the delegation of Finland transmitted to the secretariat the texts of the following legal instruments, which were subsequently circulated to contracting parties with document L/4211:

- Agreement between the Government of the Republic of Finland and the Government of the German Democratic Republic on the removal of obstacles to trade on the basis of reciprocity concerning advantages and obligations, together with the Protocols and Annexes forming integral parts thereof.

3. At the meeting of the Council on 21 November 1975 (C/M/110) 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 the German Democratic Republic signed on 4 March 1975; and to report to the Council." (L/4258/Rev.1)

4. The Working Party met on 8 and 9 February 1977 under the chairmanship of Mr. K.J. Tan (Singapore). It had available the text of the Agreement as well as replies by Finland to questions asked by contracting parties (L/4334).

5. In an introductory statement, the representative of Finland stated that his Government's starting point in negotiating agreements with the Socialist countries of Eastern Europe had been to solve in a fair and equitable way the problems arising from the European integration processes. It had been made a clear precondition for

\[1\] The Interim Report by the Working Party was issued as L/4471.
these agreements that they should be strictly consistent with Finland's international obligations, notably with Article XXIV of the General Agreement. Another precondition had been that the agreements should be based on mutual advantage. The Preamble of the Agreement between Finland and the German Democratic Republic reflected these ideas. Furthermore, it stated the desire of the signatories to find ways to develop trade and economic co-operation between countries having different economic and social systems. This Agreement differed, however, from the other similar agreements because the German Democratic Republic did not apply a customs tariff. Article 3 stated that no new duties would be introduced to the trade between the two countries, and Finland would eliminate its existing duties according to a specified time-table. On the other hand, according to Article 9, the German Democratic Republic would use the means provided by its economic system to give advantages to Finnish exports corresponding to those enjoyed by exports from the German Democratic Republic on the Finnish market. With a few exceptions, the time-table and the product coverage for the elimination of tariffs were the same as in the similar agreements examined earlier in GATT. The product coverage of the Agreement was large enough to justify the view that it covered substantially all the trade between the parties. In Finland's view, the Agreement was fully in compliance with Article XXIV of the General Agreement, since it removed the existing obstacles on substantially all the trade by eliminating tariffs where such tariffs existed and by abolishing "other restrictive regulations of commerce".

6. Several members of the Working Party, referring to earlier cases where countries which were not contracting parties had participated in the examination of agreements, regretted that the German Democratic Republic had not found it possible to answer the written questions submitted by contracting parties or to send a representative to take part in the present meeting. In the view of these members, this made it difficult for the Working Party to obtain authoritative answers to some of the questions pertaining to the foreign trade regime of that country.

7. Several members of the Working Party recalled that the free-trade area concept had been introduced in the General Agreement when customs tariffs constituted the principal instrument of trade policy and when most GATT countries had market economies, whereas in the case of centrally-planned economy State-trading countries, factors other than customs duties figured prominently. Moreover, in the present case, the German Democratic Republic maintained no customs tariff whatsoever. These members stressed the need for a thorough examination of the Agreement in order to determine whether it was compatible with Article XXIV.

8. Two members of the Working Party expressed doubts as to whether an agreement between a market economy and a centrally-planned economy State-trading country could comply with Article XXIV. One of them questioned whether it would not have been preferable to justify the Agreement on other provisions of the General Agreement.
9. One member of the Working Party noted that there was no reference in Article XXIV or any other legal instrument in the GATT either to market economy countries or to centrally-planned economy State-trading countries, nor was any distinction made between contracting parties on this basis. Consequently he urged the Working Party to examine the Agreement on its merits.

10. Another member of the Working Party cautioned against over-estimating the rôle of a customs tariff when examining a free-trade area under Article XXIV. He did not share the view that customs tariffs had constituted the prevailing instrument of trade policy when Article XXIV was drafted, and pointed out that quantitative restrictions as well as foreign exchange restrictions were then quite common. In fact, the non-tariff measures notified during the Multilateral Trade Negotiations showed clearly that the customs tariff was still far from being the exclusive, and in many cases the principal trade policy instrument. In this context he recalled that Article XXIV:8(b) referred not only to the elimination of customs duties, but also of other restrictive regulations of commerce on substantially all the parties' trade in a free-trade area.

11. Another member of the Working Party acknowledged that exchange and other restrictions existed when the General Agreement was drafted, but in his view the primary emphasis in GATT had been on the elimination of these devices, and he felt that it would be clear to anyone reading the GATT that customs tariffs were the principal intended trade policy tool. With respect to the lists of non-tariff measures notified in the Multilateral Trade Negotiations, he noted that a large number of these restrictions were either illegal or alleged to be so. In a general context, he added that his Government did not take the position that free-trade agreements including members with centrally-planned economies could not under any circumstances be consistent with Article XXIV. His authorities did, however, have serious doubts in this regard and believed that serious and novel questions, requiring intensive examination, were raised by such agreements.

12. The representative of Finland concurred that the Agreement under examination was not a typical free-trade agreement, and said that his Government had been confronted with particular problems in negotiating the instrument because of the absence of traditional trade policy methods on the part of the German Democratic Republic. He pointed out that a considerable portion of Finland's foreign trade (nearly 80 per cent) was conducted on a free-trade basis by means of agreements concluded with the Soviet Union, with sixteen countries in Western Europe and most recently with three other countries in Eastern Europe. Finland had accordingly been confronted with the problem of putting its trade with the Germany Democratic Republic on the same basis. In his view these difficulties had been solved in an orderly fashion by the provisions of the Agreement, which took into account both the international obligations of the two parties and the need to establish co-operation between countries having different economic and social systems.
13. One member of the Working Party pointed out that on the basis of the information thus far made available to the Working Party his authorities had been unable to conclude that Finland's agreements with the socialist countries in Eastern Europe had created free-trade areas. In his view, this was precisely the question under examination in the present case. He said that the Working Party would need clear and precise answers to a number of important questions before it would be in a position to draw any conclusions in this respect.

14. After the general discussion set out above, the Working Party proceeded to an examination of the Agreement based on the questions by contracting parties and the replies by Finland on more specific matters, as reproduced in document L/4334. The main points made during the discussion are summarized below.

I. GENERAL CONDITIONS

15. In the context of the reply to Question No. 2, one member of the Working Party acknowledged that the German Democratic Republic was not a contracting party, but asked whether that country's trade practices nevertheless conformed to the General Agreement. In reply, the representative of Finland stated that whereas it would be difficult to deal with all aspects of the General Agreement, the m.f.n. clause was a basic element in the bilateral trade agreements concluded by the German Democratic Republic, and he noted that this represented a basic GATT principle. The same member of the Working Party sought additional information on how a country said to have no customs tariff or other restrictive regulations of commerce could extend m.f.n. treatment. Another member of the Working Party enquired as to how trade agreements between the German Democratic Republic and other Council for Mutual Economic Aid (CMEA) countries might affect trade under the Agreement with Finland. The representative of Finland indicated that the five-year and annual trade agreements between the German Democratic Republic and other CMEA countries did not impose obligations on these governments as to fixed volumes or values of exports or imports, which were set in the detailed negotiations that subsequently took place. The member of the Working Party who had raised the issue expressed the view that although this information might be of some help to the Working Party, it illustrated the need for an authoritative reply to such further questions as the extent of any obligations placed on State-trading entities, and any consequences that might arise from non-compliance.

16. A member of the Working Party sought a more detailed explanation with respect to the statement in the reply to Question No. 3 that the Agreement would increase trade by intensifying the international division of labour. In response, the representative of Finland said that his authorities had found the results of the Agreement very satisfactory during the initial one and a half year period. Having relatively small and somewhat specialized economies, it was important for both parties to increase their mutual exchange of goods. A favourable development to that effect had in fact occurred during the past year.
17. With respect to the reply to Question No. 4, a member of the Working Party enquired as to how exporters in his country were likely to enjoy increased access to the German Democratic Republic market by virtue of the Agreement. The representative of Finland noted the increase in his own country's exports to the German Democratic Republic in the metal and machinery sectors, and cited the possibility that other components to be used with these, in the assembly of finished products in the German Democratic Republic, would be purchased from exporters in other contracting parties. The member of the Working Party who had asked the question wished to keep it before the Working Party for reply by the Government of the German Democratic Republic at a future meeting when a representative of that country was present.

II. TRADE COVERAGE

18. A member of the Working Party, noting the reply to Question No. 6 to the effect that the parties' very low trade in agricultural products did not depend on the existence or non-existence of trade barriers on these products in the two countries, enquired as to the cause for the low figure, and asked why this trade had been excluded from the Agreement. In this context he recalled the view of his authorities that the exclusion of an entire trade sector, such as that represented in CCCN Chapters 1–24, could not result in an agreement comprising substantially all the trade between the parties as required in Article XXIV:8(b). Another member of the Working Party shared this view. The representative of Finland explained that his country had practically no agricultural imports from the German Democratic Republic, and that his Government had accordingly considered that the insignificance of this trade did not warrant including complicated agricultural trade policy issues in the Agreement. In any case, the parties had allowed for a possible future increase in their agricultural trade in accordance with the terms of Protocol No. 1.

19. Referring to the reply to Question No. 14 dealing with a number of mineral and petroleum products on which Finland could retain quantitative restrictions, a member of the Working Party asked whether a "reasonable share" for the German Democratic Republic in this trade would be computed any differently than for other countries with which Finland had trade agreements covering these products, and specifically whether past trade figures might preserve future benefits for the German Democratic Republic. The representative of Finland said that the provisions of Protocol No. 4 were similar to those in agreements between Finland and other countries, including those in Western Europe. He noted that whereas the German Democratic Republic was not an important source in this regard, energy imports comprised an important element in Finland's balance-of-payments as well as an important factor in its trade with the Soviet Union. He did not expect that Protocol No. 4 would cause any problems either for the German Democratic Republic or for third countries exporting to his country.
Another member of the Working Party said that although the provisions in question might be similar to those in other agreements concluded by Finland, it was important to take account of the context in which this Agreement might have been concluded, and in particular the development of trade flows resulting from it.

20. A member of the Working Party, referring to the statistics supplied by Finland in response to Questions Nos. 15-19, said that his authorities were unable to express an opinion as to a possible increase in trade between the Parties to the Agreement. To determine this, the Working Party would have to be furnished with precise statistics from the German Democratic Republic as to trade in all products with Finland, showing the value, quantity and the percentage of the German Democratic Republic's trade in each product represented by Finnish imports and exports. In this context, global figures were irrelevant, since, for example, the purchase of a factory could result in higher figures, while at the same time trade in most or even all products could actually be lower. Another member of the Working Party shared the view that reasonably detailed statistics would be necessary in order to determine whether the parties' trade had increased. The representative of Finland said that his Government would undertake to update the statistics already made available to the Working Party, and would try to obtain more detailed statistical information for examination by the Working Party at a future meeting.

III. CUSTOMS DUTIES

21. Several members of the Working Party sought clarification as to the means provided by the German Democratic Republic's economic system, referred to in Article 9 of the Agreement and in the reply to Question No. 22, and enquired as to the concrete measures taken by the German Democratic Republic to provide advantages to Finnish exports as well as the dates when these measures took effect. One of these members asked precisely how Finland would receive better than m.f.n. treatment for its exports to the German Democratic Republic. The representative of Finland said that the Agreement clearly left to the German Democratic Republic the choice as to how imports from Finland would be favoured. He said that in the absence of a customs tariff and quantitative restrictions in the German Democratic Republic there were other factors, inherent in that country's economic system, that influenced the access of Finnish goods to its market. The Finnish delegation was prepared to examine that system if the Working Party considered this necessary. It would serve no purpose, however, to attempt to determine exactly the measures taken by the German Democratic Republic. Trade statistics would eventually show whether, and to what extent, Finnish exports had been favoured.
22. One of the members of the Working Party referred to in the preceding paragraph asked that the Working Party take note that no answer had been given as to the concrete measures taken by the German Democratic Republic, while at the same time pointing out that under the Agreement no type of trade policy measure was excluded. In his view, increased trade between the parties did not mean ipso facto that a free-trade area had been created. He said that without complete and precise information, it was impossible to form an opinion as to whether the parties had established a free-trade area. Another of the members of the Working Party referred to in the preceding paragraph agreed that the Working Party should note that it had not been possible to obtain an authoritative reply to Question No. 22. He also called attention to the requirement in Article XXIV: that a free-trade area should not raise barriers to the trade of third contracting parties.

IV. FOREIGN EXCHANGE RATE MATTERS

23. Referring to Question No. 24, concerning the conversion of national currency into various convertible currencies, one member of the Working Party called attention to the German Democratic Republic Instruction No. 100 of 1970 which dealt, inter alia, with "conversion coefficients", differentiated by products and set by the Central Bank. He asked whether this Instruction remained in force. The representative of Finland replied that the current legislation was the German Democratic Republic Currency Law of 19 December 1973. Section 15 of that Law provided that only the officially published exchange rates, established by the President of the Central Bank, were to be followed in converting currencies. The member of the Working Party who had raised the question requested additional clarification as to the law or decree that had terminated Instruction No. 100.

V. QUANTITATIVE RESTRICTIONS

24. Several members of the Working Party referred to the replies to Questions Nos. 25 and 26 to the effect that the German Democratic Republic did not apply any quantitative restrictions or other restrictive regulations of commerce. One of these members said that although details of that country's 1976 Plan were unfortunately not available, a number of published decrees called for an allocation by country and by monetary zone in the execution of the Plan. He cited in particular the Decree of 22 June 1973, which provided in Article 6(3) that pursuant to the Plan, foreign trade enterprises' imports and exports were to be carried out within the limits set in protocols which contained dispositions as to country, value, quantity, quality, delivery dates and export profitability. He also referred to the Decree of 26 February 1974 which directed foreign trade enterprises as to the country, quantity and value limits in their operations. Another member of the Working Party said that his authorities understood that there were foreign trade targets in the Plan of the German Democratic Republic, and asked whether such targets were set on a country basis.
25. The representative of Finland pointed out that the Decree of 22 June 1973 dealt with relations among foreign trade enterprises in the German Democratic Republic and not with trade relations between that country and foreign countries. Referring to a number of other legal provisions, he noted that so-called import authorizations were employed to attain fulfilment of the Plan, which was set on a product rather than on a country basis. These authorizations were automatically granted so as to meet the target specified in the Plan. It was true that although foreign trade policy implementation in the German Democratic Republic started primarily from planning as to products, the country of source or destination would naturally be taken into account; but lists showing countries as sources or market areas were indicative only and were not obligatory, since the foreign trade enterprises took commercial considerations into account. Moreover, the trading and production units, which were the end-users of imported products, had considerable influence on the sources chosen. The Finnish authorities were confident that their country's exports were not being limited by the German Democratic Republic and that the operation of that country's Plan had no restrictive features with regard to Finland.

26. Some of the members referred to in paragraph 24 said that they were not convinced that the German Democratic Republic applied no other restrictive regulations of commerce. One of these members said that while the existence of that country's Plan was clearly not at issue, the Working Party was required nevertheless to take account of the consequences of the Plan. Accordingly, he sought precise information as to whether, and, if so, how particular elements in the Plan had been modified in favour of imports from Finland, and a showing that no new measures had been introduced to compensate for such modifications. In the absence of evidence that such specific steps had been taken, it could not reasonably be argued that the parties had established a free-trade area, regardless of any increase in their mutual trade. With respect to third countries, he said that it made no difference whether a potential exporter to the German Democratic Republic faced limitations described as quantitative restrictions, or apparently similar limitations inherent in the Plan. In this context he cited the Law of 30 September 1976, in which Article 7(2) dealt with allocation on a country basis, and Article 11(4) treated allocation both by monetary zones and by countries, in the context of the 1976 Plan.

27. In response, the representative of Finland noted that the German Democratic Republic's Plans were all-embracing and that they were not inflexible, since occasionally they were revised. The emphasis was on a product rather than a country basis; and it was only to the extent that resources were limited that allocation by countries entered into the picture. With respect to the Law of 30 September 1976, Article 7 dealt with "country conceptions" which were not related to planning as such, but represented rather a preliminary stage in the planning process. As for Article 11 of that Law, this derived from the earlier-cited phenomenon of limited resources being available. In any event, a distinction had to be made between certain factors inherent in the German Democratic Republic's
Plan, and measures which were referred to in the GATT context as "other restrictive regulations of commerce". One member of the Working Party said that it would have been helpful if from the outset Finland had established such a distinction, for example, in the reply to Question No. 26.

VI. SAFEGUARDS AND BALANCE-OF-PAYMENTS MEASURES

28. Some members of the Working Party expressed an interest in learning how the Finnish authorities might address themselves to the issue of market disruption. In this context, they considered that the Working Party might benefit from any experience that the European Communities might have had in connexion with imports from the German Democratic Republic. The representative of the European Communities said that he did not consider this to be related to the work of the Working Party.

VII. EXPORT MEASURES

29. With reference to Questions Nos. 33 and 34, a member of the Working Party enquired as to the status of three measures in the German Democratic Republic aimed at stimulating exports, namely the refund on exports, the export incentive bonuses and the financial measures for export orientation. The representative of Finland agreed that the German Democratic Republic's Foreign Trade Decree of 1955 had provided for the payment of certain export premiums. His delegation had been informed by that country's authorities, however, that the 1955 Decree had been replaced by the earlier-cited Foreign Trade Law of 30 September 1976, and that the export premiums no longer existed. He said that, in any case, the Agreement provided assurance that export subsidies, however designated, would not be applied by the German Democratic Republic in its trade with Finland. The member of the Working Party who had raised the issue asked for verification at a subsequent meeting that export subsidies were not present in some other guise in the absence of any mention of that practice in the 1976 Law.

30. A member of the Working Party sought information on whether the pricing concept applied to German Democratic Republic's exports to Finland called for a price that would be an economic one in terms of recouping the cost of the product involved. He asked how various cost inputs, such as research and development expenses, were calculated in the export price. In the view of his authorities, the question of whether the German Democratic Republic employed certain measures to stimulate exports was directly relevant to the task of the Working Party because it raised a number of issues related to countervailing duties and to safeguards in the context of the rights of third countries. While taking account of the different economic system in the German Democratic Republic, it was still necessary to determine whether export subsidies existed in the market economy sense. The representative of Finland said that the Agreement did not provide any specific method for examining the export price-formation system in the German Democratic Republic, and that his Government had not explored the question of cost inputs.
such as those related to research and development. It was clear however, that unwarrantedly low prices of goods exported by that country to the Finnish market would be dealt with as provided in the Agreement.

VIII. OTHER QUESTIONS

31. Some delegations drew attention to the reply to Question No. 35, which attributed to the question a presupposition that centrally-planned economy State-trading countries were unable to conclude free-trade agreements with market economy countries under Article XXIV. They assured the Working Party that no such presupposition existed on the part of their authorities. They stressed the importance of examining the Agreement in the light, inter alia, of the plans of the foreign trade enterprises in the German Democratic Republic. The representative of Finland said that the Agreement had been brought to the attention of all the authorities and enterprises in the German Democratic Republic dealing with foreign trade.

32. One member of the Working Party said that a detailed explanation of the operation of Article 9 of the Agreement would be needed in connexion with Question No. 36. Another member of the Working Party found the replies to Questions 35 and 36 incomplete, which thus left the Working Party without an adequate basis for carrying out its examination of the Agreement.

33. A member of the Working Party noted that Question No. 39 was not limited to the price mechanism, since goods could be allocated by other means. In the present case, his authorities sought information as to how the German Democratic Republic allocated products imported from Finland under the Agreement, and as to how consumer demand would have an impact on the allocation system. In his view, this issue was highly pertinent because the Agreement had been presented as having established a free-trade area, which raised the question as to how a demand for Finnish goods in the German Democratic Republic would be created or allowed to develop. The representative of Finland said that regardless of the extent of any effect of demand on prices, it was possible that there would be an effect on volume. Although the German Democratic Republic had a Plan, and to that extent perhaps a target, account had to be taken of the needs in the country, and of the fact that the import plans were subject to revision. In his view, the allocation issue was not as relevant as the question whether Finnish exports were restricted in the German Democratic Republic or whether they would be increased in response to increased demand. His authorities considered the results under the Agreement satisfactory in this respect.

34. After the discussion summarized above, the Working Party agreed to submit to the Council the Interim Report issued in document L/4471 and to meet again within the coming eighteen months, at a date to be set by the Chairman in consultation with members of the Working Party. The delegation of Finland agreed to provide in the meantime relevant statistics and information for the next meeting.