

WORLD TRADE ORGANIZATION

RESTRICTED

WT/REG12/M/2

WT/REG13/M/2

WT/REG14/M/2

WT/REG15/M/2

WT/REG16/M/2

WT/REG20/M/2

8 July 1997

(97-2845)

Committee on Regional Trade Agreements Ninth Session

EXAMINATIONS OF THE EFTA-BULGARIA FREE TRADE AGREEMENT,
THE EFTA - HUNGARY FREE TRADE AGREEMENT,
THE EFTA - ISRAEL FREE TRADE AGREEMENT,
THE EFTA - POLAND FREE TRADE AGREEMENT,
THE EFTA-ROMANIA FREE TRADE AGREEMENT, AND
THE EFTA-SLOVENIA FREE TRADE AGREEMENT

Note on the Meeting of 17 March 1997

Chairman: H.E. Mr. Miguel J. Berthet (Uruguay)

1. The meeting was convened in WTO/AIR/549.
2. The Committee on Regional Trade Agreements continued its examinations of the EFTA-Bulgaria, EFTA-Hungary, EFTA-Israel, EFTA-Poland, EFTA-Romania, and EFTA-Slovenia Free Trade Agreements under agenda items B.I through B.VI of its Ninth Session. The meeting took up the following topics:
 - A. General remarks
 - B. Remarks specific to Agreements
3. The Chairman recalled that examinations of the EFTA Agreements with Israel (WT/REG14/M/1), Hungary (WT/REG13/M/1) and Poland (WT/REG15/M/1) had commenced in the Committee's Fourth Session. Examinations of the EFTA Agreements with Bulgaria (WT/REG12/M/1), Romania (WT/REG16/M/1) and Slovenia (WT/REG20/M/1) had begun in the Committee's Seventh Session. Updated questions and replies were contained in multisymbol document WT/REG12/2, WT/REG13/3, WT/REG14-16/2, WT/REG20/2. Today's meeting would provide an opportunity for delegations to make further comments and raise additional questions to the Parties to the Agreements.
 - A. General remarks
4. The representative of Norway, speaking on behalf of the Parties to the Agreements under examination, said he had a few introductory comments on the process of the examinations. The Parties had been hesitant to meet for the day's examination, since no new questions had been submitted to them; but they had been persuaded to do so by the Chairman and the Secretariat. The lack of new questions indicated that the factual part of the exercise was for all practical purposes concluded. They

hoped this could be the last meeting devoted to the examination, and that what remained was only to decide on conclusions. The summary records would be an important part of the report.

5. The representative of the United States expressed satisfaction with the summary records and said they would be quite useful. In the first review sessions for each of the Agreements, his delegation had raised concerns with regard to the virtual exclusion of agriculture from each Agreement. The concerns had not diminished over the preceding months, though they were duly reflected in the summary records.

6. The representative of Australia said that, like the United States delegation, her delegation was concerned over the virtual exclusion of agriculture from the Agreements.

7. The representative of Japan said he would need to check with his authorities before saying the factual part of the examination was finished.

8. The representative of Norway said the Parties to the Agreements would address new questions during the meeting and provide any additional responses in writing. No new meeting should be necessary. He reminded the Committee that the Parties had submitted the Standard Format a week in advance of the first phase of the examinations, and that they had tried to accelerate the process previously by providing information.

9. The representative of the United States said his delegation viewed EFTA's effort in the examination process as the standard which all delegations should follow.

10. The representative of Norway responded to comments by the representatives of the United States and Australia concerning the scope issue and what they called "the virtual exclusion of agriculture." He said the view of the EFTA and its partners could be found in the summary records of earlier meetings examining their Agreements.

B. Remarks specific to Agreements

11. The representative of the United States requested each of the Parties to indicate whether any MFN applied rates for industrial and agricultural products had increased in the months since the previous meetings examining the Agreements. Regarding statistics, there had been some discussion at the meeting of 6 November, during which his delegation had noted that statistics had been provided only from the EFTA point of view - i.e. EFTA imports from and exports to its partners. It was important to know, in the context of assessing the impact on third parties' interests, the importance of EFTA trade and preferential trade in the Central and Eastern European Countries (CEEC) markets. To that end, his delegation had asked for trade data from the six non-EFTA partners to the Agreements under review. The EFTA response had essentially been that EFTA exports were the equivalent of the partners' import data, and that the Parties were confident that substantially all trade was covered by each agreement. To this, his delegation would respond that export data were notoriously unreliable and that Committee Members needed to judge for themselves whether substantially all the trade was covered. He reiterated the request for import data from the six non-EFTA partners to the Agreements, and said that his delegation would also appreciate, if possible, an update of statistics provided last Autumn.

12. The representative of Norway said the representative of the United States deserved recognition for participating actively and promoting transparency; however, it would have been helpful if the United States' questions had been submitted in advance. From the EFTA side, the answer to the question on MFN applied rates was that none had been increased in the intervening months. As far as statistics

went, he understood the concern for transparency. The EFTA delegation had provided updated information last Autumn and had said that export data represented import data for its partners. At that time, the statistics were as current as possible. It was impossible for his delegation to provide more updated statistics, as those for 1996 were not yet available. Although the process of examinations had dragged on, his delegation would continue to shed as much light as possible on the issues raised. Finally, he did not subscribe to the view that export data were unreliable.

13. The representative of Poland said that, with respect to statistics, his delegation would appreciate it if the United States would clarify whether the NAFTA Parties had submitted statistics for intra-NAFTA trade on a preferential basis, or for general trade. Trade within a free-trade area (FTA) was conducted in products originally made in the area. In parallel, there could be trade on an MFN basis due to non-compliance with the rules of origin. What type of statistics were supplied by the NAFTA partners?

14. Concerning the requests by the United States delegation for updated information, the representative of Romania referred to the problem of customs duties. His delegation considered it normal to have information on trends of recent months. At the last meeting his delegation said it had not increased tariffs, and today, as well, he could indicate that there had been no such increases. Statistics were reliable, reflecting the real content of trade between Romania and the EFTA States. At the last meeting his delegation had provided statistical data showing roughly the same trends as those given by its EFTA partners. His authorities were developing integrated database statistics that would reflect not only the total trade and geographical data of Romania, but also Romania-EFTA trade trends. That information would be submitted when available.

15. In response to the United States' request for the Parties to update statistics, the representative of Hungary pointed to the biannual exercise. The Committee should not be overambitious, as it would have subsequent opportunities to review developments in the FTA. It seemed the Committee had exhausted the factual part of the examination. The Committee was now dealing with artificial problems and systemic issues that would not be solved within the context of this FTA. Of course, his delegation would respond to additional questions in good faith.

16. The representative of Japan said that tariffs were important in the analysis of consistency with GATT Article XXIV:5(b). Could the Parties confirm that they would not raise MFN applied rates in the future?

17. The representative of European Communities said that the Parties might wish to add to the rules of origin response to question 19 of the multisymbol document, so that it would reflect the wider introduction of European cumulation over the first half of 1997. That would simply be a matter of factual updating. Referring to the comments by the delegations of Australia and the United States concerning scope, he asked whether those delegations were in effect rejecting the principle set out by the Parties in paragraph 28. Paragraph 9 noted the general principle that separate bilateral arrangements should be counted as part of the instruments creating the FTAs. That was a point of principle which the Committee might need to consider in detail. What were the views of those delegations asking the question?

18. The representative of Canada referred to the remark by the representative of Poland regarding NAFTA trade statistics and said that his recollection of that examination was that there had been a series of questions and replies, and that the Parties had tried to update the information. Regarding the more substantive point on changes in applied MFN rates by the EFTA and other Parties, at a previous meeting the United States delegation had questioned Poland's raising its tariffs while negotiating the FTA with EFTA. The responses so far indicated that no MFN tariff had been changed since last

Autumn, but it would be important to include in the factual record whether any of the Parties had modified the applied rate since the entry into force of the Agreement. This point regarding the nature of the margin of preferences was important for transparency.

19. The representative of Australia said that her delegation, as well, considered it important to indicate whether there had been any changes in tariffs since the Agreement's entry into force. Concerning the scope of the Agreement and the EC representative's reference to paragraph 28 on bilateral arrangements for basic agricultural products, she noted that paragraph 9 read: "The bilateral arrangements concluded between each EFTA country and the respective EFTA partner countries improved market access conditions either by eliminating or significantly reducing tariff barriers on agricultural products covered by these Agreements." The sentence seemed to highlight the difference between the FTA coverage and the bilateral-arrangement coverage by confirming that one appeared to liberalize trade while the other only reduced tariff barriers. If, as the EC suggested, the Committee should include such bilateral arrangements as FTAs, it needed to look again at GATT Article XXIV, where the exemption was to allow for a free-trade area, not to allow for preferential trade. Under the "substantially all the trade" criterion (where, again, there were differences of opinion), duties or restrictions would not have to be abolished on all products. Article XXIV provided no justification for non-zero tariffs lower than the MFN rate that were aimed at providing a margin of preference. Article XXIV permitted the creation of preferences only in situations where free trade was attained. Paragraph 28 described the provisions under which the Parties to the Agreements had declared their readiness to foster, in as far as the agricultural policies allowed, the harmonious development of trade in agricultural products and to continue to achieve progressive liberalization of agricultural trade. Given what seemed to be the virtual exclusion of agriculture from the free trade scope of the Agreement, her delegation would be interested in receiving a report in writing from the Parties as to what had been achieved in this area, as to what steps were currently being taken to further liberalize agricultural trade, and as to what future plans the Parties had in that regard.

20. The representative of Norway said there were a number of questions that the Parties would want to answer in detail. In the interest of time, and because the questions had not been submitted in advance, his delegation preferred to respond to the questions in writing. Many of these subjects had been touched on already in other examinations, for example the topic of cumulation in the EFTA-Baltics examination.

21. The representative of the United States asked if any adjustments to the EFTA-Bulgaria FTA had been necessary as a result of Bulgaria's accession to the WTO. With respect to the EFTA-Poland FTA, the Polish delegation had said it did not see any Article XXIV conflict in its having increased applied tariffs when negotiating the FTA. The United States delegation, however, was of the view that there was indeed a conflict. Could the delegation of Poland explain why, in its view, raising applied rates during the negotiation of the FTA was consistent with Article XXIV:5(b)? He then said that he appreciated the Canadian representative's responding to the questions pertaining to the NAFTA.

22. The representative of Japan said his delegation shared the United States' concern over Poland's raising the applied rates during negotiations.

23. The representative of Bulgaria said that the response to the question put forth by the United States representative was no, there had been no need for adjustment after the accession of Bulgaria to the WTO. The Bulgaria-EFTA FTA had been adjusted to honour the spirit and requirements of the WTO before Bulgaria entered the Organization. In fact, Bulgaria had had observer status in the GATT since 1967 and had always abided by its provisions and requirements.

24. The representative of Poland said that in his view the summary records reflected what had taken place at the September meeting. He noted that there had been no reaction at that time by the United States delegation to the position taken by the Polish Government. His delegation had received the question, which had been promised at that September meeting, only today; it would answer it in due course.

25. The representative of Korea said that, in the interest of transparency, his delegation would appreciate it if the written communications could be distributed to other Members, as well.

26. The representative of the United States said his delegation wished to express dissatisfaction with a recurrent problem in the examination process. The six Agreements under examination were essentially the same - each had certain unique provisions, but the basic Agreements were the same. Each of the Parties to those Agreements was party to a number of other agreements, for example agreements with the EC, the CEFTA, the Baltics, the Faroe Islands, etc. Moreover, some countries (i.e. Austria, Finland and Sweden) had left one grouping and become part of another. In the reviews of all those Agreements, his delegation had posed questions related to the overlap of the various agreements. Representing a country outside this network of agreements, the United States delegation considered it important to know how those agreements worked with each other. At the Committee's meeting of 6 November, in response to comments made by his delegation about the "web of European agreements," the representative of Norway had noted that this was a global, rather than strictly European, phenomenon. Yes, regional trade agreements (RTAs) were in all parts of the world, but nowhere else had there been the same type of network, which involved virtually every country in Europe. It was in this context that his delegation had asked, as it had done in each review, for an indication of the share of trade covered by preferential arrangements, broken down by agreement, for each of the partners. Previously, the representative of Norway had opined that this question was not relevant to the particular discussion, but might be relevant elsewhere. The United States' frustration was that this part of the discussion did not seem to move forward. This was the forum Members had for examining agreements. In his delegation's view, it was relevant, at least in terms of transparency, to discuss the operation and relationship of similar agreements. His delegation would like this discussion to move forward and thus, in the interest of transparency, was asking for the statistics on shares of preferential trade.

27. The representative of the European Communities requested clarification on the points made by the United States representative. Was the delegation of the United States asking the partners of a range of European preferential agreements to allocate actual trade to particular agreements? Or was the delegation requesting a restatement of the percentage of trade liberalized in a series of essentially bilateral or regional arrangements? If the request was the former - allocating actual trade to particular agreements - the task would be difficult. To illustrate, in circumstances where the MFN tariff was zero and there was trade, it would be a matter of arbitrary choice as to whether the preferential agreement or the MFN rate was used as the basis for the allocation. He was unclear as to what the underlying point was. He understood that there was concern that "the web of European agreements" appeared complicated and confusing from the outside; but there were processes which were intended to make the situation clearer, such as the development of the concept of European cumulation. He would appreciate it if the United States delegation would provide further insight as to what the question was driving at.

28. The representative of the United States said the two delegations could discuss the matter informally and then make available any clarification.

29. In relation to the United States' point, the representative of Japan said that the partners to those RTAs were still WTO Members and, as such, were obliged to abide by the WTO rules. Between the multilateral trading system and RTAs, which were they going to attach priority to?

30. The representative of Norway agreed with the statement by the representative of the EC responding to the United States request for statistical information on trade inside the web of agreements. The exercise being conducted was a process of examining individual FTAs, not an exercise in examining a web of agreements. He said he was sympathetic to the United States' desire to understand these aspects, but there was no doubt that, individually, the Agreements were consistent with Article XXIV. The EFTA countries had tried to contribute as much clarity as possible by providing answers to any questions submitted. Prior to this meeting, there had been no new questions submitted. The new cumulation aspect of the rules of origin made it easier to see the consequences of the numerous agreements that existed. His delegation was prepared to discuss these questions in the systemic context. Regarding the Japanese inquiry as to which the Parties attached priority to - the multilateral trading system or RTAs - the answer was "both." He called attention to the chapeau of each of the Agreements, which emphasized that nothing in the Agreements should conflict with the provisions of the GATT/WTO system. This was important to EFTA and its partners. The FTAs had been negotiated at the same time the Uruguay Round negotiations had taken place, so the Parties had had both of those tracks in mind.

31. The representative of Poland wished to supplement the remarks by the representative of Norway concerning RTAs and the multilateral trading system by saying that the Parties' view was part of the consensus expressed in the Singapore Ministerial Declaration.

32. The representative of Norway wished to say directly that his delegation saw FTAs and the multilateral trading system as complementary to each other and not in conflict. Much of the dynamism in free trade around the world had emanated from RTAs.

33. The representative of Hungary said that, regarding the European network of FTAs, the only relevant issue was to what extent the Parties' FTA was in conformity with Article XXIV. The coincidence of other FTAs would be interesting in another forum.

34. The Chairman said that this would be the final meeting for the examination of these Agreements. The draft conclusions would be under consultation as soon as possible.

35. The Committee took note of the comments made.