

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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DRAFT REPORT OF THE WORKING PARTY ON THE RENEGOTIATION
OF THE TERMS OF ACCESSION OF POLAND

1. At its meeting on 20 February 1990, the Council established a Working Party to examine Poland's request to renegotiate the terms of its accession to the General Agreement as embodied in the Protocol for the Accession of Poland of 30 June 1967, and to submit to the Council recommendations which may include a draft Protocol of Accession.
2. The Working Party met on 10 and 15 July, 15-16 October 1991, 10-11 February 1992, 9 and 11 May and [] 1994 under the chairmanship of Mr. P. van de Locht (Netherlands). The terms of reference and membership of the Working Party are set out in document L/6649/Rev.2.
3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Régime of Poland (L/6714), and the questions submitted by contracting parties on Poland's trade régime together with the replies of the Polish authorities thereto (L/6862 and Addendum 1). In addition, the representative of Poland made available to the Working Party the following material: Act on the Privatization of State-owned enterprises; Privatization in Poland - Programme, achievements and foreign investment policy; the Gothenburg Declaration signed between the EFTA States and Poland; The evolution of the status and economic position of State-owned enterprises in Poland; a Note concerning developments in Polish agriculture and on the trade régime in alcoholic beverages and tobacco products and Update Information on Poland's Economic and Trade Policies and Performance (L/7444). In addition the following documents were submitted in 1994 to the secretariat by the delegation of Poland for examination by interested delegations: "Privatization in Poland - Activities Report of the Ministry of Privatization, 1994"; "Review of the Status of the Polish Capital Markets " (published in 1994 by Financial Services Ltd.); "Law on Privatisation of State-Owned Enterprises" (published in 1993); "Law of 30 April 1993 on National Investment Funds and Their Privatization"; Law on Counteracting Monopolistic Practices" (Anti-monopoly Law) of 24 February 1990, as amended; and a set of official documents concerning sanitary and phytosanitary controls.

4. The representative of Poland, in his statements made in 1991-1992 kept the Working Party informed of recent developments in the Polish economy. He could report that the economic and trade régime had moved constantly in the direction of privatization and reduction of the rôle of the State in the economy, including the domestic and foreign trade sectors. Due to fiscal and financial measures, the notion of market competition had taken root as the driving force in the transformation of the economic system of Poland. In the foreign trade sector, an important new development had been the introduction, on 1 August 1991, of a new tariff. Most duty rates ranged between 10 per cent and 40 per cent, with 70 per cent of tariff lines in the 15 per cent category. Only a few luxury items were subject to rates higher than 40 per cent. GSP rates had been set at 70 per cent of MFN tariffs and imports from the least-developed countries were duty free. Changes had been made in the 1989 Customs Law to establish safeguard provisions based on Article XIX of the GATT and to incorporate customs definitions and procedures. Statistical data illustrated the dynamic growth of Polish external trade especially with market-economy countries in contrast with the dramatic fall in trade with the former CMEA area. Private traders were playing an increasing role in foreign trade, accounting at the end of August 1991, for 45 per cent of imports and almost 15 per cent of the value of exports. Foreign trade enterprises in which the State was involved, either as owner or as an equity partner, had been subject to a comprehensive programme of ownership transformation aimed at a further reduction of State involvement. About twenty foreign trade enterprises were engaged in privatization procedures expected to be completed in the near future. With regard to non-tariff measures and export support, the Government had continued to follow the process of liberalization. The Polish Government aimed at pursuing such reforms in spite of a heavy toll in terms of recession, unemployment and social disruption and notwithstanding the powerful impact of factors, such as import competition, the collapse of the former CMEA system, deflationary monetary policies, financial discipline for the public sector, shift of resources towards private ownership and restraint in government intervention. Thus the competitive environment had been strengthened. The following data for 1991 illustrated the dynamics of the process: GDP had declined by an estimated 8-10 per cent, investment by about 8 per cent, industrial sales were almost 12 per cent lower than in 1990 and 35 per cent with respect to 1989, agricultural output had declined by about 2 per cent compared to the preceding year, while construction lagged 6.8 per cent. Budget deficit, caused primarily by a considerable shortfall in tax revenue, had reached well over 30,000 billion zlotys. Investment expenditures had continued to decline for the third consecutive year, with a drop of almost 8 per cent from 1990. In December 1991 unemployment had exceeded 2.1 million and its ratio to the total active population had nearly reached 11.4 per cent. The positive developments had included: the slowing-down of price inflation (December to December) from approximately 250 per cent in 1990 to 70 per cent in 1991; increased levels of private savings; relatively satisfactory currency reserves (\$6.5 billion at the end of 1991, despite a drop of approximately \$1.5 billion during 1991),

stable level of exchange rate in open market trading in major currencies. About 25 per cent of the total industrial production had come from private companies, as against 17 per cent in 1990. The output of private industry had risen almost 50 per cent while that of the State sector had declined by almost 19 per cent. The private sector outside agriculture absorbed at that time about a quarter of the Polish employed labour force. According to a Government statement, by 1994 the private sector should comprise more than a half of the total non-agricultural economy.

5. With reference to the general economic and business conditions, at subsequent meetings of the Working Party, the representative of Poland said that in 1992 the economy was still in grips of a severe recession. Since then the Polish economy had shown strong signs of recovery. In 1993 Poland's growth was the second fastest in Europe, with similar performance expected in 1994. GDP had increased by 1.5 per cent in 1992 and 4.6 per cent in 1993. The major contribution was provided by improved industrial performance. Industrial output (at constant prices) had gone up by 3.9 per cent in 1992 and 6.2 per cent in 1993 but still remained substantially lower than the late 1980s. There had been a rapid shift in relative strength of private and public industrial sectors. While the volume of sales of public industry (measured at current prices) had continued to decline by 3.3 per cent in 1992 and 6.5 per cent in 1993, private industries had achieved a rapid expansion at the rates of 23.4 per cent and 34.7 per cent respectively. As a result, the share of private industry in the total industrial output was close to 40 per cent. Inflation rates had continued to decline from 70 per cent in 1991 to 36.5 per cent in 1992 and 33 per cent in 1993. The budget deficit for 1994 was foreseen at 4.2 per cent of GDP. Unemployment had continued to grow and had reached 15.7 per cent of the labour force at the end of 1993. The private sector now provided over 50 per cent of GDP and 46 per cent of non-agricultural employment. Finally, the representative of Poland assured the Working Party of his Government's readiness to follow a policy of full transparency in its economic and trade policies by keeping strictly to GATT procedures on notification and trade policy review. He also informed the Working Party that a comprehensive TPRM of Poland's economic and trade policies had been conducted in early 1993 and had resulted in a number of positive assessments and several policy recommendations, many of which had already been assigned for implementation.

I. General Comments

6. Several members of the Working Party expressed their understanding and sympathy for Poland's objective of renegotiating its Protocol of Accession to the GATT into a standard Protocol of Accession to reflect the economic transformations taking place and offered their full cooperation in this exercise. They expressed appreciation for the information provided by Poland in the documentation made available

to the Working Party. Several members also expressed strong support for the measures being taken by Poland to transform its economy into a market economy and hoped that their successful implementation would enable Poland to assume full GATT obligations in the very near future. Some members noted the major rôle played by State-owned institutions in trade and in the economy at large in the past, and stated that the Working Party would have to assess the evolution of this rôle in order to ensure that the process of trade liberalization and the establishment of a market economy was irrevocable. Other members stated that, in their view, the progress in the process of fundamental economic reform, including the rôle of the State in the economy and in foreign trade, gave full assurances concerning the irrevocable nature of Poland's move to a market economy. At the initial meetings of the Working Party some members also stressed the need to establish a schedule of tariff concessions either in the context of the renegotiation exercise or of the Uruguay Round negotiations.

II. Transformation of the Polish Economy to a Market Economy

7. The transformation of the Polish economy to a market economy which was the basis for Poland's request to normalize its membership in GATT, was central to the discussions of the Working Party. In this regard members referred to various aspects of the transformation programme in general and particularly to the privatization of the State-owned sector. Questions were asked on the nature of State-owned enterprises, their share in Poland's GDP and its evolution; the prerogatives of public authorities in State-owned enterprises; the fiscal and other support measures for such enterprises; the status of commercially non-viable enterprises; the status of Poland's privatization programme including demonopolization, the criteria for the selection of enterprises for privatization, the financing of privatization and the participation of foreign investors and financial institutions; the rôle of State-owned enterprises and foreign trade organizations in Poland's trade régime, etc.

Central Planning

8. The representative of Poland confirmed that central planning had ceased to exist and that the institutions formerly responsible for it had either been dissolved or reformed. The institution called the Central Planning Office deals with policies and problems arising from the structural reform of the economy and had nothing to do whatsoever with planning in the traditional sense of the word.

Ownership Transformation

9. With respect to the status of the programme of privatization, the representative of Poland gave a detailed outline of the various aspects of the programme. This issue which was quite complex had been further complicated by the need and determination to accomplish it within a relatively short time. At the end of June 1991, there were some 8,600 State-owned enterprises and the overall objective was

to privatize as many as possible. The so-called small privatization and the large scale programme were two schemes of privatization being implemented. The small scale privatization covered small enterprises such as restaurants, workshops, hotels, shops etc. and was being carried out by local authorities. Already over 50 per cent of these establishments had been privatized and it was envisaged that by 1992 this sector would have been completely privatized. There had been no problems in capitalizing the privatization of this sector. The large scale privatization programme had covered about 1,500 major enterprises both in industry and other sectors, including services. Ownership transformation of this sector had been difficult because it covered a large proportion of heavy industries, many of them inefficient and carrying high cost overheads. The ownership transformation process had commenced late in 1990. The process is rather unique in two respects: (a) the decision to privatise is usually made at the enterprise level, so that it is essentially a grass-roots process; (b) a multi-track procedure is used which allows for an individualised approach in each case. Aside from the fore-mentioned small scale privatisation, which had been largely completed, the principal methods were: mass privatisation programme (see paragraph 12 below); "commercialisation" of large and medium-size enterprises; and direct privatisation through liquidation. The "commercialisation" method involves transformation of the enterprise into a State Treasury corporation (either as a joint stock or as a limited liability company) with shares being subsequently sold to private investors. The "direct privatisation through liquidation" method applied primarily to small and medium-size enterprises and consisted in outright sale, lease or merger of the enterprise in whole or in part. The latter arrangement may be preceded by bankruptcy procedures, if actually warranted by the poor financial condition of the enterprise. While in 1991 the privatization of State enterprises in non-agricultural sectors was still largely at a preparatory stage, in 1994 close to 2,700 such units, or 35 per cent of the total, were effectively covered by various privatization schemes. In addition the number of newly established private companies registered under commercial law had increased some fourfold to about 70,000 while the volume of small private establishments had more than doubled to reach almost 1.8 million units. Adequate legislative background as well as necessary institutions, such as stock exchanges had been set up to consolidate and advance this process. The privatization process had encountered several barriers, the most important being: a shortage of funds in the hands of potential investors; insufficient interest of foreign firms in investment in the Polish economy; and limited public buying of equity in privatized firms.

10. By early 1994 the privatization process had effectively become one of the fundamental driving forces of economic and social transformation. In terms of employment outside private agriculture, the share of the private sector had increased from 40 per cent in 1991 to over 46 per cent in 1993. Private investors claimed 44 per cent of total investment expenditure in 1993, due to the fast expansion of investment spending in the processing industry, construction and services. The number of private

companies registered under commercial law had increased from 16.6 thousand in early 1990 to almost 70 thousand at the end of 1993. In addition, the number of small private establishments employing up to five persons had jumped from 814 thousand in 1989 to 1,784 thousand in December 1993, of which about 40 per cent were active in trade and services.

Features of State-Owned Enterprises

11. The Polish representative submitted a document entitled "The evolution of the status and economic position of State-owned enterprises in Poland." He stated that the prerogatives of public authorities in State-owned enterprises were limited to basic ownership, the right to dissolve the firm, if it became economically non-viable, and the right to nominate the chief executive. He added that all operational decisions and activities including wages, output, distribution, and investment were the sole prerogative of the enterprise itself. He stated, furthermore, that if any enterprises engaged in State-trading activities in the meaning of Article XVII, the Government of Poland would apply the laws and regulations governing such activities in conformity with the provisions of Article XVII, including provisions for non-discrimination, the application of commercial criteria for trade transactions, notification and other procedures. Purchases by these agencies for the manufacturing process or for resale were not considered government procurement under the General Agreement.

12. With reference to the privatisation of State-owned enterprises, the representative of Poland said that by the end of December 1993, 2,685 State-owned enterprises - out of a total 8,441 registered at the end of 1989 - had been subject to various privatisation schemes. Of these, 1,082 were liquidated because of poor economic condition; 914 were privatised as active enterprises and 522 were transformed into State Treasury corporations to allow for divestiture of their stock of shares. The remaining had been covered by various other procedures. The most common approach to the privatisation of large and medium size companies was through a mass privatisation programme (MPP). This concept was first floated in early 1991 and had been officially endorsed in the Law on National Investment Funds and Their Privatisation which was passed on 30 April 1993. The MPP provided for a rapid privatisation of hundreds of enterprises which enjoyed relatively good financial standing. Under the scheme, such entities were converted into joint-stock companies. Their shares would be transferred to about 15-20 National Investment Funds (NIFs), which replaced the initial (1991) concept of "national wealth management boards" to which reference had been made at earlier meetings of the Working Party. The shares of NIFs will be listed and traded at the public stock market. Over 30 foreign-led fund management consortia had applied, through open tender, for the right to manage the NIFs. A short list had already been drawn by the Selection Commission. It was expected that the Commission would short-list supervisory board members by mid-1994 and that fund managers would be appointed soon

afterwards. Each company privatised under the MPP was expected to have initially the same shareholding structure: 33 per cent would be held by one NIF; 27 per cent would be distributed equally among all other NIFs; 25 per cent would be retained by the Treasury; and 15 per cent would be distributed free of charge to the employees of participating companies. By the spring 1994 the Ministry of Privatisation had identified the first group of about 470 State-owned enterprises to be included in the scheme. Bearer share certificates were expected to be distributed to the public in early 1995 and would be exchangeable for shares in the NIFs after they were listed on the Warsaw Stock Exchange (WSE) in mid-1995. The WSE, reopened in 1991, is now in full operation. Daily trading in early 1994 exceeded the equivalent of \$100 million.

Demonopolization Programme

13. In connection with the ownership transformation programme, questions were asked on the anti-monopoly law, the activities of the Anti-monopoly Office and measures aimed at breaking up monopolistic State-owned enterprises. The representative of Poland stated that anti-monopoly activities had been one of the centre pieces of the policies of the Government's economic reform, both in institutional terms through the establishment of the Anti-monopoly Office and in terms of measures taken to discourage monopolistic organizations. The system of production in Poland had been dominated, to a large extent, by a limited number of producers. In order to discourage excessive concentration, the Government had taken a number of administrative measures. Since the Anti-monopoly Office was set up about 2,500 anti-monopoly proceedings had been initiated aimed at either controlling monopolistic practices or breaking up existing organizations in various sectors which had monopolistic characteristics. This action had, to a large extent, been successful in breaking up monopolization of production and services, but foremost the activities of the Government against monopolistic arrangements had concentrated on encouraging the competitive activities of private economic operators especially in domestic production. One way of encouraging the private sector was to offer favourable treatment to non State-owned enterprises. An example of this has been the exemption of private firms, joint ventures and other non State-owned enterprises from the payment of the penalty tax on wages. As a result of such measures the number of private economic operators, other than family businesses, had increased seven fold between early 1990 and the mid 1993 and had reached about 127,000.

14. In response to questions, the representative of Poland confirmed that the existing legislation aimed at discouraging monopolistic practices contained provisions under which an economic entity may be divided or dissolved if two conditions are concurrently present: the entity has a dominant market position (defined by the law as more than 40 per cent of market share) and persistently restrains competition or the conditions therefor. Under these provisions the Anti-monopoly Office ordered the

break-up of about twenty, mainly regional, State enterprises in the following lines of business: grain-milling (12 cases); wood processing (3); seeds production and distribution (1); meat processing and distribution (1). A break-up was also ruled for one major national State enterprise dealing in fuels and energy and for a major inland transportation entity. So far, all contested decision related to these cases had been upheld through a judicial review process.

15. Concerning the definition of a monopolistic enterprise, the representative of Poland informed that the relevant and detailed criteria had been developed and are contained in the "Anti-monopoly Law" of 1990 as amended.

Time Table for Privatisation

16. In reply to a question concerning the timetable for privatisation, the representative of Poland said that it was the intention of the Government to carry this process forward as expeditiously as possible. However, it must be borne in mind that this process does not evolve in a vacuum and that a proper macroeconomic environment must be created and sustained for a continued development of the private sector in a market economy. This includes the development of the capital market, pension and social security reform, overhaul of the banking system, financial restructuring of State banks and enterprises. The most essential determinant is the availability of private capital, both Polish and foreign. Under the law, the agenda for privatisation is set out by the Parliament for each year. Such agenda established for 1994 is contained in document "Privatisation in Poland - Activities Report of the Ministry of Privatisation, 1994".

Exemptions from the Privatization Programme

17. A member of the Working Party asked what kind of State-owned enterprises would be exempted from privatization for reasons of "important national interests". In response the representative of Poland explained that the term implied that the interest should be national in character and really important, an example being the defence industries. He added that the Privatization Law empowered the Minister of Ownership Transformation, on behalf of the Treasury, and with the approval of the Minister of Finance, to take over all or part of an enterprise which got into financial difficulties such as losing its credit worthiness or not being able to pay to the State its dividends.

Banking Sector Privatization

18. The representative of Poland stated that the Council of Ministers had decided in mid-May 1991 to privatize nine commercial banks along the following scheme. Firstly, the banks would be transformed into joint stock companies fully belonging to the Treasury as a temporary step to enable such banks

to issue stocks. The second step would be the selection of a financial adviser which would invariably be one of the investment banks. The third step would be the identification of a "strategic investor" who could acquire a sizable portfolio of the bank and who could effectively be considered to be co-responsible for the effective management of the bank. In a number of cases "strategic investors" were likely to be non-Polish banks. The Polish banking law allowed the establishment of foreign commercial banks in Poland, both as branch offices of banks located outside the country and as full-fledged operational banks covering a wide spectrum of services. However, subsidiary offices of foreign banks in Poland must operate within the operational prescriptions set out by the National Bank of Poland. The final step in the banking privatization programme would be the sale of shares to foreign and Polish investors. The procedure being followed provided that about 70 per cent of shares would be offered to private and institutional investors, both Polish and foreign, while the remaining portfolio would be retained by the Treasury. By early 1994 three major commercial banks - out of nine covered by the programme - had been effectively privatised, and the remaining had been transformed into joint-stock companies of the Treasury as an intermediate step before their final privatisation expected before the end of 1996. About 70 small and medium-size banks were already in private hands. There were also 1,665 small cooperative banks which constituted a relatively well developed banking network with over 2,700 client service contact locations spread throughout the country. After the massive expansion of banking services in recent years, consolidation in this sector is likely to follow on the basis of private financial institutions. In addition to banks capitalized through Polish sources, licenses had been issued to ten foreign banks, covering both representative offices and - in most cases - the establishment of banks with foreign capital participation. Details are provided in a 1994 "Review of the Status of the Polish Capital Markets" prepared by Financial Services Ltd. in cooperation with the United States Agency for International Development.

Foreign Trade Organizations

19. The representative of Poland said that foreign trade organizations constituted another aspect of Poland's economic structure closely affected by the overall policy of economic transformation and privatization. In 1991, there were about sixty to seventy foreign trade organizations remaining from the previous system, some of whom were fully owned by the State, while others were only partly owned. They were now already totally independent of the State from the point of view of their managerial activities as well as in their day-to-day operations and with the liberalization of foreign trade they were obliged to operate competitively under market economy conditions, receiving neither special incentives nor special financial resources. In his view they could not be considered as State-trading entities in the sense of Article XVII of the GATT. Their evaluation was being organized individually by foreign consultant companies. Some of them would be taken over by their employees, some of them partly

by foreign investors, and others sold on public offer. The representative of Poland pointed out that a reflection of the diminishing rôle of State-owned entities in foreign trade was the fact that in the external trade, the share of private operators had increased between mid-1991 and 1994 from 45 per cent to 60-62 per cent in imports and from 15 per cent to 45 per cent in exports. The number of State-owned trading organizations active in foreign trade and involved in various stages of privatization had increased from about twenty in 1991 to more than 60 in 1993. Among those now being privatized were the principal traders in grains, sugar, meat, tropical food and alcoholic beverages, all of which were still State-owned in 1992. The last remaining major State-owned foreign trade organization "Impexmetal" (active in non-ferrous metallurgy products) was about to be transformed into a joint-stock company in 1994. This would effectively eliminate the category of State-owned trade entities in merchandise trade. The Working Party took note of these assurances.

Monitoring of the Privatization of State-Owned Enterprises

20. At the initial meeting of the Working Party, noting that State-trading enterprises and organizations maintained a dominant rôle in domestic production and in foreign trade, several members referred to the necessity of monitoring the operations of State-owned enterprises during the transitional period of restructuring and privatization, and ensuring effective transparency during the period of transformation of the economy into a market economy. In this regard some members referred to the use of Article XVII notification procedures or other agreed mechanisms. The representative of Poland reaffirmed his Government's commitment to abide by all GATT obligations including notification under Article XVII. In the past, the absence of notifications had been related to a perceived lack of clarity as to the meaning of the notification provisions of Article XVII. It was not the State ownership status *per se* which obliged the notification, such obligation arose only when the enterprise had been granted "exclusive and special privileges" which might lead to discriminatory trade practices inconsistent with the General Agreement and especially with Articles I and II thereof. He stressed that State-owned enterprises in Poland were not granted any special or exclusive rights, and operated in a manner consistent with the provisions of the GATT. They were therefore not considered as State-trading entities within the meaning of Article XVII. Some members of the Working Party pointed out that the task of the Working Party of drawing up a revised Protocol of Accession had to be performed on the understanding that Poland was moving irrevocably towards a full market economy including the process of privatization and, in their view, Article XVII notifications were a means of ensuring contracting parties' awareness of the continuity of the process. Some other members of the Working Party stressed that private ownership was not the only form of ownership that could allow a market economy to operate, since many market economy countries operated mixed ownership regimes in various sectors.

21. At its initial meeting the Working Party welcomed the volume and clarity of the information provided by Poland concerning its State-owned sector, its impact on trade, and the plans for extensive privatization. Noting that the representative of Poland had stated that his Government planned to privatize more than 50 per cent of the State-owned enterprises within the next three years, and that the privatization programme would be completed within five years, some members said that in light of the overwhelming position of these enterprises in Poland's trade régime, a commitment to continue this process would be appropriate for inclusion in the Protocol of Accession of Poland.

22. The representative of Poland recalled that private ownership of enterprises or other means of production was not a basic tenet of the General Agreement even though its rules presupposed a working market system whereby State-owned enterprises operated in accordance with commercial considerations and in a fully transparent manner. Therefore, in his opinion, there was no legal or economic reason for Poland to undertake to transfer the ownership of a certain percentage of the enterprises currently owned by the State, nor to make commitments concerning the percentage of national output that would be generated by such enterprises. Some members of the Working Party expressed support for this position.

23. In the light of the updated information provided by Poland in 1994 (document L/7444), several members said that, in their opinion, the Working Party should recognise that Poland had carried out such a comprehensive and substantial programme of ownership transformation that the role of the State was no longer an issue that would need to be addressed in the revised Protocol of Accession. Nevertheless, full transparency by Poland with regard to future developments in this sector would be welcome.

III. Macroeconomic Developments in the External Sector

Changing Trade Patterns

24. In response to requests for recent data on Polish trade including evolution of the volume of trade commodity and its geographical structure, the relative roles played by private and State-owned enterprises, currency convertibility and its effect on trade, and the evolution of trade with former CMEA trading partners, the representative of Poland stressed that the classification of trade on the basis of the convertibility or not of the currencies in which it was conducted had disappeared since Poland no longer traded with the States in the former USSR and other former CMEA countries in transferable roubles. Currently Poland traded only in convertible currencies using world prices. On the customs basis, exports between 1991 and 1993 had remained stable at close to US\$14 billion. Imports, on

the other hand, had continued to expand at a relatively fast rate, to reach \$18.7 billion in 1993, resulting in a growing trade deficit which had reached \$ 4.6 billion. The deficit was recorded in trade with all groups of trading partners, particularly with highly industrialized countries (\$3.7 billion, most of which with the European Union and the United States). As regards the geographical structure of trade, there had been a radical shift towards OECD member countries. Between 1989 and the end of 1993 their share of Poland's trade in goods had increased from 49 per cent to 75 per cent in exports and from 53 per cent to 80 per cent in imports, largely at the expense of the former USSR and of Central and Eastern Europe. This trend had been particularly strong in relations with the European Union, whose shares in both flows of trade had nearly doubled to reach in 1993 some 64 per cent of exports and 60 per cent of imports.

Foreign Exchange Régime and Exchange Rate Policy

25 The Working Party reviewed the nature of the foreign exchange régime and exchange rate policies, and Poland's progress towards establishing full convertibility for its currency, and the possible effect of the present partial convertibility on foreign trade especially export prices.

26.. The representative of Poland stated that there were two basic instruments in the Polish stabilization programme, the floating exchange rate and the control over wages in the public sector. Since the introduction of internal convertibility in 1990 the exchange rate had been "pegged" to a basket of major currencies, against which the zloty continued to be devalued systematically, albeit at a modest average monthly rate of less than 2 per cent, to reflect the domestic inflation. The system of unrestricted access to foreign currencies for Polish private and legal persons continued to remain one of the fundamental features of the economic instrumentation and a key factor behind the steady expansion of imports. At present this convertibility was limited only to current account transactions. Practically for foreign trade purposes the domestic currency was convertible. In preparation for future external convertibility, foreign entities had been allowed, since 1993, to invest in zloty denominated Government securities. Furthermore, the draft new Foreign Exchange Law provides for further liberalization in currency exchange regulations for foreign residents, and stipulates a limited use of Polish currency in foreign trade transactions.

Foreign Investment

27. In response to questions, the representative of Poland stated that the new law on foreign investment had become effective on 4 July 1991. It provided for the full transfer of profits, dividends and capital, and foreign investors were not subject s to any licensing or registration to operate except in sensitive areas such as sea ports, airports, military zones etc. Since 1991 the profile of foreign

investment had increased dramatically. The number of ventures involving foreign capital had grown from about 5,000 in 1991 to over 15,000 late in 1993. The capital already in place or committed was well over \$8 billion. It was concentrated primarily in machine manufacturing, food processing, financial services, construction, chemicals, wood and paper industries and in telecommunications. Further improvements had been made in the legislation, to provide new business opportunities for foreign investors, including indirect portfolio investment in the rapidly developing stock exchange market.

Price Policy

28. In response to questions concerning any remaining price controls, their application to imports and possible discrimination between State-owned enterprises and other consumers, at the initial meetings of the Working Party the representative of Poland stated that the Government was determined that the few remaining price-controls should be de-regulated. In the energy sector prices were already close to market prices. With regard to transportation the situation was more complex. For the national railways, for example, there was a uniform tariff covering the entire country. But municipal and inter-city transportation was subject to competitive pricing by individual companies created in the place of the dissolved State-owned inter-city transportation company. Price controls were maintained for municipal housing rents, and for pharmaceuticals sold by public health-care institutions (as opposed to free prices in private pharmacies). Polish made alcohol was subject to a minimum price in order to enforce the legislation designed to discourage abusive drinking. Imported alcoholic beverages, representing normally more expensive higher quality brands, were subject to free pricing. He affirmed that there was no price discrimination in favour of State-owned enterprises vis-à-vis other consumers. State-owned enterprises enjoyed no special privileges in regard to prices.

IV. Agricultural Sector

29. The Working Party reviewed various aspects of Poland's agriculture policies and the rôle of this sector in the process of economic transformation. Questions were asked on the size and ownership of farms, the current organization of agricultural production and distribution, the rôle of the private sector in the production, processing and in the export and import trade of agricultural products. Other questions referred to the oligopolistic structure of trade in agricultural products, and agriculture protection policies.

30. The representative of Poland said that the Government's policy vis-à-vis agriculture emphasized maintaining the prevailing rôle of the market. Private farming accounted for approximately four-fifths of the total assets in the primary agricultural sector. The remaining assets were shared between cooperative organizations and State-owned farms and support facilities. On the question of the structure

of production, the representative of Poland stated that agriculture in Poland had traditionally been within the private sector and was never collectivized. Roughly 85 per cent of land ownership and property with a corresponding share in output belonged to private farmers. State-owned or co-operative farms played a marginal rôle in Polish agriculture and some of their land was in the process of privatization. In Poland the typical farm was primarily a family farm with an average size of about five hectares. This small size had created a problem of efficiency. Many farms were unable to meet competition from imported food products. The problem had been worsened by the Government's policy of phasing out farm subsidies, but the Government had resisted increasing pressures from the farming community for protection. Generally the policy of the Government was to encourage the consolidation and extension of the private agricultural sector, to remove limits on the size of private land holdings and to authorize foreign financial assistance and credits to efficient operators.

31. The representative of Poland said that since 1992, a number of new developments had taken place, particularly as regards the ownership structure. Government-sponsored institutions, such as the Agricultural Property Agency, were actively engaged in taking over the land and other production facilities operated by the remaining State-owned farms in order to transfer them to the private sector through sale or lease. By April 1994 the Agency had acquisitioned 3,495,000 hectares of land which represented almost 100 per cent of land holdings previously operated by State-owned farms. This process is thus designed to virtually eliminate the State from any meaningful direct role in agricultural production. Food distribution in the domestic market was effectively controlled by the private sector, which in 1993 had accounted for 88 per cent of the total value of all retail sales. What remained was almost wholly attributed to trading cooperatives. Therefore, the State had effectively withdrawn from this sector. The Working Party took note of this assurance.

32. In response to questions raised at the initial meeting of the Working Party on the roles of the private sector and the Foreign Trade Organizations in trade in agricultural products, the representative of Poland stressed that the availability of foreign exchange and liberal trade policies had resulted in about 100,000 private operators being involved in foreign trade. A large part of them operated in the agricultural sector. Exports of agricultural products were conducted directly by producers and through State-owned cooperative or private trading firms, under conditions of equal legal status enjoyed by all such entities. There were no export controls, except for products covered by the GATT Dairy Arrangement (price monitoring), sheep and cattle (administration of external quotas) and alcohol and tobacco products. Beginning in 1990, export subsidies had been eliminated. In 1994 the representative of Poland informed that all four major former State-owned traders were by now effectively outside

the State sector. The biggest trader in tropical food products and alcoholic beverages (Agros) had no participation by the State; the largest meat trader (Animex) had only 34 per cent of State equity; the principal dealer in grains and sugar (Rolimpex) had been converted into a joint-stock company and was being privatised; the major trader in fresh and processed fruits and vegetables (Hortex) was also a joint stock company. Dairy products were totally traded by cooperative and private firms.

33. In response to additional requests for information on the rôle of the foreign trade organizations in the import and export of agricultural goods, price setting and customs valuation, the representative of Poland stated that pricing was subject to the general rules of the market. A number of commodity exchanges were already in operation where prices for basic commodities such as grains, sugar, oilseeds and meat were quoted. Government intervention in the domestic agricultural market was exercised through the Agricultural Market Agency (AMA) established in 1990 which operates under the statutes adopted by a Decree of the Council of Ministers dated 26 June 1991. The principal function of the AMA was to influence the domestic market for agricultural commodities and processed food with a view to improving the stability of prices and producers' incomes. The Decree stipulates, *inter alia*, that in discharging its responsibilities, AMA should conform "to the principle of non-infringement on the rules of the market in agricultural economy". The AMA performed its functions through direct transactions in domestic and international markets on commercial terms and through the management of food stocks. It may also offer credit guarantees to agricultural operators and serve as adviser to the Government on matters within its mandate. The activities of AMA were partly financed from the budget. In 1991, public financing was authorized at the level of about 2,300 billion zlotys (slightly over \$200 million) of which more than half was to be used for managing national food reserves. In the following years the disbursements from the national budget amounted to the equivalent of \$135 million in 1992; \$110 million in 1993; \$115 million in 1994. These figures represented 4-5 per cent of the total annual budget allocation for the agricultural sector in the respective years. The declining trend was related to a downscaling of AMA's market interventions, due to reduced domestic demand for farm products. The funding of AMA's activities contains no allocation for export subsidies. Following an announcement made in the Working Party in 1992, Poland had notified the Agricultural Market Agency as a State-trading entity in the GATT under provisions of Article XVII (document L/7161/Add.4).

34. During one of the initial meetings of the Working Party, a member said that its exporters had encountered difficulties in the field of alcohol and tobacco. The representative of Poland said that imports of products other than alcohol and tobacco were regulated primarily by customs duties. In addition, imports of dairy products were subject to licensing requirements. Production of, and trade

in, alcoholic beverages and tobacco products are covered by a different régime. Production of alcohol may be undertaken by State-owned firms, cooperative organizations, private brewers and foreign companies, on the basis of Government licenses. Licensing requirements apply also to domestic and foreign trade in alcohol. Production of tobacco products was subject to Government licensing and was in the hands of several State-owned companies, two Polish-foreign joint ventures and one cooperative organization. In 1992, a European subsidiary of a major overseas tobacco company had obtained the right to establish a large manufacturing facility as a fully-owned investment. Domestic trade in tobacco products was not regulated. Imports of strong alcoholic beverages and tobacco products were covered by quantitative restrictions, imports of wine and beer were subject to licensing requirements.

Agricultural Protection Policies

35. There were a number of questions during the initial meetings of the Working Party, on agricultural protection policies, especially with regard to the rationale, the instruments being used and their product coverage, the reasons for additional protection when this sector had high tariff rates and how the situation in this sector could be reconciled with the Government's overall liberalization stance. In response, the representative of Poland recalled that Poland was still largely an agricultural country with agriculture accounting for the livelihood of almost 30 per cent of the population. With the withdrawal of Government subsidies and the liberalization of foreign trade, this sector had become very vulnerable, hence the growing demand for protection. It was not the intention of the Government to create prohibitive barriers around Polish agriculture, but during the transitional period of restructuring of the agricultural sector, some temporary protective measures were needed. In trade weighted terms, average tariff protection had increased from 15.5 per cent under the old tariff system to 20.8 per cent in August 1991, followed by a decline to 18.3 per cent in January 1993. The simple average was 14.8 per cent in 1991 and 22.5 per cent in 1993.

36. The Working Party took note of the assurances by the representative of Poland that any protection for the agricultural sector would be consistent with the commitments and disciplines undertaken in the framework of the WTO Agreement.

V. Tariff and Customs System

37. Members of the Working Party asked questions on Poland's tariff and customs system, *inter alia* on the level of tariffs, ceiling bindings, duty suspensions and exemptions, import charges and customs valuation practices.

Tariff Levels

38. The representative of Poland stated that the tariff system introduced on 1 August 1991 was based on the Harmonized System of tariff classification and had rates ranging mostly from 10 per cent to 40 per cent with 70 per cent of tariff lines not exceeding 15 per cent. Only a few luxury items had rates above 40 per cent. GSP rates were set at 70 per cent of MFN rates and imports from the least-developed countries were duty free. Poland's customs tariff established in August 1991 had been subsequently modified in July 1993 and December 1993, without substantially changing the overall level of protection. As of 1 January 1992 the duty rate of 35 per cent was applied to imported passenger cars, trucks and buses. The minimum amount of customs duty was \$1,500 for passenger cars which are not more than four years old and \$3,000 for older vehicles. Parts of cars, trucks, buses and tractors for industrial assembling in Poland enjoyed duty-free entry. As of 1 March 1992, duty-free tariff quotas would be established for passenger cars and trucks originating in the EC, under the provisions of the Association Agreement between Poland and the European Communities. The annual quotas would provide for duty-free entry of: 25,000 passenger cars (as of 1993 the quota would be increased by 1,250 cars annually); 5,000 catalyzer-equipped passenger cars (the quota would be increased by 500 cars every year); 100 trucks (the quota would be increased by ten units every year).

Duty Suspensions

39. On the question of duty suspensions, the representative of Poland stated that pursuant to Article 5 of the Customs Law, the Government may suspend, in whole or in part, the collection of customs duties on any product or group of products on the *erga omnes* basis. Such suspensions may be ordered for a period not to exceed the end of the calendar year in which the decision has been taken, subject to possible extension on an annual basis. This practice had been applied particularly in respect of goods which were used for further industrial processing. The most recent decision of this type had been taken in December 1993 (Dziennik Ustaw - Journal of Law No.128/94). It provided for the application of customs duties below MFN tariff rates and covered over 1,500 nine-digit tariff lines, ranging from HS heading 0511 to HS9202.

Binding of Tariffs

40. Some members enquired whether Poland was prepared to bind its whole tariff schedule as part of the renegotiation of its Protocol of Accession. The representative of Poland said that the end result of the present exercise was expected to be the replacement of the former Protocol with a standard protocol of accession to the GATT. From 1992 onwards, tariff policy had been increasingly oriented towards embracing the goals established multilaterally within the framework of the Uruguay Round. Consequently, only minor adjustments had been made in some individual tariff rates (in both directions)

without a significant impact on the overall level of tariff protection. The most important development had been the negotiation and presentation of Poland's GATT Schedule which was annexed to the Marrakesh Protocol to GATT 1994. The Schedule, which is the first tariff schedule ever presented by Poland in the GATT, provided for a comprehensive tariff binding of all agricultural products and over 96 per cent of industrial tariff lines. The simple average tariff cut would be 37 per cent for food and agricultural products. The trade weighted reduction of industrial tariffs was estimated at 38 per cent, with the average level of tariff protection decreasing from the present 16 per cent to less than 10 per cent after the implementation of the Marrakesh commitments.

Customs Fees and Charges

41. The representative of Poland indicated that under Article 70 of the Customs Law that there were fees for customs handling. They comprised bonded fees which were levied for the storage of merchandise under the care of the customs office; handling fees for customs treatment; fees for failure to implement on schedule customs obligations under Article 70, and fees for exercising customs supervision upon the request of the concerned party. There were no penalty fees. The rates of the fees were fixed and not based on ad valorem valuation.

Duty Free Zones (DFZs)

42. A member of the Working Party said at an earlier meeting that the preferential treatment accorded to products entering the domestic market from the Duty Free Zones with regard to import duties, import restrictions, taxes and charges etc. should be eliminated. The representative of Poland informed in 1994 that the initial concept of Duty-Free Zones as "enclaves" of a market economy was now obsolete, since the entire economic system had become market-based. Consequently, the number of DFZs focused on commercial functions typical for such entities in Western Europe and related to the operation of major air and sea-ports. He further stated that the preferential treatment provision, to which the member of the Working Party had referred, no longer applied.

Taxation

43. In reply to questions, the representative of Poland stated that since July 1993 a Value Added Tax (VAT) had replaced the previous turnover tax. It was levied uniformly on all goods and services, irrespective of their domestic or foreign origin. The basic rate was 22 per cent ad valorem, with a lower (7 per cent) rate applicable to: certain agricultural inputs (fertilizers, pesticides, farm machinery); basic goods for children; health-care products; certain services (transportation, telecommunications); fuels and electricity. In addition to the VAT, some goods were subject to excise tax. This applied to passenger motor vehicles (priced higher than ECU 7,000), fuels and lubricants, alcoholic beverages, tobacco products and certain luxury consumer items, such as video cameras, yachts, motor boats, perfumes, etc. The excise tax was uniformly applied to comparable domestic and imported goods. In reply to a question, the representative of Poland stated that in the case of fertilizers where the technical application of the same effective, zero level VAT rate, appeared to have been different with respect to the domestic and imported product, the relevant procedures were being modified so as to ensure a uniform treatment.

44. With reference to the nature, rate and subsidy value of the agricultural tax, the representative of Poland stated that in 1994 the tax is levied on cultivated land, pastures, forests, lakes and ponds, used for farm production. The annual tax obligation is calculated as the equivalent of the average selling price of 250 kilograms of rye, multiplied by the total number of hectares owned by the farm, with adjustments for natural and economic characteristics of the region. The tax is collected uniformly from all farms bigger than 1 hectare (subject to adjustments for regional characteristics) and is not product specific or producer specific.

45. At one of the initial meetings, some members of the Working Party said that they would like to see a commitment by the Government of Poland to apply the taxes and charges described above in accordance with the provisions of the General Agreement, in particular article III and VIII thereof. This commitment should include the assurance that any domestic taxes whose rates varied according to whether the items are locally manufactured or imported would be eliminated prior to a certain date, and that by the same date Poland would bring the customs charges into conformity with Article XIII. If this was not accomplished, the matter should be reviewed by the CONTRACTING PARTIES.

46. The representative of Poland said in 1994 that a uniform and non-discriminatory tax treatment of domestic and imported products required by Article III had become established under the VAT and excise tax laws and procedures, as stated in paragraph 43. Therefore, in his view, there was no need to restate commitments proposed in paragraph 45 because the factual situation on which the language

of that paragraph was based no longer applied. He further stated that the administrative practices related to fees and formalities connected with importation and exportation would conform fully to the provisions of Article VIII. Charges on imports, other than tariffs, or customs charges associated with the cost of services rendered, would not be applied in excess of the bound rates of duty established in Poland's tariff schedule, unless such application could be explicitly justified under the appropriate GATT provisions. The Working Party took note of these assurances.

VI. Quantitative Import Restrictions and Other Non-Tariff Measures

47. Several members expressed appreciation of the fact that Poland maintained only limited measures of import restrictions not justifiable under the GATT. They requested Poland to commit itself to their elimination as soon as possible and in the future to apply restrictions in full conformity with GATT provisions. The representative of Poland stressed, at one of the initial meetings, that some non-tariff measures had been applied for a short and limited time in order to facilitate the introduction of a uniform turnover tax. Some restrictions had also been imposed when the liberal system of foreign trade was being abused by certain traders; however, as the situation had improved, some quotas had been increased while others such as that on beer had been eliminated. With the introduction of the value added tax it would be possible to eventually eliminate all non-tariff barriers. Nevertheless there might be some problems with the liberalization of ethyl alcohol and vodka because it was a socially sensitive question.

48. A member of the Working Party requested at one of the initial meetings that Poland make a commitment in the Protocol of Accession which would provide for the elimination by a certain date of import prohibitions, import licensing, import permits, or other quantitative limitations on imports and for their application in the meantime in a manner consistent with the provisions of the General Agreement, including Articles XI, XII, XIII, XIX, XX and XXI. The representative of Poland replied that his Government would have no difficulty in undertaking a commitment to gradually eliminate restrictive measures maintained for reasons other than to protect human and plant health and public morals, or for national security purposes. Any remaining restrictions would be notified and justified in accordance with relevant provisions of the General Agreement, in particular Articles XI, XII, XVIII, XIX, XX, XXI, and legal instruments associated with the General Agreement. Restrictions found not to be in conformity with the provisions of the General Agreement would be eliminated by a certain date, unless otherwise stipulated in the new Schedule LXV. If this was not accomplished, the issue could be reviewed by the CONTRACTING PARTIES. In addition, Poland would ensure that the remaining restrictions and import permit requirements were applied consistently with Article XIII of the General Agreement in accordance with the principle of non-discrimination. The Government of

Poland was ready, if requested, to consult with other contracting parties concerning the effect of these measures on their trade. The Working Party took note of these assurances and commitments.

49. Following the discussion at earlier meetings of the Working Party, the representative of Poland informed in 1994 that Poland submitted in May 1993 a complete GATT notification of quantitative restrictions and other non-tariff measures, providing in each case a justification under the relevant provisions of the GATT (document NTM/W/6/Rev.5/Add.4). He assured members of the Working Party that Poland had no intention of introducing quantitative restrictions or other non-tariff measures inconsistent with the GATT. Poland will ensure that its import regime on agricultural products would conform with the Uruguay Round Agreement on Agriculture on the entry into force of the WTO Agreement for Poland. The representative of Poland further stated that his Government was bound by legal requirements of full transparency of regulations concerning administration of non-tariff measures. All such regulations were and will continue to be available in regular Government publications easily accessible to the public. The Working Party took note of these assurances.

Customs Valuation Practices

50. Members of the Working Party raised a number of questions regarding Poland's customs valuation practices and procedures. They asked precise information on how Poland valued imports for customs purposes, information on customs border procedures and about legal texts still in effect. A member alluded to arbitrary methods of valuation at the border rather than the use of invoices or other determined methods of valuation. Another member said that lists of prices were issued at the border regarding goods entering Poland and asked whether such prices were official or not. There was also a question on Poland's plans with regard to customs valuation practices and especially the timing of the application of the new customs valuation régime.

51. The representative of Poland stated that the Polish Parliament had passed amendments to the Customs Law on 27 June 1991, published in the Journal of Law No. 73, item 320. The amendments which had entered into force on 19 August 1991 covered, among other things, the valuation of goods for customs purposes. The new régime introduced in Poland defined the customs value of imported goods in a way very similar to that applied in most European countries. The representative of Poland recalled that Poland was a signatory to the Agreement on Implementation of Article VII of the General Agreement and that stipulated the observance of the relevant GATT provisions. The practice was to assess customs duties on the basis of the actual value of the imported merchandise. Only when such value could not be determined on the basis of the documents presented or if the customs services had reasons to doubt the accuracy and integrity of such documents, would the procedures of Article 3 of

the Customs Valuation Code be followed. In response to specific questions raised by some members of the Working Party, he added that the President of the Central Customs Authority had stated officially that no arbitrary or fictitious price-lists are presently used or would be used for this purpose.

Import Measures and Balance of Payments

52. A member of the Working Party stated that trade restrictions were an inefficient means of maintaining or restoring balance-of-payments equilibrium. This member added that, in the view of her Government, in the event of serious balance of payments that made imposition of trade restrictions unavoidable, Poland should only impose price-based measures, such as tariffs or import surcharges, which would be removed within a fixed, publicly announced time schedule. Moreover, Poland should make a commitment to notify any restrictions taken for balance-of-payments purposes to the Balance-of-Payments Committee, and to consult with the CONTRACTING PARTIES according to the relevant provisions of Article XII and other GATT instruments. In reply to these comments, the representative of Poland stated that the Government of Poland recognized the inherent inefficiency of trade restrictions as a means to maintain or restore balance-of-payments equilibrium. However, in the event of serious balance-of-payments difficulties that made imposition of trade restrictions unavoidable, the Government of Poland would conform to the provisions of Article XII of the General Agreement. Measures to protect the balance of payments would be applied as uniformly as possible to all imports, to ensure that they would not have the effect of protecting particular industries or sectors. He added that, if quantitative restrictions were applied on specific products to foster the development of domestic productive capacity or output, these restrictions would not be justified by Poland on balance-of-payments grounds.

53. In reply to a question about import surcharges in force, the representative of Poland stated that prior to late 1992 Poland did not apply any import surcharges. In December 1992, a 6 per cent surcharge was established for the period until the end of 1994 on the erga omnes basis for all imported goods, including preferential trade. For legal reasons, the surcharge was technically operated in 1993 as an additional customs duty. Since January 1994 it was applied in its originally intended shape of a uniform border tax. The purpose of this measure had been to prevent a rapid deterioration in the balance-of-payments position. The surcharge was immediately and duly notified under the relevant GATT procedures and was subject to consultations in the Committee on Balance-of-Payments Restrictions under Article XII:4(a) in March/ April 1993 (BOP/R/206). The surcharge was still in effect and would be subject to consultations in the BOP Committee meeting scheduled for June 1994.

Unfair Trade Practices and Safeguards

54. Some members of the Working Party asked for assurances that Poland would apply import measures taken for anti-dumping purposes or regarding subsidies and countervailing duties in conformity with the provisions of Article VI. They further asked for confirmation that Poland would abide by the provisions of Article XIX of the General Agreement including the serious injury test when applying safeguard measures. The representative of Poland stated that the rights and obligations under GATT Articles VI and XVI and the corresponding MTN Agreements had been incorporated into the Polish legal system, notably the Customs Law as amended. The administration of the relevant procedures had been entrusted to the Ministry of Foreign Economic Relations. The same applied to the provisions of Article XIX, including the application of the serious injury test. The Working Party took note of these assurances. With regard to the implementation of Article VI of the General Agreement with respect to imports originating from Poland, the representative of Poland stated that it was his Government's understanding that, in the light of Poland's transformation into a market economy, the second Supplementary Provision in Annex I to paragraph 1 of Article VI of the General Agreement, relating to imports from a country which had a complete or substantially complete monopoly of trade and where all domestic prices were fixed by the State, would no longer be applicable to Polish goods.

Export Restrictions

55. In reply to questions on the use of export restrictions, the representative of Poland pointed out that export prohibitions had been instituted on certain products as a temporary measure to prevent the re-export of products offered as aid to Poland. The licensing of coal exports had been waived since mid-1991; however, the export tax remained in order to maintain control over the domestic price of coal. This was a temporary measure that was likely to be eliminated in the near future. He added that as of early 1994 very few export prohibitions were in place. They applied to the following products: geese weighing not more than 185 grams; geese eggs for hatching; waste of raw hides or skins. Several other goods, including dairy products, alcoholic beverages, tobacco products, hard coal, petroleum products, natural gas and ferrous and non-ferrous metal scrap were subject to export licensing. The principal reasons of the licensing requirement were the need to enforce minimum price provisions of the Dairy Arrangement; fiscal policy considerations (alcoholic beverages, tobacco products); existence of few remaining domestic price controls (coal and petroleum); shortage of domestic supplies (metal scrap).

Subsidies

56. In reply to questions the representative of Poland informed that, as of early 1994, only one industrial product, namely calcium fertilizers, was subject to product specific subsidization with regard to production and domestic transportation. An inventory of other subsidies outside agriculture was in preparation and would be notified in the GATT before the end of 1994. He further stated that detailed data on subsidies in agriculture, including domestic and export support, and reduction commitments related thereto, had been presented by Poland in the relevant sections of Schedule LXV-Poland attached to the Marrakesh Protocol. As regards non-agricultural products, there are at present no product specific or industry specific export subsidies. Only late in 1993, the Government had decided to put in place certain budget-supported measures intended to encourage exports. The most important among these is the increase in the working capital of the Export Credit Insurance Corporation (KUKI) to \$10-12 million, which should allow a maximum annual level of about \$1 billion in export credit risk insurance coverage. The Government may also underwrite export-related investment credits granted by commercial banks for small and medium-size firms with the underwritten portion not exceeding the equivalent of 20 per cent of the total volume of sales registered by the firm. In the Budget Law for 1994, the total annual ceiling for all Government credit guarantees relating to commercial bank credits, including also such underwriting, was set at 25,000 billion zlotys (about \$1.2 billion).

VII. MTN Codes

57. With reference to the MTN Agreements and Arrangements, the representative of Poland stated that Poland had accepted the Anti-Dumping Code (in 1981); the Agreement on Import Licensing Procedures (in 1987); and had signed the Customs Valuation Code (in 1990) and the Subsidies Code (in 1991). Poland's membership in the Uruguay Round successor arrangements to the Tokyo Round Codes was assured through the application of the relevant provisions relating to Multilateral Trade Agreements listed in Annex 1A to the Agreement Establishing the World Trade Organization (WTO), which had been signed by Poland at the Marrakesh Ministerial Meeting. As regards the Plurilateral Trade Agreements of Annex 4 to the WTO, Poland intended to seek an early accession to the Aircraft Agreement, subject to a negotiated arrangement which would accommodate Poland's concerns regarding, in particular, tariff reduction schedule, public aid and offsets. Domestic legislation was now being developed on government procurement rules, which should allow Poland to accede also to the Government Procurement Agreement. The continuation of membership in the Dairy and Bovine Meat Arrangements would be decided soon, one important consideration being the position taken by major suppliers as regards their own participation.

Application of Technical Regulations, Standards, Certification and Labelling Requirements

58. Concerning the application of standards at the border, some members of the Working Party said that Poland should provide for the application to imports and domestic goods of the same controls and rules regarding technical regulations, standards, certification and labelling requirements. A member of the Working Party also sought assurances that Poland would adhere to the principles of the Uruguay Round draft text on sanitary and phytosanitary regulations. The representative of Poland confirmed that Poland intended to apply to imported and domestic goods the same controls and rules regarding technical regulations, standards, certification and labelling requirements. The administrative practices presently followed in this regard by the Polish authorities would be reviewed to ensure that they would not be applied to imports in an arbitrary manner, in a way that discriminated between supplier countries where the same conditions apply, or as a disguised restriction on international trade. Certification requirements would be administered in a transparent and expeditious manner. Poland would, if requested, consult with the contracting parties concerning the effects of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these assurances.

Sanitary and Phytosanitary Measures

59. In reply to questions the representative of Poland stated that the regulations concerning sanitary controls of imported meat and meat products were based on a Decree of the President of Poland of 1927, and were applied uniformly to all imports. The regulations had been duly notified to veterinary authorities of other countries and were easily available to traders. Imported plants were subject to phytosanitary controls under the supervision of the Official Plant Protection Station and needed to be accompanied by a phytosanitary certificate. The relevant documents have been deposited with the GATT Secretariat for examination by interested delegations.

VIII. Poland's Trade Relations

60. On the question of the current status, future prospects and plans for Poland's trade relations with other Eastern European countries including the States in the former Soviet Union, the representative of Poland stated at one of the initial meetings of the Working Party that there were no particular problems with those countries which were GATT members because the general GATT rules applied to them. Trade was conducted in convertible currencies. The situation was different with regard to the States in the former Soviet Union. This trade had almost collapsed due to payment difficulties and not to any deliberate policy of switching from Eastern-bound to Western-bound trade. With regard to the CMEA, he said that Poland did not consider the possibility of creating or participating in any

organization that would replace the CMEA. Moreover, he noted that transferable roubles had disappeared from the Polish trading system. Therefore, any clearing system in Poland's dealings with the former CMEA countries would be based on the dollar or other convertible currencies.

61. The transformation from a non-convertible rouble to a convertible currency trade had led to a dramatic fall in Polish exports and a considerable trade imbalance. Poland had to maintain imports that were technically or structurally determined such as natural gas and oil. Poland also recognized the importance of keeping stable and predictable trade links with the States of the former Soviet Union and the need to create conditions that would prevent further decline, without involving the Government in special arrangements with some of these States based on the concept of trade in convertible currencies.

62. At a later meeting the representative of Poland indicated that as of 1994 trade with the former CMEA partners was subject to the same rules, practices and modalities (including forms and convertible media of payments, border measures etc.), as those applied in trade with any other partners.

Trade Agreements

63. Members of the Working Party asked a number of questions on preferential trade agreements with the EEC and EFTA, their likely contents, the time-table for trade liberalization with preferential partners and the effects of the agreements on Poland's trade régime. The representative of Poland stated that the Association Agreement between Poland and the European Communities had entered into force in February 1994 after the ratification process had been completed by all signatories. Its trade provisions had been applied on an interim basis since March 1992. The immediate objective of the Agreement was the establishment of a free-trade area between Poland and the European Union within 10 years, through a gradual elimination of tariffs and other barriers in mutual trade. The Interim Agreement was notified in the GATT under Article XXIV (document L/6992/Add.1). Replies by Poland and other parties directly concerned to questions asked by a number of GATT contracting parties had been circulated and were expected to be reviewed later in 1994. In December 1992 Poland and the EFTA States had signed a Free Trade Agreement. Bilateral arrangements on trade in agricultural products between each EFTA State and Poland were also concluded within the framework of the Free Trade Agreement. The objective of the Agreement, in accordance with GATT Article XXIV, was to abolish tariffs and other trade restrictions on industrial products, fish and other marine products and processed agricultural products between the EFTA States and Poland. The Agreement was applied, together with the above-mentioned bilateral arrangements, as from 15 November 1993 on the basis of exchange of notes, pending the ratification by all Signatory States.

A GATT communication on this subject had been transmitted by Austria on behalf of all the signatories in document L/7372. The text of the Agreement was contained in GATT document L/7372/Add.1.

64. The representative of Poland stated that, in his Government's view, the implementation of the fore-mentioned free trade agreements should result in a strong trade creating effect for Poland which would be beneficial to third parties, members of the GATT.

65. The representative of Poland added that also in December 1992 Poland, together with the Czech Republic, Hungary and the Slovak Republic had signed the Central European Free Trade Agreement (CEFTA), which took effect in March 1993. The Agreement covered trade in industrial and agricultural products and provided for the gradual elimination of tariff and non-tariff barriers to substantially all trade among the signatories. The liberalization process, to be completed over eight years (or during a shorter period if mutually agreed), would be based on the principle of symmetrical mutual concessions.

IX. Protocol

66. The Working Party addressed the issue of the possible new protocol of accession for Poland on the basis of its deliberations and the draft documentation prepared by the Secretariat.

67. The representative of Poland stressed that his Government had two main reasons to undertaking the process of negotiating a standard protocol of accession. Firstly, in view of the recent economic reforms, Poland found itself in a position to undertake and observe meaningful commitments vis-à-vis other GATT partners in all matters covered by the General Agreement without requesting waivers or derogations. Secondly, Poland's reform process aimed at achieving a rational and economically sound competitive environment consistent with the General Agreement would require the support of all its trading partners.

68. Several members of the Working Party expressed support for Poland's desire to negotiate a standard protocol of accession and welcomed Poland's readiness to assume full GATT commitments and obligations without waivers, derogations or special provisions. These members expressed sympathy and support for the process of economic transformation going on in Poland and urged its continuation. While noting the efforts of Poland to reform its economy and assume normal GATT relations, some members stressed that the fact-finding exercise had to be pursued further since there were a number of issues on which further information would have to be furnished. These members stressed the need

for strong commitments and assurances on the observation of GATT obligations with regard to issues such as import charges and taxation, the application of anti-dumping and countervailing duties, safeguard measures, quantitative restrictions on imports, the application of balance-of-payments measures, free trade zones and their management at the border, acceptance of standards, certification and labelling requirements, the acceptance of the Customs Valuation Code, etc. While expressing understanding for the dynamic nature of the process of transformation, some members of the Working Party emphasized the need for greater transparency through mechanisms to be worked out by the Working Party.

69. Before conclusion of the proceedings of the Working Party, the representative of Poland reiterated his Government's deep commitment to the objectives, rules and disciplines of the multilateral trading system as embodied in the GATT. He further stated that this commitment, reflected inter alia in Poland's new Schedule attached to GATT 1994, had been the motivating force behind the signing of the Marrakesh Decisions by Poland with a view to becoming an original member of the World Trade Organization.

Conclusions

70. The Working Party took note of the explanations and statements of Poland concerning its foreign trade regime as reflected in this report. The Working Party took note of the assurances given by Poland in relation to certain specific matters which are reproduced in paragraphs [] of this report.

71. Having carried out examination of the foreign trade regime of Poland and in the light of the explanations and assurances given by the representatives of Poland, the Working Party reached the conclusion that having regard to the satisfactory conclusion of the renegotiation of the terms of accession of Poland to the General Agreement on Tariffs and Trade, the CONTRACTING PARTIES could decide to rescind the Protocol of Accession of Poland dated 30 June 1967 and replace it with a revised Protocol of Accession. For this purpose, the Working Party has prepared the draft Decision and revised Protocol of Accession reproduced in the Appendix to this report. It is proposed that these texts be approved by the Council when it adopts the report. When the tariff negotiations between Poland and contracting parties in connection with the renegotiation of the terms of the Protocol of Accession have been concluded, the resulting Schedule of Poland and any concessions granted by contracting parties as a result of negotiations with Poland would be annexed to the revised Protocol of Accession. The Decision would then be submitted to a vote by contracting parties in accordance with Article XXXIII. When the Decision is adopted the revised Protocol of Accession would be open for acceptance and would enter into force thirty days after its acceptance by Poland.

[To be completed]

APPENDIX

Draft Decision

The CONTRACTING PARTIES,

Having regard to the results of the negotiations directed towards the renegotiation of the terms of accession of Poland to the General Agreement on Tariffs and Trade and having prepared a revised Protocol of Accession of Poland,

Decide, that upon the entry into force of the revised Protocol of Accession of Poland, the Protocol of Accession dated 30 June 1967 will be rescinded, and

Decide further, in accordance with Article XXXIII of the General Agreement, that the terms of accession of the Government of Poland will be those set out in the revised Protocol of Accession.

DRAFT REVISED PROTOCOL FOR THE ACCESSION
OF POLAND TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "contracting parties" and the "General Agreement", respectively), the European Economic Community and the Government of Poland (hereinafter referred to as "Poland"),

Recalling that Poland has been a contracting party to the General Agreement since 18 October 1967,

Having regard to the request by the Government of Poland to renegotiate the terms of accession set out in the Protocol of Accession of Poland, dated 30 June 1967,

Noting that Poland has undertaken the transformation of its economic and trade system to a market economy,

Considering that the provisions of the Protocol of Accession of Poland, dated 30 June 1967, are outdated and should be rescinded,

Noting the willingness of the Government of Poland to comply with all GATT obligations without exceptions,

Having regard to the results of the negotiations directed towards the revision of the Protocol of accession of Poland to the General Agreement,

Have through their representatives agreed to rescind and replace the Protocol of Accession of Poland, dated 30 June 1967, with the following Protocol of Accession:

PART I - GENERAL

1. Poland shall, upon entry into force of this Protocol pursuant to paragraph 6, continue to be a contracting party to the General Agreement, as defined in Article XXXII thereof, and shall apply to contracting parties provisionally and subject to this Protocol:

- (a) Parts I, III and IV of the General Agreement, and
- (b) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2(b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.

2. (a) The provisions of the General Agreement to be applied to contracting parties by Poland shall, except as otherwise provided in this Protocol, be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which Poland becomes a contracting party.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII, and sub-paragraph 3(c) of Article X of the General Agreement refer to the date of that Agreement, the applicable date in respect of Poland shall be the date of this Protocol.

PART II - SCHEDULE

3. The schedule in the Annex shall, upon the entry into force of this Protocol, become a schedule to the General Agreement relating to Poland.

4. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of the Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the Schedule annexed to this Protocol shall be the date of this Protocol.

(b) For the purpose of the reference in paragraph 6(a) of Article II of the General Agreement to the date of that Agreement, the applicable date in respect of the Schedule annexed to this Protocol shall be the date of this Protocol.

PART III - FINAL PROVISIONS

5. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES. It shall be open for acceptance, by signature or otherwise, by Poland until [date to be inserted]. It shall also be open for acceptance by contracting parties and by the European Economic Community.

6. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by Poland.

7. Poland, continuing to be a contracting party to the General Agreement pursuant to paragraph 1 of this Protocol, may accede to the General Agreement upon the applicable terms of this Protocol by deposit of an instrument of accession with the Director-General. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the deposit of the instrument of accession, whichever is the later. Accession to the General Agreement pursuant to this paragraph shall, for the purposes of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 4 of Article XXVI thereof.

8. Poland may withdraw its provisional application of the General Agreement prior to its accession thereto pursuant to paragraph 7 and such withdrawal shall take effect on the sixtieth day following the day on which written notice thereof is received by the Director-General.

9. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of each acceptance thereof, pursuant to paragraph 5 to each contracting party, to the European Economic Community, and to Poland.

10. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Geneva this [date to be inserted] one thousand nine hundred and ninety-four , in a single copy, in the English, French and Spanish languages, except as otherwise specified with respect to the Schedule annexed hereto, each text being authentic.

SCHEDULE LXV - POLAND

[to be completed]