

GENERAL AGREEMENT ON

RESTRICTED

Spec(92)4
29 January 1992

TARIFFS AND TRADE

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 and [] February 1992 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.1.
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; and Declaration between Poland and EFTA countries.
4. The representative of Poland, in an introductory statement, gave an outline of recent developments in the Polish economy. The economic and trade régime had moved further in the direction of privatization and reduction of the role of the State in the economy, including the domestic and foreign trade sectors. Following recent fiscal and financial measures, the notion of competition had taken root as the driving force in the transformation of the economic and social system of Poland. However,

budgetary disequilibrium continued to present problems. In the foreign trade sector, the most important 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 75 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 incorporate customs definitions and procedures. Recent 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, were being subject to a comprehensive programme of ownership transformation aimed at a further reduction of State involvement. About 20 Foreign Trade Enterprises were currently engaged in privatization procedures expected to be completed in the next few months. With regard to non-tariff measures and export support, the Government continued to follow the process of liberalization outlined in the documentation. The Polish Government aimed to pursue such reforms in spite of a heavy toll in terms of recession, unemployment and social disruption. 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. In this regard, he informed the Working Party of his country's readiness to submit its trade policies for review, within the context of the TPRM, in the second half of 1992.

I. General Comments

5. 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 transformation 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 continuing major role played by State owned institutions in trade and in the economy at large, and stated that the Working Party would have to assess this role in order to ensure that the process of trade liberalization and the establishment of a market economy was irrevocable. Some members also stressed the need for a schedule of tariff concessions established either in the context of the renegotiation exercise or of the Uruguay Round.

II. Economic Policies

Commodity and Geographical Structure of Foreign Trade

6. 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 Polish representatives submitted a document entitled, "The evolution of the status and economic position of State owned enterprises in Poland". 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 would soon disappear since Poland no longer traded with the USSR and other CMEA countries in transferable roubles. Currently Poland traded only in convertible currencies using world prices. Trade figures for the first five months of 1991 compared to those of the same period of 1990 showed that while exports of Poland to the European Community had increased by 23 per cent and imports had practically doubled, Poland's exports to Eastern Europe had

diminished by almost 50 per cent and imports had fallen by almost 60 per cent.

Foreign Exchange Régime and Exchange Rate Policy

7. 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.

8. The representative of Poland stated that there were two basic instruments in the Polish stabilization programme, the fixed exchange rate and the control over wages in the public sector. The Government had maintained a stable exchange rate for about 15 months. The currency had been devalued by 16.6 per cent recently in view of the rising rate of inflation. Poland did not have a multiple currency régime. The former exchange rate was linked to the dollar but now the rate was linked to a basket of currencies in accordance with the share of the currencies concerned in Polish foreign trade. The objective of the Government was to achieve a full liberalization of the fixed foreign exchange system and full convertibility of the zloty. At present this convertibility was limited only to current account transactions. Practically for foreign trade purposes the domestic currency was convertible. It was not convertible for capital transactions but with the introduction of the new law on foreign investment some capital transactions would be possible. For instance full transfer of dividends, profits and capital would be guaranteed. Poland was moving step-by-step towards full convertibility which was expected to be achieved in 2 to 3 years depending upon the state of the economy.

9. With regard to the effect of the partial convertibility of the zloty on trade, the representative of Poland explained that since its introduction, at the beginning of 1990, the system of partial convertibility of the zloty had worked well and had had a positive impact on trade because exports and imports were rising very quickly, in spite of the fact that the country had at present a negative balance of trade. Convertibility had so far had a negative impact on trade with USSR and to a

certain extent, on trade with other former CMEA countries. But trade with convertible currency countries was developing satisfactorily. The impact on prices was difficult to predict. On the whole private Polish companies had adjusted very well to the existing price conditions in foreign markets. Internal convertibility had also been important in the fight against monopolies and in the promotion of competition on the internal market and this had had a very positive impact on prices on the Polish market. The first reaction of Polish producers, when the liberalization of foreign trade and currency system was introduced in January 1990, had been to increase prices. They were then faced with competition from imported products and prices had to be reduced. This situation had a generally beneficial effect of weeding out inefficient industries. Formerly the ability of individual companies to import goods was linked to their export earnings, now all that they needed was the possession of local currency. Since the stable exchange rate was introduced in 1990 there had only been one devaluation but this did not mean that the rate had been artificially stabilized. A very convenient reference point were the quotations in the private currency market which was very liberal and was based on the existence of thousands of private money dealers who had obtained licences from the Ministry of Finance to conduct operations in foreign exchange. Normally there was practically no difference in the exchange rate quotations as between official and private transactions. Convertibility had in fact increased confidence in the national currency.

Foreign Investment

10. In response to a question, the representative of Poland stated that the new law on foreign investment was passed on 14 June 1991 and became effective on 4 July. It provided for the full transfer of profits, dividends and capital and foreign investors did not require any licensing or registration permitting them to operate except in sensitive areas such as sea ports, airports, military zones etc.

Price Policy

11. In response to questions concerning any remaining price controls, their application to imports and possible discrimination between State-owned enterprises and other consumers, the representative of Poland stated that the Government was determined that the few remaining price controls should be de-regulated practically by the end of 1991 and that in the energy sector they were already close to market prices. With regards 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 may still be maintained for municipal housing rents, and for pharmaceuticals sold by public health-care institutions (as opposed to free prices in private pharmacies). With regard to alcoholic beverages, the representative of Poland stated that the situation was under review. Polish made alcohol was subject to price regulation while imported alcoholic beverages were subject to free pricing. On the question of price discrimination, he affirmed that there were no such discrimination in favour of State-owned enterprises vis-à-vis other consumers. State-owned enterprises enjoyed no special privileges in this regard.

III. Transformation of the Polish Economy to a Market Economy

12. 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 role of State owned enterprises and foreign trade organizations in Poland's trade régime, etc.

Central Planning

13. In a reply to a question, 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 Central Planning Office, although still in existence, had been converted to an institution dealing 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.

Privatization

14. In reply to a question on 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 8600 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 within a year this sector would have been completely privatized. There has so far been no problem in capitalizing the privatization of this sector. The large scale privatization programme covered about 1500 major enterprises both in industry and other sectors including services. Privatization of this sector has been difficult because it covered a large proportion of heavy industries many of them inefficient and carrying heavy social overheads. Out of the 1500 State owned enterprises, 400 representing the "top of the cream" and accounting for about 25 per cent of industrial sales and 12 per cent of industrial employment had been selected for privatization by mid-1993, after having been evaluated by foreign consultancy firms.

15. In reply to a question on the mechanism of privatization, the representative of Poland explained that for the large scale enterprises, special institutions called national wealth management boards had been created each of which would acquire up to 60 per cent of the shares in the privatized enterprises, the Treasury would be left with a 30 per cent share and the remaining 10 per cent would be distributed among employees. The national wealth management boards would be chaired by Polish citizens but the day-to-day management would be conducted by western investment funds, investment banks and financial experts. Part of the 30 per cent shares allotted to the Treasury were likely to be placed with institutional investors such as pension funds, insurance institutions and similar agencies. The performance of these companies would be monitored closely and evaluated before their shares were traded on the stock market. Each Polish adult citizen was expected to receive a certificate, tradeable in 1993, which would allow him or her to acquire shares in the privatized enterprises. These would not be shares in the stock of the 400 enterprises but shares in the investment groups. Only after the first annual reports of these companies had been published, the shares would become tradeable. Both Polish and foreign investors would be able to trade on the market.

Features of State Owned Enterprises

16. In response to a question, the representative of Poland 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.

Criteria for the Selection of Enterprises

17. A number of questions were asked on the criteria used for the selection of enterprises for privatization. Further information was demanded on the use of such criteria as the absence of monopolistic position, good management-union relations, environmental liabilities, and abusive nationalization. In his reply, the representative of Poland stated

that the criterion of the absence of a monopolistic position of an enterprise to be privatized was based on the desire not to convert previous State monopolies into private monopolies which would have negative effects on competition. The concept of abusive nationalization covered cases of nationalization effected without due regard to existing nationalization legislation and contrary to the basic provisions of existing law at the time of nationalization.

Foreign Trade Organizations

18. Foreign Trade Organizations constituted another aspect of Poland's economic structure closely affected by the overall policy of economic transformation and privatization. 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 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 these respects they could not be considered as State trading entities in the sense of Article XVII. It was, however, the intention of the Government to privatize them completely by the end of 1992 and currently twenty of them were in the process of being privatized. 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 role of State owned entities in foreign trade was the fact that in the first five months of 1991 the share of private companies in imports was over 40 per cent compared with 1 per cent in 1990. As far as agricultural products were concerned, the share of private exporters and importers was over 50 per cent during the same period.

Demonopolization Programme

19. In connection with the privatization programme questions were asked on the anti-monopoly law, the activities of the anti-monopoly commission and measures aimed at breaking up monopolistic State owned enterprises.

20. In reply to a question on the operation of the anti-monopoly law and anti-monopoly commission, the representative of Poland stated that anti-monopoly activities had been one of the centre pieces of the policies of the Government's on economic reform, not only in institutional terms such as the establishment of the anti-monopoly office but also in terms of practical actions taken with a view to discouraging monopolistic organizations. The system of production in Poland was still dominated, to a large extent, by a limited number of producers. In order to discourage this excessive concentration the Government had taken a number of administrative measures. Since the anti-monopoly office was set up about 2000 anti-monopoly proceedings had been initiated aimed at either controlling excessive monopolistic practices or breaking up existing organizations in various sectors which had strong monopolistic characteristics. This action had, to a large extent, been successful in breaking up vertical 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 more than doubled between early 1990 and the first half of 1991 and stood at thirty eight thousand. This phenomenon was most evident in foreign trade.

21. In reply to a question whether an enterprise found to be monopolistic would be automatically broken up, the representative of Poland pointed out that the actual practice was only beginning to emerge through actions taken

by the anti-monopoly commission. For example, in the transportation sector, the formerly monopolistic all national in-land transportation organization has been broken down into forty nine independent units. One organization was taking care of schedule planning, but the operations of the individual units were independent with regard to pricing and competition. Another example was the action taken a year ago to encourage import competition to counter the monopolistic position enjoyed by some domestic producers. This was done by substantially reducing effective tariffs without changing nominal tariffs. The future strategy of the Government with regard to enterprises with monopolistic status would be to privatize them. A large part of the 400 major enterprises selected for privatization by 1993 were monopolistic or quasi-monopolistic entities. On the whole, the approach would be to break up monopolistic entities before privatization so as not to substitute a private monopoly for a public one.

22. Concerning the definition of a monopolistic enterprise the representative of Poland said that so far no criteria had been developed on the basis of the competition law for assessing the market position of enterprises which might be deemed to be excessive and thus harmful to competition. Several proposals including the control of collusive behaviour of enterprises were being considered. A low threshold of 30 per cent for recognizing the market position of an enterprise as monopolistic enabled the control of collusive behaviour on the part of enterprises.

Time-table for Privatization

23. In reply to a question on the time-table for privatization, the representative of Poland said that it was the intention of the Government to make the privatization programme as complete as possible. It is expected that within the next 3 years more than 50 per cent of all State-owned enterprises would be privatized, and the whole programme would be completed within 5 years.

Exemptions from the Privatization Programme

24. A member of the Working Party asked what kinds of State owned enterprises were envisaged to 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 defense industries.

25. The representative of Poland stated that the provision for the Privatization law, which empowered the Minister of Ownership Changes to take over all or part of a company on behalf of the Treasury and with the approval of the Minister of Finance, meant that if an enterprise got into financial difficulties such as losing its credit worthiness or not being able to pay to the State its dividends, it became almost automatically subject to bankruptcy proceedings.

Banking Sector Privatization

26. 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 advisor which would invariably be one of the investment banks. The third step would be identification of what one could call 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 such 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 also as full fledged operational banks covering a wide spectrum of services. He explained, however, that subsidiary offices of foreign banks in Poland must operate within the operational prescriptions of the Polish banking system as 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. Forty five per cent of such shares would go to Polish customers while a minority portfolio would

be sold to non-Polish customers. Poland at present had seventy seven commercial banks the majority of which were privately owned. Only two out of the seventy seven were foreign banks. It was the hope that with improved communications infrastructure foreign participation in this sector would expand in the near future. The central bank no longer had commercial functions and acts exclusively as a normal central bank.

Monitoring of the Privatization of State Owned Enterprises

27. Noting that State trading enterprises and organizations still maintained a dominant role in domestic production and in foreign trade, several members of the Working Party referred to the necessity of monitoring the operations of State owned enterprises over the transitional period of restructuring and privatization, and ensuring effective transparency during the transitional period of transforming 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. 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 that put the enterprises under obligation to be notified but that such obligation arose only when the enterprise had been granted "exclusive and special privileges" which might potentially or in effect encourage discriminatory trade practices inconsistent with the General Agreement and especially with Articles I and II thereof. His Government had repeatedly 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. 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 Article XVII notification was 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 régimes.

IV. Agricultural Sector

28. The Working Party reviewed various aspects of Poland's agriculture policies and the role 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 role of the private sector in the production, processing and in the export and import trade in agricultural products. Other questions covered the oligopolistic structure of trade in agricultural products, and agriculture protection policies.

29. On the question of the structure of production, the representative of Poland stated that agriculture in Poland had traditionally been dominated by 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 role 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. This 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.

30. The representative of Poland said that the issue of food distribution should be seen in the overall context of the comprehensive privatization of domestic trade in Poland. Already close to 80 per cent of all retail establishments were in private hands. This process affected both internal marketing of food products and external trade. In the first eight months

of 1991, private imports had accounted for 45 per cent of the total dollar denominated imports of Poland. This was six times more than a year ago and a large part of the 45 per cent share was attributed to agricultural and processed goods.

31. In response to questions 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. However, in terms of volume, external agricultural trade was still dominated by the traditional four major foreign trade organizations. One of them which specialized in trade in grains and similar bulk agricultural commodities was fully State owned. The three others had substantial State involvement in their equity capital and traded in a number of agricultural commodities. He emphasized that the foreign trade organizations did not have monopoly powers. In the first four months of this year, the four large organizations had not participated at all in trade in such items as alcohol, sugar and grains mainly due to competition from private operators.

32. In response to requests for information on the role 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, oil seeds and meat were quoted. The government had resisted calls for the introduction of guaranteed prices for certain farm products. The Agricultural Market Development Agency which was partly funded by the treasury was the only public agency which had certain features of a State trading entity in this sector. This agency operated mostly in basic commodities such as grains, oil seeds and sugar and occasionally in the dairy and meat sectors. Its main function was to offset extreme fluctuations in domestic prices. The foreign trade volume conducted by this agency was relatively marginal. It was not intended to

expand the field of activity of the Agency. Following a careful analysis of its mode of operation, Poland would submit a formal notification under Article XVII. He added that the general customs valuation procedures applied in this sector.

Anti-Monopoly Actions

33. Questions were asked on measures being taken to break what was considered to be oligopolistic structure in foreign trade in agricultural products. The representative of Poland said that the Government had promoted the introduction of competition in this sector rather than resorting to specific administrative measures. In the food processing industry, the government had de-monopolized the institutions which used to dominate the market, and at present in Poland there were no trade or marketing boards. Up to now there were no specific instances of the involvement of anti-monopoly institutions in this sector.

Agricultural Protection Policies

34. There were a number of questions on agricultural protection policies, especially with regard to the rationale, the instruments being used and their product coverage, and the reasons why this sector needed additional protection when it already had the highest tariff rates and how this 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. Existing rates of protection for food products were being analysed. The adequate level of protection for the agricultural sector was an open question to which no specific response had been found. This was a sensitive issue in the negotiations for a free-trade association agreement with the EEC. Poland could not afford a policy of the kind of the common agricultural policy, and had considerable difficulty with subsidized products entering its market without protection. It was not the intention of the Government to create prohibitive barriers around Polish agriculture,

but during the transitional period of restructuring the agriculture sector, some temporary protective measures especially against subsidized imports were needed. The new tariff régime of Poland, effective on 1 August 1991, reflected increases in the applied tariff rates on some agricultural products. In terms of trade weighted average tariff protection had increased from 15.55 per cent under the old tariff system to 25.5 per cent under the new régime. The mathematical averages were 14.84 per cent and 22.5 per cent, respectively.

35. The representative of Poland gave the assurance that any additional protection for the agricultural sector would be in the form of tariffs and GATT-consistent non-tariff-measures.

V. Tariff and Customs System

36. 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

37. In a brief description of the tariff system introduced on 1 August 1991 the representative of Poland stated that it 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 in the 15 per cent category. Only a few luxury items had rates above 40 per cent. GSP rates were set at 75 per cent of MFN rates and imports from the least-developed countries were duty free. The trade weighted analysis of the tariff schedule would be made available as soon as possible.

Duty Suspensions

38. On the question of the duration and coverage of duty suspensions, the representative of Poland stated that the current duty suspensions which were introduced by the Decree of the Council of Ministers of 23 July 1991 were valid till the end of 1991. They were related to the new tariff régime which had entered into force on 1 August 1991. They provided for a

total or partial suspension of duties on a large range of goods on the basis of Article 4 paragraph 5.2 of the Customs Law.

Binding of Tariffs

39. Some members inquired whether Poland was prepared to bind its whole tariff schedule as part of the re-negotiation 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. In this context Poland was prepared to negotiate and bind its tariffs either in the framework of bilateral negotiations or within the Uruguay Round. Several members stressed that a bound tariff schedule was an integral part of a standard protocol of accession to the GATT and that Poland, in re-negotiating its former schedule based on non-tariff terms, would be accepting normal GATT obligations. This should not be construed as a price because under the GATT, tariff rates, however low they might be, had no status until they were bound. Noting that Poland would not be expected to make tariff concessions not commensurate with its level of development, some members expressed interest in carrying out tariff negotiations with Poland either within the framework of the Uruguay Round or the renegotiation of the Protocol of Accession. The representative of Poland reaffirmed his Government's commitment to renegotiate its non-tariff schedule.

Surcharges

40. In reply to a question about the nature of import surcharges in force, the representative of Poland stated that Poland had no policy of imposing tariff surcharges.

Import Taxes, Customs Fees and Charges

41. The representative of Poland indicated under Article 70 of the Customs Law 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

42. A member of the Working Party said 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 said that the special duty free zones were in reality very marginal. Although at a certain period it was contemplated to create a number of these duty-free zones and twelve of them had been actually established only two were operational. He gave assurance that measures would be taken to bring the actual practice in line with the law.

Taxation

43. In reply to a question, the representative of Poland stated that the Value Added Tax scheduled to be introduced in 1992 would replace the turnover tax currently in force. There was no discrimination in the level of internal tax between imported and domestic goods. With regard to imported tobacco and alcoholic beverages the level of taxes was quite high due to certain social problems.

44. In reply to another question, he explained that while the methodology of calculation of the turnover tax was the same for imported and domestic goods, the basis for calculation was different: for imported goods the tax was calculated on the basis of the customs value plus duty, while for domestic products the calculation was based on the domestic price. However, although the bases differed, the rate of taxation was the same.

45. With reference to the nature, rate and subsidy value of the agricultural tax, the representative of Poland admitted that at present there was some disorganization in the internal tax system and the Government was working on the introduction of a modern system of taxation consisting, in principle, of 3 taxes namely a value added tax, a corporate income tax and a personal income tax. All these changes might be

introduced in 1992. This would imply that any one engaged in agriculture would pay a normal corporate tax and a personal income tax. The present agricultural tax was not a special tax but only a different form of corporate tax. With regard to the rate of tax it was explained that, under the previous system applied in the private sector, it was difficult to indicate the actual level of taxes in percentage terms. In the agriculture sector, for example, taxes were levied in real terms. It was this system which had been replaced by the agricultural tax whose disappearance was also only a matter of time. He added that there was no subsidy implied in this tax.

Internal Taxes

46. With regard to the existence of internal taxes on imports, the representative of Poland indicated that such taxes were applied to imported and domestic tobacco and alcoholic beverages. He added that the level of these taxes was high due to certain social problems. Poland's policy was to treat imports and domestic products on equal footing. He would inform the Working Party in due course whether there was any tax differentiation between imported and domestic products as suggested by one member of the Working Party with specific reference to alcoholic beverages and tobacco products.

VI. 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 that some non-tariff measures had been applied for a short and limited duration 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, the situation had improved and some quotas had been increased while other such as that on beer had been abandoned. He added that, with the introduction of the value added tax it would be possible to eventually eliminate all non

tariff barriers. He said that nevertheless there might be some problems with ethyl alcohol and vodka because it was a sensitive issue and more of a social than a trade problem. He assured members of the Working Party that Poland had no intention of introducing new quantitative restrictions or other non-tariff measures inconsistent with the GATT.

Customs Valuation Practices

48. Members of the Working Party referred to Poland's customs valuation practices and procedures, the use of official prices at the border, the current legal text on customs valuation and Poland's plans on this subject.

49. 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 which entered into force on 19 August 1991. The amendments covered, among other things, the valuation of goods for customs purposes. According to the previous regulations, the customs value of the imported item was defined as the contractual value of the goods declared for customs clearance, namely the price paid or to be paid for the item, increased by the following amounts: commission on sale; cost of packing and containers, if they belonged to the imported item; licence fees and dues paid to the buyers upon the purchase of the item; income and other benefits from resale, use or other arrangements concerning the goods in question and which directly or indirectly resulted from the sale; the value of goods and services provided by the buyers free or at prices lower than the going market prices in connection with the production or sale of the item and reduced by the following amounts, transport costs including loading charges and other fees, transport and insurance costs. The amended regulations stipulated that the customs value would no longer be reduced by the amounts listed above, namely the transport cost, including loading charges and other fees plus transport and insurance costs. These would be added to the contractual value of the goods declared for customs clearance. The new régime introduced in Poland defined customs value of imported goods in a way very similar to that applied in most European countries. Customs officers were allowed to review the value declared by the importer, if there was suspicion about the declared price, and according to the

established practice in Poland had the right to change the price and propose another price. At a very early stage, when the changes had come into effect, the Central Customs Authority had sent lists of prices to customs officers but presently this practice had ceased.

Import Measures and Balance of Payments

50. In reply to questions concerning Poland's plans for the application of import measures to defend the balance of payments, the representative of Poland stated that he did not see the particular necessity of applying in the future import restrictions for balance of payments reasons. At the moment, Poland had no specific provisions which could be used in the event of balance of payments difficulties other than those relating to safeguard measures. The Parliament had added a chapter to the Customs Law which stipulated certain specific provisions relating to safeguards essentially based on Article XIX of the General Agreement.

Unfair Trade Practices

51. The representative of Poland said that in this respect Polish laws would be applied in conformity with the relevant provisions of the GATT.

Textiles Support Measures

52. The representative of Poland said that the textiles industry did not benefit from any special support measures although the textiles industry was facing a difficult market situation.

Export Restrictions

53. 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.

VII. MTN Codes

54. With reference to the MTN Agreements and Arrangements, the representative of Poland stated that Poland had accepted the Customs Valuation Code in 1990 and the Subsidies Code in 1991 and was in the process of ratification. The Polish Government intended to accede to the remaining MTN Codes as soon as possible. This intention had been influenced by the expectation that the Uruguay Round would produce new arrangements with regard to some of the codes. The postponement of accession to the Government Procurement Code till 1992 was related to the problem of establishing focal points within the administration for dealing with the issues of government procurement. A similar problem was being encountered with the Code on Technical Barriers to Trade. The administrative body responsible for its implementation was technically not ready to assume the responsibilities arising from the Code.

55. A member of the Working Party said that her Government was anxious to see Poland accede to the Standards Code as soon as possible. This representative sought assurances that standards regulation and certification and labelling requirements would not be used in a way as to restrict imports, that they would be implemented in a transparent and expeditious manner, and that the principles of the Uruguay Round draft agreement on sanitary and phytosanitary regulations would be adhered to. The representative of Poland confirmed that his authorities would abide by the standards and regulations in question.

VIII. Poland's Trade Relations

USSR and Eastern European Countries

56. On the question of the current status, future prospects and plans for Poland's trade relations with other Eastern European countries including the Soviet Union, the representative of Poland stated 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 but the situation was different with regard to the Soviet Union. The volume of trade was so large that the transformation from a non-convertible rouble to a convertible currency trade had led to a

considerable imbalance in trade at the disadvantage of Poland. There had been a dramatic fall in Polish exports. Poland had to cope with imports that were structurally determined such as natural gas and oil that had to come to Poland for technical considerations such as the existence of pipelines etc. Poland recognized the importance of keeping a stable and predictable trade link with the Soviet Union and the need to create conditions that would stimulate such trade and prevent further decline without involving the government in any special arrangements that might deviate from normal market principles. Poland had therefore signed commercial agreements with some of the Republics generally based on the concept of trade in convertible currencies.

57. With regard to a possible organization to replace the CMEA, the representative of Poland stated that Poland did not consider the possibility of creating or participating in an organization to replace the CMEA.

58. The representative of Poland indicated that although trade with USSR had almost collapsed, this was due to payment difficulties and not to a deliberate policy of switching from eastern bound trade to a western bound one. The basic problem arose from the inability of the Soviet Union to pay for goods supplied by Poland. Moreover, major problems arising from the centralized decision making mechanism in the Soviet Union were a hindrance to the bilateral trade.

Clearing System

59. With regard to a possible recourse to a clearing system in Poland's dealings with former CMEA countries, the representative of Poland stressed that it would be based on the dollar or convertible currencies and not on transferable roubles which had disappeared from the Polish trading system.

Trade Agreements

60. Members of the Working Party asked a number of questions on preferential trade agreements being negotiated by Poland 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 agreements with the EEC and that with EFTA were entering their final negotiating stages. The negotiations with the EEC covered a comprehensive association agreement which would comprise provisions on a wide range of trade economic, political, cultural and social relations. The agreement would state that the full membership of Poland in the European Community was a common political objective to be achieved in the future. The chapter dealing with the free movement of goods was one of the important parts of the association agreement. This goal would be achieved through the establishment of a free trade area between Poland and the EEC. The agreement being negotiated with EFTA countries was of a more limited nature and only concerned the establishment of a free trade area.

61. With regard to the provisions on the free movement of goods, the representative of Poland said that the free trade agreements should cover substantially all the trade and no commodity sector should be left out of the mutual liberalization process. The treatment of agricultural products had become the most sensitive issue and was the crucial element that would determine the positive outcome of the negotiations. Under the free trade agreements, duties and other restrictive regulations on trade would be eliminated with respect to all products covered by the agreements during the phasing out period. The reciprocal trade concessions would be implemented with due observance of the principle of asymmetry. This implied that Poland's partners would implement their concessions vis-à-vis Poland in the initial part of the transitional period while Poland would liberalize the bulk of her imports from the free-trade area partners in the second half so as to achieve the same level of trade liberalization at the end of the transitional period. The details of the liberalization schedule within the transitional period were still to be decided, however, the overall transitional period would not be longer than 10 years. One provision in the transitional period was the restructurization clause. Under this provision Poland would be allowed to reintroduce, during the transitional period and for a limited period of time, higher duty rates in order to protect industries or certain sectors undergoing restructurization

or sectors facing serious difficulties, particularly if these difficulties threatened to produce serious social problems. The free trade agreements would contain provisions dealing with measures such as rules of origin, government procurement, State aid, rules of competition, payments provisions, safeguard clauses, technical regulations, dumping, protection of intellectual property, and measures in case of balance of payments difficulties. The implementation of the free trade agreements should result in a strong trade creating effect in Poland which would be beneficial to all her GATT partners. He gave the assurance that the free trade agreements would be submitted to the contracting parties for their examination after they had been concluded, in accordance with Article XXIV of the GATT. A member of the Working Party requested that the final contents of the agreements and the dates for their implementation be notified to contracting parties as soon as possible.

62. With regard to other preferential agreements, the representative of Poland indicated that at the moment only one such possibility was being considered namely a free trade area involving Poland, Hungary and Czechoslovakia. This matter was, however, at the stage of very informal consideration. A member of the Working Party confirmed the statement by Poland regarding the possible creation of a Central European free trade area and added that agreements between these countries would be concluded on such issues as, double taxation, protection of investments, enhancement of cooperation among commercial banks, coordination of telecommunication and transport systems, diversification of energy services, and environmental protection. The ultimate objective would be to create a free trade arrangement among the three countries.

IX. Protocol

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

64. The representative of Poland stressed that his Government had had two main reasons to undertake 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. Second, Poland's reform process inspired, as it was, by the basic philosophy of the GATT aimed at achieving a rational and economically sound competitive environment would require the support of all its trading partners. Moreover, as Poland exercised its GATT rights and obligations, it was not excluded that additional measures might have to be implemented in the future if necessary.

65. Several members of the Working Party expressed support for Poland's desire to negotiate a standard protocol of accession and pointed at Poland's readiness to assume full GATT commitments and obligations without waivers, derogations or special provision. These members expressed sympathy and support for the process of economic transformation going on in Poland and urged its continuation. While appreciating 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 noted 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 payment 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 and for following the process of dismantling and privatization of State owned enterprises through mechanisms to be worked out by the Working Party.

[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, in accordance with Article XXXIII of the General Agreement, that the terms of accession of the Government of Poland as revised will be those set out in the said Protocol.

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"),

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,

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 as follows:

PART I - GENERAL

1. Poland shall, upon entry into force of this Protocol pursuant to paragraph 6, become 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, having become 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-two, 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.