

# GENERAL AGREEMENT ON

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# TARIFFS AND TRADE

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

### Revision

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 10-11 February and [ ] 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.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; Declaration between Poland and EFTA countries; The evolution of the status and economic position of State-owned enterprises in Poland and a Note concerning developments in Polish agriculture and on the trade régime in alcoholic beverages and tobacco products.

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 rôle of the State in the economy, including the domestic

and foreign trade sectors. Following recent 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 now 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 to 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 rôle 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 twenty 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 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 preliminary 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 now absorbed about a quarter of the Polish employed labour force. According to a very recent Government statement, within three years the private sector should comprise more than a half of the total non-agricultural economy. 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 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 continuing major rôle played by State owned institutions in trade and in the economy at large, and stated that the Working Party would have to assess 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. 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 negotiations.

## II. Transformation of the Polish Economy to a Market Economy

6. 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

7. 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

8. 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 within a year this sector would have been completely privatized. There had been no problems in capitalizing the privatization of this sector. The large scale privatization programme would cover 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. By the end of 1991 about thirty major State-owned industrial enterprises had been privatized. Another thirty privatizations were expected in the beginning of 1992. Negotiations on ownership transformation were considerably advanced in the paper and oil-refining industries. Pre-privatization feasibility studies had been or were about to be completed for nearly 400 enterprises, which together represented approximately \$15 billion worth of annual sales in eleven industrial sectors and employed over 600,000 people. In 1991 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.

9. 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. The shares would become tradeable only after the first annual reports of these companies had been published. Both Polish and foreign investors would be able to trade on the market.

#### Features of State-Owned Enterprises

10. The Polish representatives submitted a document entitled "The evolution of the status and economic position of State-owned enterprises in Poland." They 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 the Government of Poland would apply the laws and regulations governing State-trading activities of its enterprises 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. A member of the Working Party expressed appreciation for this statement and stressed his desire to see a provision in the Protocol noting the above commitment.

#### Demonopolization Programme

11. 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 was still 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 2,000 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 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 38,000. This phenomenon was most evident in domestic and foreign trade.

12. 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 office. For example, in the transportation sector, the formerly monopolistic inland transportation organization had been broken down into forty-nine independent units. One organization was taking care of schedule planning, but with regard to pricing and competition the operations of the individual units were independent. Another action was 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 was 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.

13. Concerning the definition of a monopolistic enterprise, the representative of Poland said that so far no criteria had been developed 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. On the basis of the competition law, a low threshold of 30 per cent for recognizing the market position of an enterprise as dominant enabled the control of collusive behaviour on the part of enterprises.

#### Criteria for the Selection of Enterprises

14. 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. 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.

#### Time-table for Privatization

15. In reply to a question concerning the timetable for privatization, the representative of Poland said that it was the intention of the Government to privatize within the next three years more than 50 per cent of all State-owned enterprises and to complete the whole programme within five years.

#### Exemptions from the Privatization Programme

16. 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 Changes, 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

17. 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. 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 the improved communications infrastructure, foreign participation in this sector would expand in the near future.

#### Foreign Trade Organizations

18. 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. 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 his view they could not be considered as State-trading entities in the sense of Article XVII. It was, however, the intention of the Polish Government to privatize most of them 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 rôle 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 1989. As far as agricultural products were concerned, during the same period, the share of private exporters and importers was over 50 per cent. He stressed that the sourcing policy of foreign trade organizations would be based on commercial considerations and consistent with the General Agreement.

#### Monitoring of the Privatization of State Owned Enterprises

19. Noting that State trading enterprises and organizations still maintained a dominant rôle 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 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 régimes in various sectors.

20. 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. This commitment would reflect Poland's stated intent to proceed to gradually transfer from State ownership a certain percentage of the enterprises currently held by the Government by a certain date, in line with the plans, procedures and objectives of Poland's Privatization Law and as described in the Working Party report. In their view Poland should make similar commitments regarding the percentage of national output of the enterprises still owned by the Government, and the percentage of imports and exports generated by such enterprises. If these commitments were not carried out, the issue would have to be reviewed by the CONTRACTING PARTIES. In addition, and in order to keep the CONTRACTING PARTIES informed of Poland's progress towards these goals, the Government of Poland should make a commitment to report annually on the status of its privatization efforts, including expected developments and the rôle of State-owned enterprises in Polish trade. Finally, the Working Party should take note of these assurances.

21. 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.

### III. Macroeconomic Developments in External Sector

#### Changing Trade Patterns

22. In response to requests for recent data on Polish trade including evolution of the volume of trade commodity and its geographical structure, the relative rôles 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 would soon disappear 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. Preliminary trade figures for 1991 compared to those of 1990 showed that exports had declined in volume terms but increased by some 10 per cent in value to \$13.3 billion. Imports, in contrast, had grown by 34.4 per cent in volume and as much as 62 per cent in value terms, to reach \$13.4 billion. The volume of imports of consumer goods had doubled in relation to 1990, while the volume of imports of capital goods was up by 50 per cent. The share of private operators in total foreign trade continued to expand, especially on the import side, where it had reached over 45 per cent. The value of private imports was three times higher than the value of private exports.

#### Foreign Exchange Régime and Exchange Rate Policy

23. 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.

24. 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 exchange 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 two to three years depending upon the state of the economy.

25. 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 the States in the former 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 assess. On the whole, private Polish companies had adjusted relatively 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 the foreign trade and currency system was introduced in January 1990, had been to increase prices, but, when faced with competition from imported products, prices had to be reduced. This

situation had the 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 was the quotations in the private currency market which was based on the existence 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

26. In response to a question, the representative of Poland stated that the new law on foreign investment passed on 14 June 1991 had become effective on 4 July. It provided for the full transfer of profits, dividends and capital, and foreign investors were not required to subject themselves to any licensing or registration to operate except in sensitive areas such as sea ports, airports, military zones etc.

#### Price Policy

27. 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. 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 might 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. 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

28. 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.

29. 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. Food processing accounted for approximately 10 per cent of the total industrial employment, 9 per cent of all fixed assets, 20 per cent of the total industrial output and 12 per cent of all exports. This was Poland's second most important industrial sector, next to engineering industries.

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 rôles 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, except for incidental support of individual export sales of sugar and potato starch in the 1990/91 season. 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. 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. The foreign trade organizations did not have monopoly powers. Due to competition from private operators, in 1991 the participation of the four large organizations in trade in such items as alcohol, sugar and grains had diminished substantially.

32. 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 this regard Poland would submit a formal notification under Article XVII of the General Agreement.

33. 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. Recently, 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. Licenses could be granted to importers whose initial capital at least amounts to 10 billion zlotys (approx. US\$1 million) or to those who can offer financial guarantees of equal value.

#### Anti-Monopoly Actions

34. Questions were asked on measures being taken to break what was considered to be the oligopolistic structure of foreign trade in agricultural products. The representative of Poland said that, in this sector, the Government had promoted the introduction of competition, 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

35. There were a number of questions 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. 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 and EFTA. 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 trade weighted terms, 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.

36. The Working Party took note of the assurances by the representative of Poland 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

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. The trade weighted analysis of the tariff schedule would be made available as soon as possible. Since the introduction of the new customs tariff on 1 August 1991, adjustments had covered a relatively small number of tariff items, although some of them might be of considerable interest to potential suppliers. Shortly after the introduction of the new tariff, duty rates on herrings and sprats were decreased from 15 per cent to 5 per cent, with the exception of the Baltic herrings and sprats for which the duty rate remained at the level of 15 per cent. Imported books and newspapers were accorded duty-free treatment. At the same time, duty rates on imported small motor vehicles for the transport of goods was increased to 25 per cent. In October 1991, rates on some sorts of fermented drinks were lowered. In mid-December 1991, the Council of Ministers had decided to increase the duty rates for passenger cars, trucks and buses, as well as to eliminate import duties on crude oil and natural gas and to reduce duty rates on natural calcium phosphates from 5 to 3.5 per cent. The duty rates on bulk and packaged black tea had been readjusted as well. Consequently, 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 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

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. 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 renegotiating 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

41. 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.

Customs Fees and Charges

42. 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

43. 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 acknowledged the need to clarify the situation but added that the practical implementation was, however, different. Moreover, 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 law into line with the actual practice of applying all taxes, import restrictions and customs and tariff charges that are normally applied to imports into Polish customs territory to the imported component of goods produced in the free-trade zones when they are exported into the national customs territory. It was proposed that the Working Party should take note of this assurance and that it should be incorporated with the others by reference into the Protocol.

Taxation

44. In reply to a question, the representative of Poland stated that the Value Added Tax scheduled to be introduced in 1993 would replace the turnover tax currently in force. There was no discrimination in the level of internal tax between imported and domestic goods. 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 effective taxation was essentially 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 three taxes, namely: a value added tax, a corporate income tax and a personal income tax. All these changes might be introduced in 1992 and 1993. 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, the disappearance of which was also only a matter of time. He added that there was no subsidy implied in this tax.

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 an 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 a

member of the Working Party with specific reference to alcoholic beverages and tobacco products.

47. 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 in paragraphs 42, 44-46 above in accordance with the provisions of the General Agreement, in particular Articles 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 that same date Poland would bring the customs charges into conformity with Article VIII. If this was not accomplished, the matter should be reviewed by the CONTRACTING PARTIES.

48. The representative of Poland said that the overall fiscal system was under a detailed review aimed at bringing it into conformity with the internationally recognized standards and practices, particularly those of the EEC. As of 1 January 1992, a comprehensive personal income tax had become law. The introduction of a value-added tax system late in 1992 or early in 1993 was in preparation. One overriding rule in this area was the principle of equal treatment of all taxpayers. Consequently, the Government would continue to ensure that taxes and charges are applied to imports in accordance with the provisions of the General Agreement, in particular Articles III and VIII thereof. In response to specific questions raised at the Working Party, Poland's Minister of Finance had declared that while the nominal tax rates applied to domestic and imported goods might differ because of the different bases of the tax assessment (customs value plus customs duty for imports and sales value for domestic goods), the effective taxation of domestic and imported goods was intended to be the same. Marginal tax differentials which might occasionally occur would be eliminated with the introduction of the VAT system. Poland also undertook 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.

#### VI. Non Tariff Measures

49. 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 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. 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

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.

#### Quantitative Import Restrictions

52. In response to questions on the nature and product coverage of quantitative import restrictions maintained by Poland, the representative of Poland stated that import prohibitions covered only fifty-nine eight-digit tariff items in the HS nomenclature, such as undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent or higher (spirits), undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent (vodka, liquors), passenger cars and chassis and bodies thereof, which were ten or more years old, as well as two-stroke engines and motor vehicles equipped with such engines. Import quotas covered only twenty-six eight-digit tariff items in the HS nomenclature, such as the following alcoholic beverages: denatured alcohol of any strength, compound alcoholic preparations of a kind used for the manufacturing of beverages, spirits obtained by distilling grapes, whiskies, rum and gin. Other import restrictions in the form of licensing

requirements applied on 172 eight-digit tariff items in the HS nomenclature, such as beer, wines, vermouth and other fermented beverages, dairy products falling within the scope of the International Dairy Arrangement, petroleum oils and gases and equipment for military and police use.

53. A member of the Working Party requested 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. A consolidated notification of all such restrictions would be submitted shortly. 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 to be 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.

#### Import Measures and Balance of Payments

54. 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. 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 and safeguards

55. 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

56. 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

57. 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 issue 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.

#### 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 before the end of 1992, 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.

#### VIII. Poland's Trade Relations

59. 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 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.

60. 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 that might deviate from market principles. Poland had therefore signed commercial agreements with some of these States based on the concept of trade in convertible currencies.

61. With regard to the CMEA, the representative of Poland stated 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.

#### Trade Agreements

62. 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. 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. The representative of Poland stated that the negotiations with the EEC and EFTA were entering their final stages. The negotiations with the EEC envisaged a comprehensive association agreement which would comprise a wide range of trade, economic, political, cultural and social relations. Poland's ultimate objective was to become a member of the Community and the agreement would help to achieve

this objective. The free movement of goods, an important goal of the association agreement, would be achieved through the establishment of a free-trade area between Poland and the EEC. The agreement being negotiated with EFTA only concerned the establishment of a free-trade area. With regard to the provisions on the free movement of goods, the representative of Poland said that the free-trade agreements would cover substantially all the trade and no commodity sector would be left out of the mutual liberalization process. The treatment of agricultural products was the most sensitive issue. 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 ten 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.

63. 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 the Czech and Slovak Federal Republic. This matter was, however, still at the stage of 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

64. 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.

65. 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.

66. 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 and for monitoring 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, 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-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.