Communication from the Permanent Mission of Czechoslovakia

The following communication, dated 7 August 1991, has been received by the secretariat.

The Permanent Mission of the Czech and Slovak Federal Republic presents its compliments to the secretariat of the General Agreement on Tariffs and Trade and, in accordance with paragraph 3 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance of 28 November 1979, has the honour to submit to the GATT information regarding the key legislative measures in the transformation program of the Czechoslovak economy to market principles.
KEY LEGISLATIVE MEASURES IN THE TRANSFORMATION PROGRAMME OF THE CZECHOSLOVAK ECONOMY TO MARKET PRINCIPLES

The Government Programme of the transition to a market-oriented economy formulated as the Economic Reform Scenario was approved by the Government of the Czech and Slovak Federative Republic (CSFR) on 30 August 1990 and endorsed by the Federal Assembly at the beginning of September 1990. It came into effect on 1 January 1991. In connection with the implementation of this Programme a number of laws and legislative measures were adopted, and others are ready for enactment.

I. CHANGE OF OWNERSHIP RELATIONS IN THE ECONOMY

One of the foundations of a functioning market economy is the private ownership of the means of production. In view of the fact that State ownership has a dominating position in Czechoslovakia's economy the implementation of the economic reform is largely conditional on the implementation of denationalization and privatization, and during the transitional period on the changed position of the State enterprise as well.

The State Enterprise Act (No. 111/1990) regulates the position and legal conditions of the State enterprise for the forthcoming period (until the adoption of the Commercial Code). This Act is therefore seen as a legislative measure whose regulatory rôle is of a relatively temporary nature.

According to this Act, independence and self-management form the decisive features of the position and activities of these enterprises.

The State's regulatory functions in relation to these enterprises are confined to and the State's rôle is concentrated on the shaping of conditions and required framework for entrepreneurial activities.

The enterprise is a legal entity which enters into legal relationships in its own name and which bears responsibility stemming from these relationships. It is not responsible for the commitments of the State or of other bodies, and, on the other hand, the State is not responsible for the commitments of the enterprise. The properties operated by the enterprise management are in state ownership.

The forms of management of state enterprises and the enterprises themselves are differentiated into two types.
The basic type is the enterprise considerably approaching the so-called managerial concept of management. It is headed by a manager and supervisory council whose one half is appointed and recalled by the founder, while the other half is elected and recalled by the work force or its delegates. The council has supervisory authority, it supervises the management and running of the enterprise, and thus approaches in conception the Supervisory Board of a shareholding company. (It is envisaged that a considerable part of this type of enterprise will be turned into shareholding companies.)

The second type of economic agents introduced by the State Enterprise Act is the enterprise for meeting interests beneficial to the public. These are enterprises whose basic object of activity is the satisfaction of such interests. Enterprises for meeting interests beneficial to the public may be set up only in such spheres of activities stipulated by the respective Government.

When abolishing an enterprise without liquidation the founder may place its material assets as a whole in a shareholding company or contractually transfer them into the ownership of another juristic or natural person. The founder may also contractually lease the material assets of the enterprise for temporary use to a juristic or natural person in accordance with the Commercial Code.

Privatization Acts

The key legislative step leading to the implementation of the ongoing denationalization and privatization processes are the so-called Small and Big Privatization Acts.

The Law on Transfers of State Ownership of Certain Assets to other juristic or natural persons (No. 427/1990 of 25 October 1990), i.e. the so-called Small Privatization Act, regulates the privatization proceedings concerning small-scale enterprises, retail trade and service facilities and other than agricultural productions by way of public auctions.

Simultaneously with small privatization, the authorities are carrying the restitution of the same type of property, i.e. the restoration of property to its original owners, or direct heirs.

Other forms of enterprise discontinuation:

- by way of liquidation;

- by transformation into shareholding company, or by merger or sale as an entity.
The decisive step towards denationalization and privatization was the enactment of the law stipulating the conditions of State property transfers to other persons (Act No. 92, 1991, which came into effect on 1 April 1991), the so-called Big Privatization Act. This Act regulates the conditions of State property transfers, hitherto under the rightful management of the State enterprises, State insurance companies, State financial institutions and other State organizations, including their joint ventures, to other juristic persons for entrepreneurial purposes, as well as the conditions of the transfer of State capital participation in this entrepreneurial activity, to Czechoslovak or foreign juristic or natural persons for the purpose of entrepreneurial activity. This Act similarly covers also the property of foreign trade corporations and other foreign trading organizations as well as their capital participation in the entrepreneurial activities of other juristic persons.

The property transfer is being carried out according to this Act in accordance with the approved privatization project of the enterprise or in accordance with the approved project of the State capital participation in entrepreneurial activity.

The enterprise privatization project must contain the requirements stipulated by law. It may concern part of the enterprise, the entire enterprise or the property of several enterprises. The draft project is as a rule worked out by the enterprise concerned but responsibility for it is borne by its founder who submits it for approval either to the Federal Ministry of Finance (in the event of the founder being a federal central body of the State administration) or to the respective body of the State administration of the national republic (in all other cases).

The privatization project of the State capital participation in entrepreneurial activity contains the appropriate requirements of the privatization project of the enterprise; its draft is as a rule worked out by the juristic person concerned, and responsibility for it is borne by the federal central body of the State administration or the body of the State administration of the national republic, or by the local government authority in charge of the State rights concerning capital participations; it is again submitted for approval to the Federal Ministry of Finance or to the respective body of the State administration of the national republic.

In keeping with the approved privatization project, the founder abolishes the enterprise without liquidation, or takes out part of the enterprise property earmarked for
privatization. The privatized property is being transferred according to the devolution of powers either to the Federal Fund of National Property or to the Fund of National Property of the respective National Republic.

The assets of these Funds do not form part of the State Budgets, and they may only be used for privatization purposes which according to the terms of the Act are the following modes:

- The setting up of a shareholding or other commercial company, and the handling of capital participations in these companies.

- The sale of the enterprise property or of its part.

- The transfer of the privatized property to the local government authority.

- The transfer of the privatized property for purposes of health or pension insurance schemes.

As a special privatization form the Act introduces investment coupons, i.e. securities listed by name entitling their holders to buy shares earmarked for sale against these coupons.

The assets of foreign trade corporations, of other foreign trading organizations and of State financial institutions (with the exception of the Czechoslovak State Bank and of State savings companies) will be transferred in accordance with the privatization project to the National Fund of that National Republic in which the privatized enterprise has its headquarters, and it will be put into the basic capital of the shareholding companies setting up this Fund.

It is anticipated that the share of the private sector in the Czechoslovak economy will be augmented in the following two basic ways:

- by the entry of a new private entrepreneurial agents into the economy and by their growth;

- by privatization, i.e. by the sale of assets allocated to the existing State enterprises to private economic agents.

The Shareholding Companies Act

(No. 104, 1990) is closely linked to other legal norms, notably to the State Enterprise Act and to the Enterprise with Foreign Capital Participation Act. It is envisaged that
shareholding companies will form the predominant entrepreneurial mode enabling the concentration of considerable capital and creating the prerequisites for the material motivation of a wide range of agents in efficient economic activity.

According to the terms of the enacted law, the shareholding company is a juristic person for entrepreneurial activity, whose basic capital is shared in a fixed number of shares of a nominal value fixed in advance. The company accounts with its assets for any violation of its commitments or other obligations. However, the shareholder is not the guarantor of the company's commitments. In accordance with the approved Act and the company's statutes, the holding of shares entitles the shareholder to participate in its management, in its profits and its residue in the event of the company's failure.

The State, a juristic or natural person may be the founder of a company. A company may be founded also by a single founder (the foundation capital must not be lower than 100,000 Kcs). The founders secure the creation of the basic capital share subscriptions.

An important document both for the registration of the company as well as for its own activities are its statutes which define the amount of basic capital, the conditions of share refunding, including their nominal value, they set out the object of entrepreneurial activity, the functioning of the company's organs, and they lay down some of the company's economic principles.

The company's highest body is its General Meeting in whose deliberations all shareholders are entitled to participate. This body approves the company's statutes and decides on matters of principle concerning the company's activities, for instance, on raising or lowering basic capital, etc. It meets at least once a year but may be convened in case of need at any time.

The executive organ of the company is the Board of Directors elected by the General Meeting from among shareholders or other persons.

The controlling body of the shareholding company is the Supervisory Council.

Each company also selects at least one auditor of accounts.

The present legal norm also sets out in detail the rules governing the raising and lowering of basic capital, and stipulates that the sole mandatory fund is the Reserve Fund. That is formed by the company's profits and its minimal amount is set at 10 per cent of basic capital.
Enterprise with Foreign Capital Participation Act

As follows from the amendments and supplements contained in the Act No. 112/1990 the amended Act No. 173/1988 on the Enterprise with Foreign Capital Participation sets out the aim of

- liberalizing the conditions for the establishment of enterprises with foreign capital participation;

- rationalizing the framework conditions for the economic activities of these enterprises.

The enterprise with foreign capital participation (further on only the enterprise) may be set up without authorization with a 100 per cent foreign capital share and with the participation of a Czechoslovak natural person on the basis and with the bounds of the authorization granted by the Federal Ministry of Finance in agreement with the Ministry of Finance, Prices and Wages of the republic on whose territory the enterprise is based. The exception is the setting up of an enterprise in the banking sphere in which the authorization is granted by the Czechoslovak State Bank.

In keeping with Czechoslovak legal norms, not only a Czechoslovak participant but also a foreign economic agent (including individual entrepreneurs) may apply for the establishment of an enterprise with existing provision allowing a 100 per cent foreign capital participation.

In addition to Czechoslovak economic agents (State, private and cooperative enterprises) the Act enables also Czechoslovak natural persons and individual private entrepreneurs authorized by law to establish and participate in the activities of an enterprise with foreign capital participation.

The decision-making process on granting authorization takes into account the circumstance whether prerequisites exist that the activities of the enterprise to be founded will be in keeping with the interest of the Czechoslovak economy, and that its economic activities will create adequate financial sources in Czechoslovak currency as well as in foreign currencies.

The conditions for economic activities stipulate that the foreign participant will be given the advantages arising from the Act in the event that the enterprise was set up with the participation of a foreign partner but also in the event of a foreign participant taking part in its entrepreneurial activity after the establishment of the enterprises (as a
shareholder who joined the already existing shareholding company; involved is a share in the basic capital of the enterprise, not a routine trading partnership).

The enterprise is an income tax payer. The income tax rate is 20 per cent of the base (which is the profit from domestic as well as foreign sources modified by the so-called "add-ible" and deductible items) not exceeding 200,000 Kcs and 40 per cent of the base exceeding 200,000 Kcs in those cases in which the share of foreign capital is higher than 30 per cent. If the share of foreign capital is 30 per cent or lower, the tax rate is 55 per cent. There is also a wage tax amounting to 50 per cent of the paid wages, and a turnover tax - if no exports are involved - equal to the tax imposed on "domestic" economic agents.

The Federal Ministry of Finance may exempt entirely or in part newly set up enterprises from income tax, at most, however, for a period of two years since the start of activities. This tax exemption is usually tied to the condition that for the duration of this exemption no dividends will be paid (shares from profit) but that the entire remaining profit will be re-invested. The Act also enables the authorities to lower the rate of the income tax and of the tax on the wage volume.

The enterprise is obliged to create after its establishment a Reserve Fund. This Fund is annually added to from after-tax profit, minimally to the amount of 5 per cent, up to the amount laid down in the statutes. The minimum amount of the Reserve Fund is 10 per cent of the basic assets. This Reserve Fund serves to cover losses and risks, and the financing of fluctuations in management. It is created and listed on principle in Czechoslovak crowns, even though the enterprise has the means of the Fund deposited in its bank account in Czechoslovak crowns as well as in foreign currency.

The enterprise may open its accounts in foreign currency at an authorized Czechoslovak financial institution and at a foreign bank only with the approval of the Czechoslovak State Bank.

The enterprise may accept a foreign currency credit also from a Czechoslovak financial institution and from a foreign bank only with the approval of the Czechoslovak State Bank.

II. Price Policy

The new Price Act No. 5126/1990, which came into effect on 1 January 1991, enables the economy to join a system in which the basic principle of price fixing is an agreement between the seller and the buyer.
The Act concerns the application, regulation and control of the prices of products, performances, work and services (goods) for the domestic market, including the prices of imported goods and the prices of goods earmarked for export. While the former price regulations applied only to prices used during sales and purchases against Czechoslovak currency, the new Act covers also the sale of goods against foreign currencies as far as that is permitted on Czechoslovak territory.

The Act applies without difference to all sellers and buyers on the home market, i.e. to all citizens who are carrying out entrepreneurial activities in accordance with the Private Enterprise of Citizens Act, to State enterprises, cooperatives, shareholding companies, joint venture enterprises and companies, to foreign firms, etc.

The Act sees the price as the cash amount negotiated during the sale or purchase of goods, or fixed for evaluation for other purposes. This therefore involves the market-oriented fixing of all prices which came into being exclusively on the basis of an agreement between the seller and the buyer, and which are variable according to the relationship between supply and demand.

In price negotiations neither the seller nor the buyer may misuse his economic standing to gain by sale or purchase for the negotiated price undue economic benefit.

Part of the Price Act introducing price liberalization is also price regulation which may be applied either in the event of restricting economic competition and the regulated limitation of supply, which may lead to the risk of speculative price increases or the risk of further restricting economic competition (cartel agreements), or in cases when that is required by an exceptional situation (crisis) on the market (e.g. as a result of an extreme price development on foreign markets with a direct impact on the home market, as a result of natural disasters, etc).

All prices subject to price regulation are also market prices and are negotiated routinely between the seller and the buyer (this also applies to officially set fixed prices when applied, when the object of the agreement are at least the set conditions related to the given fixed price). Price regulation in general does not fix concrete prices (these are negotiated), it only sets the rules, or the limitations for their negotiation with the Act defining price regulation as the "stipulation or direct regulation of the price amount by pricing authorities and local government bodies".

In past practice centrally fixed prices were in a number
of cases linked to direct subsidies from the State Budget (for instance, price regulations of imports, the negative turnover tax, subsidies for procurement prices). Price regulation according to the Price Act No. 526/1990 does not entail any automatic claim to the allocation of means from the State Budget. As far as the State will temporarily grant a certain sector financial aid this ought to be done strictly for a given purpose and independently of prices so that these subsidies would become an instrument minimally disturbing the market.

According to this Act the regulation methods are:

- the fixing of prices or officially fixed prices (maximum prices which must not be exceeded; set prices which must not be altered; minimum prices which must not be lowered);

- outline guidance of prices (price authorities set the conditions for the negotiation of prices);

- time set prices which apply when the seller occupies a monopolistic or dominant position on the market of a concrete kind of goods in at least one of the national republics, and when the pricing authority stipulates by a special decision valid for these goods the scope of price rises, which when exceeded are bound to be reported;

- price moratorium - a time limited ban on the price rises above the existing valid level on the market of a given kind of goods; it is authorized by the Czechoslovak Government in agreement with the Governments of both national republics for a period of at most six months.

The sellers are bound to keep evidence of officially fixed prices, of prices subject to outline guidance and of time set prices, of prices of consumer goods sold to the end consumer.

The Act enables the authorities - whenever expedient - to apply simultaneously also several price regulation methods to the same kind of goods.

The concrete method and conditions of price regulation and their changes are laid down by the Ministries of Finance (in given cases also by the respective District Authority or local community) taking into account the nature of the goods, the existing price level and the anticipated trends in costs, demand and supply, and as a rule also the viewpoints of
sellers and buyers. The observance of the set rules of price regulation will be overseen by a newly conceived system of price control and will be legally safeguarded by sanctions for violating pricing behaviour.

III. Foreign Currency Management

The foreign Currency Act

The new Foreign Currency Act No. 528/1990 of 28 November 1990 came into effect on 1 January 1991 and represents a further important step on the economic reform course. This is a legal norm which sets out the legislative framework for the application of the principle of the internal convertibility of the Czechoslovak crown and the development of market relations in the foreign currency management sphere. The implementation of the Foreign Currency Act is set out in detail in the Public Notice No. 583/1990 of 19 December 1990.

The basic postulate of the new legal measure is the strengthening of the Czechoslovak currency. The Act:

- defines
- the basic terms in the foreign currency management (foreign currency means, foreign exchange, foreign currency, foreign payment documents, gold, securities, foreign securities, foreign currency values, trade in foreign currency values, financial claims of foreign currency holders of Czechoslovak nationality on foreign currency holders of foreign nationality, foreign currency obligations of foreign currency holders of Czechoslovak nationality towards foreign currency holders of foreign nationality, foreign currency financial institution, foreign currency authorization, foreign currency holder of Czechoslovak nationality and of foreign nationality, foreign currency organs);
- the range of authority of foreign currency organs (the Federal Ministry of Finance, the Ministries of Finance of the National Republics, the Czechoslovak State Bank);
- regulates
- trade with foreign currency values and payment contact;
- rights and obligations of foreign currency holders of Czechoslovak nationality and of foreign nationality;
- the import, export and transfers of foreign currency and other values;
- capital participation in entrepreneurial activities abroad;
the opening and use of accounts of foreign currency holders of foreign nationality;

foreign currency control during imports and exports of values as well as related offences and proceedings dealing with them.

The Foreign Currency Act stipulates on a qualitatively new basis the rights and obligations of foreign currency holders of Czechoslovak nationality, and in so doing it conceives differently and relatively independently the foreign currency position of entrepreneurial agents (juristic persons or natural persons of equal status, i.e. natural persons - entrepreneurs listed in the Register of Enterprises) and of citizens (natural persons).

The legal regulation of foreign currency management ensures on the one hand equal and in principle unrestricted access of all juristic persons - entrepreneurs to foreign currency means, while on the other hand imposing upon them the obligation to sell their earned foreign currency means to Czechoslovak financial institutions (the principle of internal convertibility whose basic principle is the elimination of foreign currency circulation from the domestic economy as well as the exclusive use of the Czechoslovak currency in all operations carried out by domestic juristic persons).

The principle of internal convertibility and the duty to turn in all foreign currency do not, however, apply to natural persons who have the right to open in a Czechoslovak authorized financial institution an interest-bearing foreign currency account and to dispose essentially without any restriction of these deposited foreign currency means.

In view of the fact that at the present stage full liberalization in foreign currency management is for various reasons not a realistic proposition the Act embodies in a number of cases foreign currency authorization.

Amongst the most important provisions of the new Foreign Currency Act are the following:

- Trade with foreign currency means is regulated. The principle applies that foreign currency holders of Czechoslovak nationality may trade in foreign currency values (sell, buy, exchange and loan them, etc) only with the foreign currency authorization of the Czechoslovak State Bank (excepting the case in which one of the participants is a financial institution).
The reporting duty (of financial claims and obligations relating to a foreign currency holder of foreign nationality, of real estate abroad, of capital participation in joint ventures abroad, of foreign securities) of foreign currency holders of Czechoslovak nationality - juristic as well as natural persons - is against the past strongly liberalized. It is only carried out at the request of the respective foreign currency organ.

Juristic as well as natural persons are obliged to transfer to Czechoslovakia foreign currency means obtained abroad (exemptions are granted by way of foreign currency authorizations).

Juristic persons continue to be liable to turn in all foreign currencies (this applies to joint ventures as foreign currency holders of Czechoslovak nationality but does not apply to natural persons who are not listed in the Register of Enterprises) in that they must offer within 30 days an authorized Czechoslovak financial institution for purchase all gained foreign currency means against Czechoslovak currency at the valid exchange rate. Foreign currency means deposited by a foreign currency holder of foreign nationality into the basic capital of a joint venture are, of course, not subject to this duty.

A juristic person has the possibility of opening a foreign currency account on the basis of a foreign currency authorization.

For foreign currency holders of Czechoslovak nationality - natural persons - the limit of the equivalent value of foreign currency means which need not be deposited in a foreign currency account or sold to an authorized financial institution is being raised from the amount of 2,000 Kcs to 5,000 Kcs. A natural person may use these means without any restriction (excepting foreign currency trading).

The export and import of Czechoslovak currency and other values quoted in Czechoslovak currency, their transfer abroad and from abroad continues to be admissible only with a foreign currency authorization of the Czechoslovak State Bank.

A foreign currency holder of foreign nationality may without a foreign currency authorization transfer or transport abroad any inheritance acquired in Czechoslovakia as well as the foreign currency equivalent of Czechoslovak crowns obtained by the sale of inherited real estate. The condition is confirmation
by the notary’s office certifying the inheritance as well as reciprocity in the relations between Czechoslovakia and the respective country.

- A foreign currency holder of Czechoslovak nationality may participate with his capital in entrepreneurial activities abroad.

- The authorized Czechoslovak financial institution is obliged to open at the request of a foreign currency holder of foreign nationality in Czechoslovakia an interest-bearing account in Czechoslovak or foreign currency - a so-called foreigner account. A foreign currency holder of foreign nationality may without any restriction use his means for payments abroad as well as in this country (except for trading purposes).

- The Czechoslovak State Bank and other foreign currency organs carry out foreign currency control within the framework of their authority.

IV. The Customs System

The basic norm which regulates the customs system in Czechoslovakia is the Customs Act No. 5/1991 which came into effect on 1 February 1991.

The purpose of this Act is to regulate the customs control of the import, export and trans-shipment of goods, and customs statistics, to stipulate the rights and duties of the organs of the customs administration, as well as of juristic and natural persons during customs control, and to safeguard the interest of Czechoslovakia during the import, export and trans-shipment of goods.

According to the terms of this Act it is the Federal Ministry of Foreign Trade which wields authority in matters of customs and excise, of customs policy and customs tariffs with the Central Customs Administration being charged with the implementation of this authority. The powers of the Central Customs Administration in the two national republics are carried out by the Customs Management for the Czech Republic and the Customs Management for the Slovak Republic. The executive organs of the Customs Administration are custom houses (inland and border houses). As part of individual customs houses the Federal Ministry of Foreign Trade may set up customs branch offices or other organizational bodies.

The Act No. 5/1991 contains a practically newly formulated part dealing with the customs territory, the customs border zone and the free customs zone.

According to the terms of this amendment the free customs zone is considered to be a part of Czechoslovakia in
which the goods imported there are regarded from the point of
view of import customs, taxes and duties as if they were not
situated on customs territorz and which therefore are not
subject to the usual customs control. The free customs zone
serves both for the storing or end assembly or for similar
operations with goods (free trading customs zone) as well as
for reprocessing, treatment, repair or production (free
industrial customs zone).

(The conditions for setting up a free customs zone, the
kinds of goods which may be imported there and the methods of
customs control in free customs zones are regulated by the
Decree of the Federal Ministry of Foreign Trade of 21 January
1991, which implements the Customs Act.)

In further parts the Customs Act deals with customs
control and the transport of goods across the State
frontiers. In this section is also a newly formulated
provision according to which the organs of the Customs
Administration carry out the collection of data and the
processing of information on goods exports and imports based
on documents prescribed in the customs proceedings. The
method of keeping customs statistics is regulated by a Decree
of the Federal Ministry of Foreign Trade.

The range of problems concerning the customs themselves
is dealt with in the Fifth Chapter of the Customs Act. Even
though all imported, exported and trans-shipped goods are
subject to customs control dutiable goods are differentiated.

All imported goods, with the exception of goods
specifically designated as duty-free in the tariff, are
liable to import duties. Exported goods are liable to export
duties only when the tariff specifically sets the duty.

Goods which in international agreements are explicitly
designated as duty-free goods are not subject to customs
duties.

The rates, the basis for fixing the duties and the tariff
are set by the Czechoslovak Government in an order with the
Federal Ministry of Foreign Trade ruling in agreement with
the Federal Ministry of Finance in which cases unified rates
for fixing the customs duties and their amount are to be
used. By a Decree issued on 21 January 1991, the fixing of
customs duties was differentiated in the following way:

- for goods coming from countries

(a) with which Czechoslovakia negotiated the most favoured
nation status the customs duties are fixed according to
contractual rates,
(b) to which preferential customs duties apply these duties are fixed at the amount set by the respective Czechoslovak regulations,

(c) with which an agreement on the mutual complete or partial freeing of goods from duties was concluded duties are not fixed or are fixed according to reduced customs rates.

Freed of duty are those goods which are during their import and export freed of customs inspections, as well as goods for which this is required by public interest.

The Czechoslovak Government may also on grounds of economic retaliation set for a transient period surcharges on customs rates on goods imported from a country which discriminates Czechoslovakia in economic relations; alternatively, it may introduce a special duty on goods which according to the tariff are not liable to duties.

Quite newly are in this latest amended Customs Act formulated the inception of the State's claim on customs duty (it begins from the moment at which the goods are under customs control), and the questions concerning the fixing of customs duties (these are fixed according to the state of the goods and to the regulations in force on the day from which the goods are under customs control). When releasing the goods into recorded circulation the goods may be freed from import duties completely or partially. When in goods released into recorded circulation abroad changes take place in their value by processing, treatment or repair, value added duty arising from their processing, treatment or repair is being imposed during re-imports. When changes in their value take place in goods released into recorded circulation in this country by temporary use, valued-reduced duty is imposed during re-export.

Customs duty is payable within 30 days after the amount of the imposed duty was notified to the participant of the customs proceedings.

The customs house is authorized to request the payment of caution-money during imports up to the amount of the import duty raised by 10 per cent and other taxes and duties which can be claimed during imports of goods and exports up to the amount of the customs value or the price of the goods. In goods whose export is banned or restricted customs caution-money may be requested up to five times of their customs value or price.

In the part of the Customs Act dealing with customs proceedings a new paragraph has been added concerning the decision-making in customs proceedings. A supplementary
provision has been added in which - in keeping with the commitment in Article 13 of the agreement implementing Article VII of GATT - on customs value - the customs house is given the possibility - on the basis of a request by the participant in the customs proceedings - to allow the handling of goods even before a decision has been taken on their release. The customs house will always meet such a request if the reason for not releasing the goods is only the need to determine the origin of the goods, the place from which they were sent, their tariff rate or the customs value of the goods.

Goods which cannot be forwarded or released into free recorded circulation or sent abroad can be temporarily stored.

For the sake of facilitating foreign trading contacts Czechoslovak and foreign juristic as well as natural persons may set up customs warehousing facilities.

The provisions of the amended Customs Act do not, however, apply to the temporary storing and the storing of goods in free customs zones.

In its concluding parts the Act deals with questions of proceedings during customs offences, proceedings concerning the imposition of fines on organizations, proceedings concerning the seizure and selling of goods, the common principles governing the proceedings before the organs of the Customs Administration, as well as common, temporary and concluding provisions.

Import Surcharge

In connection with the changed exchange rate of the Czechoslovak crown in relation to freely convertible currencies and with the introduction of internal convertibility an import surcharge amounting to 20 per cent of the customs value of consumer goods and foodstuffs (according to a binding list of items) was introduced on imported goods released into free circulation in keeping with the Federal Ministry of Finance Decree No. 569/1990. This surcharge is to serve as a temporary economic instrument which ought to help maintain a balanced state of the Czechoslovak balance of payments, i.e. to temporarily regulate the anticipated pressure on the purchase of foreign currency means. However, the validity of this Decree was cancelled on 1 April 1991 both in connection with the positive results in the development of the balance of payments as well as in connection with the application of new customs regulations. On that date a new Decree of the Federal Ministry of Finance No. 108/1991 of 8 March 1991 came into effect. It frees additional imports from this import surcharge, notably those earmarked for manufacturing consumption. In other words, the import surcharge is not
being imposed or collected even when the goods are listed in the respective list of items; in these cases:

- on goods imported to meet the personal needs of natural persons, which are not of a commercial nature;

- on imported goods to which the complete freeing from import duty applies (§ 35-38 and 40-55 of the Decree No. 43/1991, which implements the Customs Act)*;

- in documented re-imports to Czechoslovakia;

- in imports of goods freed of duty on the basis of the Decree of the Federal Ministry of Foreign Trade No. 572/1990, i.e. - of goods for the needs of state registered churches, religious societies, monastic orders, congregations and their charitable institutions;

- in the case of free-of-charge imports: goods sent by the foreign supplier in compensation of faulty goods, documentation, promotional materials of little value, which are used to promote goods or firms, and product samples;

- in imports of goods of Finnish origin from Finland on the grounds of the agreement on duty-free contacts;

- on goods imported into Czechoslovakia unequivocally for manufacturing consumption, i.e. for further re-processing, completion and assembly in production. In such a case, however, the importer must state in the proposed customs proceedings that the goods in the imported volume are earmarked exclusively for the above-stated purposes. The manufacturer is obliged to keep evidence of such goods and prove to the financial or customs organs their utilization. However, the mere division, classification, weighing or packaging or another simple treatment of the imported goods are not regarded as re-processing, completion or assembly.

* goods for the needs of heads of foreign countries, official gifts, prizes of honour and awards, goods for the needs of persons and organs enjoying privileges and immunities, moved personal effects, wedding gifts, inherited goods, religious objects, goods of a humanitarian nature, literary, scientific and artistic works, goods in border traffic, fuel and oil, lubricating oils and fats for transport means, goods for supply travellers and crews in means of transport, requirements for foreign trading activities, returned packings, coffins and urns, material for the building, maintenance and decoration of military cemeteries, goods important for criminal and judicial proceedings;
As far as the amount of the import surcharge is concerned, its change is now under active consideration depending on the state of the balance of payments. In view of the more positive development of the balance of payments than had been anticipated, the Federal Ministry of Finance decided to lower it by 2 per cent as of 1 May 1991 (which ought to be reflected in a decline of prices of imported goods) as well as of 1 June 1991 by another 3 per cent, i.e. to 15 per cent.

The certificate of the import surcharge is issued by the customs house, the importer pays it and carries it to account simultaneously with the duty, while the Central Customs Administration delivers the surcharge into the State Budget.

In specially justifiable cases, the Federal Ministry of Finance may make an exemption on the payment of this import surcharge or it may reduce it.

V. Foreign Trade Activities

The demonopolization and liberalization of foreign trading activities is a significant measure of the economic reform. The amended Act on Economic Contacts with Abroad No. 42/1980 (as follows from the changes and supplements carried out by Act No. 102/88 and the Act No. 113/1990) regulates:

- the organizing, management and control of foreign trading activities and defines their forms;
- the setting up of commercial representations by foreign nationals on Czechoslovak territory;
- the establishment of organizational units by Czechoslovak nationals abroad;
- the position of Chambers of Commerce and Industry on Czechoslovak territory and their tasks;
- non-commercial exports and imports;
- the protection of the commercio-political interest of Czechoslovakia;
- the defining of the range of authority of central organs in this sphere.

Act No. 113/1990 introduces the most substantial changes notably into the defining and management of foreign economic activities.
According to the terms of this Act foreign economic activities take the following forms:
- foreign trading activities, and
- foreign economic services.

The present conditions for carrying out foreign trading activities are regulated by the Federal Ministry of Foreign Trade Decree No. 27/§99§ of 17 January 1991. This Decree changes and supplements the Federal Ministry of Foreign Trade Decree No. 533/1990 concerning authorization to carry out foreign trading activities, the carrying out of foreign trading activities without registration or authorization, and the carrying out of foreign trading activities by foreign nationals.

According to this latest Decree, Czechoslovakia nationals no longer require the registration of foreign trading activities or authorization for foreign trading activities:
- for the export and import of goods, as well as for the provision and acceptance of services (with the exception of cases listed in the Czechoslovak Government Decree No. 256/1990 which stipulates the exports and imports of goods and other activities requiring authorization for foreign trading activities);
- for the purchase of goods and their direct sale abroad without import to Czechoslovakia;
- for mediating activities carried out for Czechoslovak nationals in contact with foreign nationals;
- for carrying out impartial controls;
- for safeguarding the trans-shipment of goods (consignments).

Foreign nationals also do not require authorization for foreign trading activities (with the exception of cases listed in the Czechoslovak Government Decree No. 256/1990).

The blocking of deposits given as bail for the purpose of authorization or registration of foreign trading activities where authorization or registration for this activity are no longer required is being abolished.

Licensing System

The Czechoslovak Government decision taken on 4 March 1990 - which into effect on 1 July 1990 - introduced in Czechoslovakia a licensing system for the export and import
of goods against convertible currency. With the change-over of payment contacts with the countries of the former rouble sphere, Yugoslavia and China to freely convertible currencies as of 1 January 1991 the licensing system applies to all countries with which Czechoslovakia is trading. In contrast to the countries with a functioning market economy, in which the licensing system for the most part restricts imports in order to protect domestic producers in Czechoslovakia the licensing system is for a transient period - in view of the needs of protecting the home market and domestic producers against the lack of basic inputs - almost exclusively aimed at restricting exports. Depending on economic development exports ought to be in future gradually liberalized and the licensing proceedings ought to be applied in principle only in the case of those items where this will be necessary from the point of view of the protection of security and health, and of those items where exports are restricted on the basis of bilateral agreements.

The federal Ministry of Foreign Trade is in charge of issuing licences and laying down quantitative or value limits. At present, the imports and exports of goods are regulated by the Federal Ministry of Foreign Trade Decree No. 8/1991 of 5 January 1991, which changes and supplements the Decree No. 266/1990 on conditions for issuing official authorization to import and export goods and services.

In the case of imports official authorization for 1991 concerns only four items (crude oil; natural gas, including liquified gas; hunting and sporting weapons, and specific shooting facilities; ammunition and pyrotechnic products).

From the point of view of the nomenclature of licensed export items in 1991 licences apply to selected kinds of products, crop products, products of the food-processing industry and beverages, mineral raw materials and products, products of the chemical industry and of related industrial branches, including pharmaceutical products, raw hides and leather, wood and wood products, textile materials and textile products, precious metals, common metals and products made from common metals, weapons, ammunition and their parts.

The export of selected items is restricted by some customer countries on the basis of concluded bilateral agreements (Norway, the United States, Canada and EEC countries). Czechoslovak economic agents may export and import without any limitation other goods not listed in the annexed to the valid

Licences for goods listed in the annexes are not required for the export and import of trade samples, for the export and import of goods earmarked for trade fairs and product
displays, for the import and export of goods earmarked as sample products, earmarked for trials, for performing a profession, for loaning and for compensation for faulty goods.

Applications for granting licences must be made to the Federal Ministry of Foreign Trade. These requests are dealt with successively as they come in within a period of 20 days of their arrival.