INTERIM AGREEMENTS BETWEEN THE CZECH AND SLOVAK FEDERAL REPUBLIC
AND THE EUROPEAN COMMUNITIES, HUNGARY AND
THE EUROPEAN COMMUNITIES
AND POLAND AND THE EUROPEAN COMMUNITIES

Questions and Replies

Contracting parties were invited (GATT/AIR/3338) to communicate to the secretariat any questions they might wish to put concerning the Interim Agreements between the European Communities and the Czech and Slovak Federal Republic, Hungary and Poland. In response to this request, a number of questions were received and were transmitted to the Parties to the Agreements. The questions and the replies which have been received are set out below. The secretariat has consolidated the questions and answers for all three Agreements under same subject headings in order to permit the Working Party to discuss the Agreements in parallel and to avoid unnecessary triplication of some questions.

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2 Copies of the text of the Agreements were sent to each contracting party with document L/6992/Add.1.
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1. GENERAL

1.1 SEPARATE AGREEMENTS WITH THE SUCCESSOR STATES OF THE FORMER CZECH AND SLOVAK FEDERAL REPUBLIC

EC/CSFR Agreement

1.1.1 Question

What has become of the European Communities/Czech and Slovak Federal Republic (hereafter referred to as CSFR) Agreement after the separation of the CSFR?

1.1.1 Answer

Both the Czech Republic and the Slovak Republic have confirmed to the European Communities that:

- each of the two above republics continues to assume all the obligations deriving from all agreements between the CSFR and the Community;
- the trade concessions arising from the Interim Agreement will apply to the customs territory of the Slovak Republic and the Czech Republic;
- these concessions shall not be affected by the succession and arrangements between the Slovak Republic and the Czech Republic concerning management of trade flows.

The renegotiations with the aim of concluding two separate and identical Czech Republic/European Communities and Slovak Republic/European Communities European Agreements started on April 14 between the Czech Republic and the European Communities and on April 15 between the Slovak Republic and the European Communities. No trade-related elements of the present CSFR/European Communities agreement are expected to be affected by these negotiations.

1.1.2 Question

The division of the CSFR into the Czech Republic and the Slovak Republic has required modification of the European Communities/CSFR Association Agreement. In January 1993, both the Czech and Slovak Republics affirmed that each would be a successor state to the CSFR and would therefore assume for its respective territory all rights and obligations as a State Party to the Interim Agreement with the European Communities.

- Has the further evolution of Czech/Slovak relations caused any party to the Association Agreement to consider requesting substantive modifications to the original European Communities/CSFR Agreement? If so, what changes are contemplated (i.e., changes in aggregate - Czech and Slovak combined - quota levels, modifications to tariff reduction phasing, etc)?

1.1.2 Answer

See Answer 1.1.1.
1.2 RATIFICATION

EC/CSFR Agreement

1.2.1 Question

What steps remain to be taken to achieve ratification of the Agreements by "all national parliaments concerned" as described in L/6992? When do parties envision ratification by all taking place? Will such ratification be notified to the GATT?

1.2.1 Answer

The Interim Agreement (L/6992/Add.1) which contains the trade provisions of the Europe Agreement and is the subject of examination by the Working Party, has already entered into force.

EC/Hungary Agreement

1.2.2 Question

What steps remain to be taken to achieve ratification of the Agreements by "all national parliaments concerned" as described in L/6992? When do parties envision ratification by all taking place? Will such ratification be notified to the GATT?

1.2.2 Answer

The Interim Agreement (L/6992/Add.1) which contains the trade provisions of the Europe Agreement and which is the subject of the examination by the Working Party has already entered into force. It did not require parliamentary ratification either by Hungary or the European Communities.

EC/Poland Agreement

1.2.3 Question

What steps remain to be taken to achieve ratification of the Agreements by "all national parliaments concerned" as described in L/6992? When do parties envision ratification by all taking place? Will such ratification be notified to the GATT?

1.2.3 Answer

The Interim Agreements contain the trade provisions of the Europe Agreements and have been notified under L/6992/Add.1. They are the subject of the Article XXIV examination by the Working Party. For the European Communities they came into force by Council Decision of 25 February 1993. For Poland, the ratification has been done through the Proclamation of the President of 21 February 1992. On this legal basis the Government announced on 24 February 1992 the entry into force of the Agreement for Poland as of 1 March 1992 (c.f. Dziennick Ustaw (Journal of Laws), No. 17/1992).
EC/CSFR, EC/Hungary and EC/Poland Agreements

1.2.4 Question

Do the Interim Agreements, as notified in L/6992, not require ratification? On what authority have European Communities and the Czech Republic, Hungary, Poland and the Slovak Republic entered into/implemented the Interim Agreements?

1.2.4 Answer

The Interim Agreements do not, for the European Communities, require ratification in national parliaments. Implementation is based on the relevant provisions in the Treaty of Rome, in particular Article 113. Thus the Council has decided to approve the Agreements proposed by the Commission, having had regard to the opinion of the European Parliament. For the Czech Republic and the Slovak Republic see Answer 1.1.1. For Hungary, the Interim Agreement does not require ratification by the Parliament. For Poland, the Agreement has entered into force by virtue of a Proclamation of the President of the Republic of Poland issued on 21 February 1992. The Proclamation confirms that the Agreement is considered as accepted and ratified.

Article 46:1 of EC/CSFR Agreement, Article 45:1 of EC/Hungary Agreement and Article 46:1 of EC/Poland Agreement

1.2.5 Question

We understand that the full Europe Agreement was not ratified by all Parties prior to 31 December 1992. What measures were taken to extend the Interim Agreement? For what period of time was it extended? When do you anticipate complete ratification by all Parties?

1.2.5 Answer

The fixed end date of 31 December 1992 has been deleted by subsequent agreement between the Parties. The Interim Agreements will remain in force until ratification procedures of the European Agreements are completed.

1.2.6 Question

In the event that the Europe Agreement is not ratified by all concerned by 31 December 1992, what will be the status of these Interim Agreements?

1.2.6 Answer

See Answer 1.2.5.

EC/CSFR, EC/Hungary and EC/Poland Agreements

1.2.7 Question

Many of the articles of the Europe Agreements, not incorporated into the Interim Agreements, have significant potential to affect the movement of goods, services, capital and people across borders. Do provisions exist for the full Europe Agreements to come into force before ratification by all parliaments concerned? Will articles of Agreements not yet formally ratified be notified upon ratification? Will delayed ratification of the Agreements affect plans for implementation of other provisions?
1.2.7 Answer

No provision exists for the Europe Agreements to enter into force prior to ratification by all parties.

All Articles of the Europe Agreements between the Czech Republic, Hungary, Poland and the Slovak Republic and the European Communities which are relevant from the GATT point of view have been incorporated in the Interim Agreements. As regards Articles of the Interim Agreement which relate to areas not covered by GATT, these will be notified after ratification and when relevant future notification obligations will apply, e.g., under the Uruguay Round Agreements.
2. PROVISIONS OF THE INTERIM AGREEMENTS

2.1 PREAMBULAR PARAGRAPH

EC/CSFR, EC/Hungary, EC/Poland Agreements

2.1.1 Question

In the second preambular paragraph to the European Communities/CSFR Agreement reproduced in L/6992/Add.1, it is stated, inter alia, that the aim of the Europe Agreement is "to govern commercial and economic relations between the Parties". This language is identical to the analogous preambular paragraph in the European Communities/Poland Agreement. However, it is noted that only the European Communities/Hungary preamble makes direct reference to the establishment of a "gradual free-trade area between the Community and Hungary covering substantially all trade between them" as one of the stated aims of the Europe Agreement. Could the Parties to the Agreements please explain this discrepancy?

2.1.1 Answer

The three Agreements, although similar, have been negotiated independently. This explains differences in the texts. However, all three Agreements aim to establish gradually a free trade area between the signatories covering substantially all the trade between them (see Article 1.1 of the Agreements). Parties to the Agreements understand that the Working Party acts on the basis of standard terms of reference and that its purpose is to examine the Agreements on their own merits rather than by comparison to each other.

2.1.2 Question

What trade-related powers have been assigned to the "Association Council" referred to in the penultimate preambular paragraph in all three Agreements? Does the Joint Committee currently exercise any trade-related powers in addition to those mentioned in the Articles of the Interim Agreements? How is the Joint Committee currently constituted?

2.1.2 Answer

The Association Councils will have exactly the same trade-related powers under the future European Agreements as the Joint Committees under the Interim Agreements. The trade-related powers of the Joint Committees referred to in Title III of the Interim Agreements include the power to take decisions in the cases provided for, for example in Articles 22, 27, 33 and 39 of the CSFR Agreement, and to make recommendations. They shall meet once a year. The Commission of the European Communities, assisted by representatives of the member States, represents the Community in the Joint Committee, on the one hand, and representatives of each other Party to the Agreements make up the other delegation. Special sessions of the Committees may be held, if the Parties so agree, at the request of either Party. The first meetings of the Joint Committees were held in May and June 1992.
2.2 CUSTOMS DUTIES ON EC IMPORTS OF INDUSTRIAL PRODUCTS ORIGINATING IN THE CZECH REPUBLIC, HUNGARY, POLAND AND THE SLOVAK REPUBLIC

Article 3:1 to 3:3 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.2.1 Question

European Communities customs duties on specified industrial products will be progressively abolished, according to Article 3 of each Agreement, through the use of three mechanisms: (i) progressive reduction of customs duties in accordance with specified timetables; (ii) suspension of customs duties on imports within the limits of annual European Community tariff quotas or ceilings increasing progressively so as to arrive at a complete abolition of these customs duties after a fixed period, and (iii) progressive dismantlement of customs duties on imports applicable to import quantities in excess of the above-mentioned quotas or ceilings. What percentage of these tariff reductions, if any, were previously granted by virtue of the Agreements on Trade and Commercial and Economic Co-operation between the Parties?

2.2.1 Answer

The previous Agreements on Trade and Commercial and Economic co-operation were of a non-preferential character. No tariff reductions were implemented by virtue of the Agreements.

Article 3:2 of EC/CSFR and EC/Poland Agreements

2.2.2 Question

Article 3:2 of the European Communities/CSFR Agreement states that with regard to customs duties on imports, products originating in the CSFR listed in Annex II(a) will be progressively abolished in accordance with a set timetable: on the date of entry into force, each duty to be reduced by 50%; one year after the date of entry into force, elimination of remaining duties. Taking March 1, 1992 as the date of entry into force, the CSFR would presumably have until 1 March 1993 to abolish all remaining duties. However, the header to Annex II(a) states that remaining duties are to be abolished on "1.1.93". A similar discrepancy appears to exist in the case of the European Communities/Poland Agreement. Could the Parties to the Agreements please clarify their intentions in this regard?

2.2.2 Answer

There is no discrepancy. Under Article 50 of the Interim Agreements the date 1.1.1992 means the date of entry into force of the Agreements for covering dates and periods with respect to implementing obligations after 1.3.1992. Tariff reductions under Article 3.2 moreover concern the European Communities, rather than the Czech Republic and Slovak Republic or Poland.
2.3 EUROPEAN COMMUNITY QUANTITATIVE RESTRICTIONS AND MEASURES HAVING AN EQUIVALENT EFFECT ON IMPORTS OF INDUSTRIAL PRODUCTS ORIGINATING IN THE CZECH REPUBLIC, HUNGARY, POLAND AND THE SLOVAK REPUBLIC

Article 3:4 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.3.1 Question

Regarding Article 3:4, would the European Communities explain the specific content of "quantitative restrictions and measures having an equivalent effect to the quantitative restrictions on imports" of the products originating in the Czech Republic, Hungary, the Slovak Republic and Poland which shall be abolished by the European Communities. To which other countries and on which items have those measures been applied by the European Communities? If there are any such quantitative restrictions, are they also going to be abolished?

2.3.1 Answer

The obligation to abolish "quantitative restrictions and measures having an equivalent effect to quantitative restrictions on imports" into the Community is a wide-ranging one and implies the abolition of all laws and regulations which are capable of hindering, directly or indirectly, actually or potentially, imports from the Parties.

Article 3:4, together with Article 19:2, further has a generic nature and does not aim to refer to specific restrictions or measures. Rather its object is to ensure that the liberalization foreseen in the Agreements is not undermined by measures which de facto have an equivalent effect to quantitative restrictions.

2.4 CUSTOMS DUTIES ON IMPORTS APPLICABLE IN CZECH REPUBLIC, HUNGARY, POLAND AND SLOVAK REPUBLIC ORIGINATING IN THE EUROPEAN COMMUNITIES

Article 4 of EC/CSFR Agreement

2.4.1 Question

Article 4 specifies that customs duties on imports of products into the CSFR will be abolished according to the arrangements set out in Annexes IV, V, VI and VII. Do these annexes together cover all industrial products, or are there some products for which customs duties will not be abolished? If so, what proportion of CSFR imports of industrial products from the Community will continue to be subject to customs duties after the conclusion of the transitional period?

2.4.1 Answer

The Annexes together cover all industrial products, with the exception of those which enjoyed zero-duty MFN rate before the date of entry into force of the European Communities/CSFR Interim Agreement. Thus all duties and restrictions on imports of industrial products will be eliminated within the transitional period.

2.4.2 Question

Did the CSFR raise its tariff rates on any items during the period between the day the formal negotiations on this Agreement started and the day when this Agreement entered into force? If there
are any. please provide a list of these items. Also, please indicate when each modification was made and what percentage each modification was.

2.4.2 Answer

As is well known the CONTRACTING PARTIES on 4 December 1991 granted the CSFR an Article XXV waiver regarding a part of its tariff bindings until 31 December 1992. The object of the waiver was to enable the Government of the CSFR to implement, on 1 January 1992, certain changes in its customs tariff and to subsequently negotiate these changes under Article XXVIII. Lists of items subject to the waiver were notified to the contracting parties (document L/6911/Add. 1 dated 19 November 1991). In this context, it is worth mentioning that as from the same date other bound tariff rates were reduced (document L/6911/Add. 12 dated 2 December 1991).

The above mentioned negotiations were completed in November 1992, the conditions of the waiver thus being fully respected. The contracting parties have been informed of the results in accordance with established procedures (document Secret/338 and its Add. 1 and 2 dated 26 November 1992).

Article 4 of EC/Hungary Agreement

2.4.3 Question

Did Hungary raise its tariff rates on any items during the period between the day when formal negotiations on this Agreement started and the day when this Agreement entered into force? If there are any, please provide a list of these items. Also, please indicate when each modification was made and what percentage each modification was.

2.4.3 Answer

Tariff rates in Hungary were raised in the course of 1991 for the following 9 digit HS items:

- 2922.41-008 from 7.7 to 15 per cent (*),
- 3823.90-052 from 0 to 10 per cent (*),
- 8528.10-994 from 15 to 25 per cent (*),
- 8704.10-015 from 10 to 18 per cent,
- 8704.10-990 from 10 to 25 per cent,
- 8704.21-019 from 10 to 18 per cent,
- 8704.21-996 from 10 to 25 per cent.

In the case of bound rates (marked with an asterisk) the necessary procedures under Article XXVIII of the GATT have taken place between Hungary and the interested contracting parties prior to the introduction of the measure. During the period in question, Hungary also implemented MFN duty reductions covering more than 600 tariff lines.

Article 4 of EC/Poland Agreement

2.4.5 Question

Did Poland raise its tariff rates on any items during the period between the day when the formal negotiations on this Agreement started and the day when this Agreement entered into force? If there are any, please provide a list of these items. Also, please indicate when each modification was made and what percentage each modification was.
2.4.5 Answer


On 23 July 1991 a new customs tariff was introduced in Poland and the duty on most items was increased. On 12 December 1991 the rates on CN 0902 30 00, 87 01, 87 02, 87 03, 87 04, 87 05, 87 06, 87 07 were increased. Simultaneously, a minimum duty collection on CN 24 20 00, 87 02 - 87 06, of US$1,500 (but US$3,000 if more than 4 years old) and 87 07 of US$1,000 was established.

In this context Poland would like to reiterate its opinion that the increase of those unbound duties had no relation to the free trade area agreement under negotiation with the European Communities, but was called for after the radical overhaul to a market economy as a result of which tariffs are now the primary instrument of protection for the domestic industry. There was no further increase of duties from that date. Moreover, for some items the collection of duties was suspended and some tariff quotas were established.

2.4.6 Question

Poland raised the tariff rates of motor-vehicles two months before its Agreement with the European Communities took effect, and introduced duty-free tariff quotas exclusively for the motor-vehicles from the European Communities as stipulated in Article 4.2 of the Agreement. Would Poland provide an explanation of the consistency of this measure with the GATT provisions, especially Article XXIV:4.

2.4.6 Answer

The increase in the unbound tariffs on motor vehicles by Poland has no relation to the objective of negotiating a free trade agreement between Poland and the European Communities.

The General Agreement further does not exclude the application of a duty free tariff quota as a means of gradual liberalization in the respective schedules establishing a free trade area.

EC/CSFR Agreement

2.4.7 Question

When will the Czech Republic and the Slovak Republic fully adopt/have they already adopted Combined Nomenclature (CN)? Do the Czech Republic and the Slovak Republic plan to adopt CN in its exact form as their national tariff classification system?

2.4.7 Answer

The Czech Republic and the Slovak Republic have adopted the combined Nomenclature and apply it as a national tariff classification.
EC/Hungary Agreement

2.4.8 Question

When will Hungary fully adopt/have they already adopted Combined Nomenclature (CN)? Does Hungary plan to adopt CN in its exact form as their national tariff classification system? If so, when?

2.4.8 Answer

It is expected that the Combined Nomenclature will be adopted within five years.

EC/Poland Agreement

2.4.9 Question

During Poland’s Trade Policy Review Mechanism (TPRM) discussions in January 1993, Poland claimed to have adopted the European Communities’s Combined Nomenclature (CN) in its exact form. In many instances, however, the Polish tariff classification system diverges significantly from the CN in several areas (e.g. CN8542.11). Does Poland plan to adopt the CN in its exact form as its national tariff classification system? If so, when?

2.4.9 Answer

Poland has based its national tariff classification system on the CN nomenclature in its exact form. Recently, the level of disaggregate has been upgraded to nine digits, and in this respect it may differ from the CN system as applied in some other countries. Otherwise, no divergences are intended or practised.

2.5 QUANTITATIVE RESTRICTIONS APPLIED BY THE CZECH REPUBLIC, HUNGARY, POLAND AND THE SLOVAK REPUBLIC ON IMPORTS ORIGINATING IN THE EUROPEAN COMMUNITIES

Article 4:5 of EC/CSFR Agreement

2.5.1 Question

Regarding Article 4:5, would the Parties explain the specific content of quantitative restrictions and measures having an equivalent effect to quantitative restrictions on imports of the products originating in the European Communities which shall be abolished by the CSFR. To which other countries and on which items have those measures been applied? If there are any such quantitative restrictions, are they also going to be abolished?

2.5.1 Answer

Article 4:5 of the European Communities/CSFR Agreement relates only to quantitative restrictions (see Answer 2.5.2). Measures having an effect equivalent to quantitative restrictions on imports from the European Communities into the Czech Republic and Slovak Republic are covered by Article 4:6. This Article, together with Article 19:2 has a generic nature and aims to ensure that the liberalization foreseen in the Agreements is not undermined by measures which de facto have an equivalent effect.
to quantitative restrictions. Moreover, the Czech Republic and the Slovak Republic do not maintain such restrictions.

2.5.2 Question

Under Article 4:5, quantitative restrictions on imports into the CSFR of industrial products from the Community listed in Annex VIII will be progressively abolished by the end of the transitional period. Is there a plan and schedule for the liberalization and elimination of these quantitative restrictions?

2.5.2 Answer

The scope of Annex VIII is very limited, only 4 product headings are included, covering uranium and two waste products. Restrictions will be progressively abolished by the end of the transitional period. A schedule for the removal of these restrictions is not available yet but will be discussed at a later stage so as to comply with the objective of eliminating them by the end of the transitional period.

Article 4:4 of EC/Hungary Agreement

2.5.3 Question

What quantitative restrictions currently are in effect between the European Communities and Hungary? Which of these will not be abolished as the result of this agreement?

2.5.3 Answer

Hungary maintains quantitative restrictions and other measures having equivalent effect on goods listed in Annex VIa or falling under Protocol 1 to the Agreement. All these restrictions shall be abolished by the end of the transitional period. Annex IXa and IXb contain those agricultural products originating in the Community for which quantitative restrictions have already - totally or partially - been eliminated. Hungary also declared its intention to increase on a regular basis, after consultation with the Community, the number of products included in the list in Annex IXa. For quantitative arrangements maintained by the Community, see Answer 2.10.1.

2.5.4 Question

Regarding Article 4.4, could Hungary explain the specific content of quantitative restrictions and measures having an equivalent effect to quantitative restrictions on imports of the products originating in the European Communities which shall be abolished by Hungary. To which other countries and on which items have those measures been applied? If there are any such quantitative restrictions, are they also going to be abolished?

2.5.4 Answer

Annex VI(a) of the European Communities/Hungary Agreement contains the list of products subject to the provisions of Article 4:4. Restrictions on these products, as well as those falling within the scope of Protocol 1 and Chapter 2 of Protocol 2 shall be progressively abolished by 31 December 2000 at the latest. The restrictions in question are applied by means of (1) the global quota on consumer goods and (2) the import licensing requirement imposed on certain other products. These measures have already been in effect before Hungary’s accession to the GATT and are applied to all countries. Hungary intends to continue eliminating these restrictions in a non-discriminatory manner. Apart from these specifics the wording of Article 4:4 is of a generic nature and aims to ensure that the liberalization
foreseen in the Agreement is not undermined by measures which in fact have an effect equivalent to quantitative restrictions.

2.5.5 Question

Article 4.4 provides that "Hungary shall open import ceilings for products originating in the Community listed in Annex VI(b) and on the conditions contained therein". What is meant by "open import ceilings"? Is this measure taken by Hungary applied to the products originating in the third countries as well? If the "import ceilings" mean to restrict the flow of any source, how do you explain the consistency of the measure with the GATT provisions, especially Article XI? If this measure discriminates the import of the third countries vis-à-vis the import from the European Community, how does Hungary explain the consistency with the GATT provisions, especially with Article XIII?

2.5.5 Answer

Annex VI(a) contains a list of industrial products for which Hungary maintains import restrictions, in the form of licensing. For some of these, listed in Annex VI(b), import ceilings have been opened for products originating in the Community, ensuring that licenses will be customarily delivered up to the quantities fixed. These quantities are to be increased by 10 per cent annually (7 per cent for passenger cars) until the restrictions regarding the products concerned are eliminated.

As regards consistency with Article XI of GATT, these measures, i.e., those consisting of opening import ceilings, do not constitute new restrictions, but provide, compared to the past situation, additional import possibilities for products originating in the Community. Remaining restrictions are to be abolished by Hungary by 31 December 2000.

The provisions of Article 4.4 and Annex VI(b) do not establish any discrimination between GATT contracting parties not party to the Interim Agreement. However, please note that it is the intention of the Hungarian government to also phase out the restrictions in question towards third countries in a non-discriminatory manner by the end of 2000 (see under Answer 2.5.4).

2.5.6 Question

Will the import ceilings for Community products entering Hungary specified in Annex VI(b) be eliminated by the end of the transition period?

2.5.6 Answer

The Hungarian Government shall lift all restrictions covered by Annex VI(b) by 31 December 2000.

2.5.7 Question

Does Hungary plan to continue to liberalize its import licensing regime on an MFN basis or only with respect to imports from the European Communities.

2.5.7 Answer

See Answer under 2.5.4 and 2.5.5.
2.5.8 Question

Why is it only in the case of Hungary that the Joint Committee will periodically review the progressive dismantling of quantitative restrictions on imports into that country?

2.5.8 Answer

The Agreements have been negotiated separately and should be assessed in their own context, rather than by comparison to each other.

*Article 4.2 of EC/Poland Agreement and Article 4.4 of EC/Hungary Agreement*

2.5.9 Question

With reference to Article 4:2 and Annex IV(b) of the European Communities/Poland Agreement, and Article 4:4 and Annex VI(b) of the European Communities/Hungary Agreement, please explain the need for the restrictions on the importation into Poland and Hungary respectively of the specified products from the European Communities. Also, please provide figures on the amount of trade in these products that currently exists, and the amount that is likely to be constrained by the above-mentioned provisions.

2.5.9 Answer

Restrictions maintained by Poland on imports of products originating in the Community are listed in Annex V, and not Annex IV(b). They concern a limited number of particular products (cars of 10 years or older, vehicles for the transport of goods of 6 years or older, two-stroke engines and some petroleum oils and gases) and shall be abolished during the transitional period. Annex IV(b) of the European Communities/Poland Agreement does not establish any restrictions on imports into Poland. On the contrary it provides for a tariff concession. Liberalization is to be achieved by a gradual increase of a tariff-free quota and a parallel reduction of duties applied on imports exceeding the tariff quota.

As regards the products of Annex VI(b) of the European Communities/Hungary agreement, restrictions are indeed maintained on a number of products, but these have been established taking into account the trend of imports from the European Communities in previous years and an annual increase of 10 per cent of applied ceilings is foreseen, except for passenger cars, where the rate of increase is 7 per cent. The Hungarian Government shall lift all restrictions covered by Annex VI(b) by 31 December 2000.

The overall value of the ceilings remains below 5 per cent of total Hungarian imports from the Community in 1991. It may also be noted that in 1992 Hungary abolished on an *erga omnes* basis all quantitative restrictions, including the USS30 million import ceiling specified in Annex VI(b), on imports of furniture. See under Answer 2.5.4 and 2.5.5.

*EC/Poland Agreement*

2.5.10 Question

What quantitative restrictions currently are in effect between the European Communities and Poland? Which of these will not be abolished as the result of this agreement?
2.5.10 Answer

Poland now maintains import prohibitions on undenatured ethyl alcohol of at least 80 per cent alcoholic strength (CN 2207.10), and on unflavoured vodkas (ex 2208.90). Other import prohibitions cover the following products: two-stroke engines for automobiles and automobiles with such engines (ex. 8407); automobiles and bodies thereof 10 years old or older (ex. 8703); motor vehicles for transportation of goods and bodies thereof 6 years old or older (ex. 8704).

Import quotas are maintained on: ethyl alcohol and other spirits denatured of any strength (2207.20), compound alcoholic preparations (2208.10), cognacs and brandies (2208.20), whiskies (2208.30), rum and tafia (2208.40), gin and geneva (2208.50), liqueurs and on certain other beverages; cigars, cheroots and cigarillos and cigarettes of tobacco and tobacco substitutes (2402.10, 2402.20, 2402.30); petroleum oils and oils obtained from bituminous minerals, other than crude (2710).

All these restrictions are administered erga omnes. Prohibitions on alcohols, as listed, will be terminated before the end of the first five-year period after the Agreement has come into force, while the prohibitions on automotive equipment will be lifted at the end of the tenth year. Other restrictions indicated above are not within the purview of the Agreement. All quantitative restrictions maintained by Poland, as well as other non-tariff import measures have been notified in the GATT and are to be found in MTN/W/6/Rev.5/Add.7 dated 27 May 1993.

For quantitative arrangements maintained by the Community, see Answer 2.3.1

Article 4.4 of EC/Poland Agreement

2.5.11 Question

Regarding Article 4.4, would Poland explain the specific content of quantitative restrictions and measures having an equivalent effect to quantitative restrictions on imports of the products originating in the European Community which shall be abolished by Poland. To which countries and on which items have those measures been applied? If there are any such quantitative restrictions, are they also going to be abolished?

2.5.11 Answer

Poland does not maintain at present any quantitative restrictions on imports from third countries, different from those which are applied to the European Communities. These restrictions have been notified to the GATT and notification will continue to be updated as appropriate. As regards the specific context of the term quantitative restrictions and measures of equivalent effect, see under Answer 2.3.1.

2.5.12 Question

Annex V of the European Communities/Poland Agreement indicates that removal of Polish prohibitions on imports of motor vehicles will occur relatively slowly (with full elimination achieved only by the year 2002). It is further understood from another source that this progressive dismantling of tariffs will be accompanied by duty free entry within a set quota for a limited volume of European Communities manufactured cars, but that this policy has given rise to controversy since the European Communities beneficiaries have so far been limited to the three main producers which have agreed to set up automotive plants in Poland - Fiat, Volkswagen, and GM Europe. Can the Parties concerned comment on this situation?
2.5.12 Answer

Annexes IV(b) and V provide for the removal of restrictions by the end of the transitional period of ten years. This conforms fully with the criterion of "a reasonable length of time" stipulated in Article XXIV. As regards the duty free tariff quota applicable to the importation of passenger cars from the European Communities (30,000 units to be annually increased by 5 per cent/10 per cent), this is applied on the basis of "first come, first served".

2.5.13 Question

The implementation of auto quotas was left unsettled due to European Communities member states' disputes over allocation of the quotas. Please provide the new language negotiated for these quotas and a description of how the quotas will be allocated.

2.5.13 Answer

See reply under 2.5.12.

2.6 CUSTOMS DUTIES OF A FISCAL NATURE

Article 5 of EC/CSFR Agreement

2.6.1 Question

Does Article 5 prohibit the Czech Republic and the Slovak Republic from imposing (in coordination with the IMF) a customs surcharge on European Communities imports to raise revenue?

2.6.1 Answer

No. Balance-of-payments measures are dealt with under Article 34 which provides that any measure may only be taken in accordance with the conditions established under the GATT.

2.6.2 Question

The Czech Republic and the Slovak Republic introduced a completely revised taxation structure in January 1993. Will any of these new taxes treat imported goods and services differently from domestic goods and services? Will any taxes levied differentially upon imports apply equally to EC-origin and non-EC-origin products? Have the Czech and Slovak Republics adopted in whole or in modified form the tax policies of the federation following the breakup of the CSFR?

2.6.2 Answer

The taxation systems of the Czech Republic and the Slovak Republic comply with GATT obligations, in particular those of Article III.

Article 5 of EC/Hungary Agreement

2.6.3 Question

Article 5 of the CSFR Agreement may prohibit the Czech Republic and the Slovak Republic from imposing (in co-ordination with the IMF) a customs surcharge on European Communities imports
to raise revenue. Are there similar provisions in the agreement with Hungary? If so, is Hungary prohibited from imposing such a surcharge?

2.6.3 Answer

Articles 5 in European Communities/CSFR and European Communities/Hungary Agreements are identical. Article 5 is unrelated to IMF issues such as balance-of-payments measures. Article 5 ensures that the provisions of the abolition of duties apply to any duty irrespective of its economic objective (whether protective or fiscal).

Derogation from the obligation to abolish all duties for measures taken for balance-of-payments reasons is provided for by Article 33, which refers to the conditions established under the GATT.

*Article 5 of EC/Poland Agreement*

2.6.4 Question

Article 5 of the European Communities/CSFR Agreement may prohibit the Czech and Slovak Republics from imposing (in co-ordination with the IMF) a customs surcharge on European Communities imports to raise revenue. Are there similar provisions in the agreement with Poland? If so, is Poland prohibited from imposing such a surcharge?

2.6.4 Answer

The Agreement does not prohibit Poland from imposing a customs surcharge on imports from the European Communities as has actually been done. Regarding the European Communities/Poland Agreement, measures taken for balance of payments reasons must comply with Article 34, which refers to the conditions established under the GATT.

2.7 CHARGES HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES ON IMPORTS

*Article 6 of EC/CSFR Agreement*

2.7.1 Question

Regarding Article 6, would Parties explain the specific nature and scope of "charges having equivalent effect to customs duties on imports".

2.7.1 Answer

As with quantitative restrictions and measures of equivalent effect, the provisions on customs duties and charges having equivalent effect have been drafted in this manner to make clear that they apply not only to customs duties but to all charges having an equivalent effect, in fact. The obligation to abolish "charges having an equivalent effect" aims to encompass any charge which, whatever its name or structure, is imposed on a good in connection with its importation. Charges imposed in order to provide for costs of services rendered are (as under Article VIII) excepted from the abolition obligation of Article 6.
2.7.2 Question

Article 6 states that "The Community and the CSFR shall abolish upon entry into force of this Agreement in trade between themselves, any charges having an effect equivalent to customs duties on imports". Does the surcharge currently imposed by the Czech Republic and the Slovak Republic on certain categories of imports currently apply to imports from the European Communities, as well as to those from third countries? How much longer does the Czech Republic and the Slovak Republic intend to maintain this surcharge for the European Communities? For MFN trading partners?

2.7.2 Answer

See Answer 2.5.1.

Article 6 of EC/Hungary Agreement

2.7.3 Question

Regarding Article 6, would Parties explain the specific nature and scope of "charges having equivalent effect to customs duties on imports".

2.7.3 Answer

The "charges having an equivalent effect to customs duties" applied by Hungary are listed in Article 6. The licensing fee is levied on the products subject to licensing, the two other fees are applicable to all products. See further answer under 2.7.1.

2.7.4 Question

Article 6 provides that Hungary shall abolish, in accordance with a certain timetable, on its imports from the Community charges having an effect equivalent to customs duties on imports. Is this measure taken by Hungary applied to the third countries as well?

2.7.4 Answer

The fees referred to under Answer 2.7.3 are applied and will be eliminated on an erga omnes basis.

2.7.5 Question

In Article 6, Hungary commits to eliminate by 1997 three separate fees on imports with a total value of 6 per cent ad valorem. Will Hungary continue to maintain these fees on its MFN trade? Does Hungary have plans to eliminate these fees on its MFN trade? If not, would Hungary describe in more detail how the ad valorem fees are related to the cost of the service they pay for? Does Hungary plan any changes in the structure of these fees to meet the provisions of Article VIII of the GATT?

2.7.5 Answer

See answer under 2.7.4.
2.7.6 Question

Will the Hungarian 2 per cent customs clearance fee, 3 per cent statistical fee, and value added tax continue to apply to imports from the European Communities?

2.7.6 Answer

See answer under 2.7.3 and 2.7.4.

Article 6 of EC/Poland Agreement

2.7.7 Question

Regarding Article 6, would Parties explain the specific nature and scope of "charges having equivalent effect to customs duties on imports".

2.7.7 Answer

See answer under 2.7.1.

2.7.8 Question

Does Article 6 apply to Poland’s turnover tax on imports (in particular, the turnover tax on tobacco products and alcohol) which is levied in discriminatory fashion for foreign and domestic products?

2.7.8 Answer

Article 6 refers to the abolition of border charges having effects equivalent to those of customs duties. It does not apply to taxes, whether collected at the border or otherwise, if such taxes are levied on imported and domestic products. As of 5 July 1993 the turnover tax has been replaced by a TVA tax. The rates for products indicated in this question are the same for domestic and imported items.

2.8 CUSTOMS DUTIES ON EXPORTS AND CHARGES HAVING EQUIVALENT EFFECT

Article 7 of EC/CSFR Agreement

2.8.1 Question

Regarding Article 7, on which items and to what countries are such measures on exports as quantitative restrictions, customs duties and charges having equivalent effect applied?

2.8.1 Answer

The Czech Republic and the Slovak Republic do not apply any duty or charge of equivalent effect referred to in Article 7. They apply export licensing on the products listed in Annex IX. These will be abolished by the end of the fifth year after entry into force of the Agreement.

Regarding this question, it is to be noted that Article 7 has not been drafted to tackle specific measures on specific products; it is of a generic nature, (in the same way for example as GATT Article II requires that imports be exempt from customs duties in excess of those set forth in schedules).
2.8.2 Question

Regarding Article 7, on which items and to what countries are such measures on exports as quantitative restrictions, customs duties and charges having an equivalent effect apply?

2.8.2 Answer

As far as exports from Hungary are concerned, no duties referred to in Article 7 exist. Export restrictions applied by Hungary have been described in GATT documents C/RW/11A, paragraphs 315 to 324 and 327. See further answer under 2.8.1, paragraph 2.

2.8.3 Question

Regarding Article 7, on which items and to what countries are the measures on exports quantitative restrictions, customs duties and charges having equivalent effect apply?

2.8.3 Answer

Article 7 refers to Annex VI wherein Poland indicates products with export quantitative restrictions which will be eliminated by the end of the fifth year from the entry into force of the Interim Agreement. The items in question are HS 2701 (coal), HS 2704 00 (coke), HS 2710 (petroleum oils). See further answer under 2.8.1, paragraph 2.

2.8.4 Question

Article 7 (including Annex VI) abolishes quantitative restrictions on exports and measures having equivalent effect. Does this Article apply to goods which Polish law allows to be restricted for, e.g., national security reasons?

2.8.4 Answer

Restrictions applied for reasons of national security are legitimate if they comply with the requirements of Article 29.

2.9 ACCELERATED TRADE LIBERALIZATION IN INDUSTRIAL PRODUCTS

2.9.1 Question

In Article 8, Parties declare their readiness to accelerate trade liberalizations. Have Parties made plans to do so? If so, when do they anticipate implementing the accelerated liberalization?
2.9.1 Answer

No specific measures have yet been taken under Article 8. If such measures were to be taken, the execution of implementation would take place ahead of the schedule foreseen in Articles 3 and 4.

*Article 8 of EC/Hungary Agreement*

2.9.2 Question

In Article 8, Parties declare their readiness to accelerate trade liberalizations. Have Parties made plans to do so? If so, when do you anticipate implementing the accelerated liberalization?

2.9.2 Answer

No specific measures have yet been taken under Article 8. If such measures were to be taken, which the general economic situation of Parties and the situation of specific economic sectors would have to permit, the execution of implementation would take place ahead of the schedule foreseen in Articles 3 and 4.

*Article 8 of EC/Poland Agreement*

2.9.3 Question

In Article 8, Parties declare their readiness to accelerate trade liberalizations. Have Parties made plans to do so? If so, what do you anticipate implementing the accelerated liberalization, and for which items?

2.9.3 Answer

No specific measures have yet been taken under Article 8. If such measures were to be taken, the execution of implementation would take place ahead of the schedule foreseen in Articles 3 and 4.

2.10 TEXTILE PRODUCTS

*Article 9 of EC/CSFR Agreement*

2.10.1 Question

Under Protocol No.1, quantitative arrangements under the Multifibre Arrangement will continue to apply to trade between the European Community and the CSFR. Can the Parties confirm that, under Article 3 of Protocol No.1, the restrictive arrangements under the MFA will be terminated by the end of the transition period?

2.10.1 Answer

The Parties confirm that restrictive arrangements under the MFA will be terminated in accordance with the additional protocols to the Interim Agreements on quantitative arrangements for textile products initialled in December 1992 and applied as of 1 January 1993. These protocols foresee the elimination
of restrictions within a maximum period of five years. A provision has also been included for splitting
the quotas between the two new Republics in the event that that should be necessary.

*Article 9 of EC/Hungary Agreement*

2.10.2 Question

Under Protocol No.1, quantitative arrangements under the Multifibre Arrangement will continue
to apply to trade between the European Community and Hungary. Can the Parties confirm that, under
Article 3 of Protocol No.1, the restrictive arrangements under the MFA will be terminated by the end
of the transition period?

2.10.2 Answer

Idem as Answer 2.10.1 (save the last sentence).

*Article 9 of EC/Poland Agreement*

2.10.3 Question

Under Protocol No.1, quantitative arrangements under the Multifibre Arrangement will continue
to apply to trade between the European Community and Poland. Can the Parties confirm that, under
Article 3 of Protocol No.1, the restrictive arrangements under the MFA will be terminated by the end
of the transition period?

2.10.3 Answer

Idem as Answer 2.10.1 (save the last sentence).

*Article 9 of EC/CSFR, EC/Hungary and EC/Poland Agreements*

2.10.4 Question

Protocol 1. Article 3.2 states that the Parties will negotiate a new Protocol on quantitative
arrangements for textiles as soon as the Uruguay Round negotiations have concluded on a new textile
regime. The quantitative restrictions (QRs) are to be eliminated in half the period decided by the Round,
but not later than five years starting on 1 January 1993. The Uruguay Round has not yet concluded.
Have the Parties begun negotiating a new protocol? Did the elimination of QRs begin as scheduled
on 1 January 1993? will reductions be completed as anticipated by 1 January 1998?

2.10.4 Answer

See Answer under 2.10.1.
2.11 RETENTION OF AGRICULTURAL COMPONENTS IN DUTIES

Article 11 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.11.1 Question

Regarding Article 11, would the Parties please explain the specific nature and scope of "agricultural component".

2.11.1 Answer

The agricultural component referred to in Article 11 is the same as the agricultural component mentioned in Article 2 of Protocol no. 3 of the Agreements.

This agricultural component may be retained as part of the duty applicable on the processed products listed in Annex VII. (Annex X for the European Communities/CSFR Agreement). It may be modified into a tariff equivalent within the context of comprehensive tariffication currently foreseen in the Uruguay Round negotiations.

2.12 FREE MOVEMENT OF AGRICULTURAL PRODUCTS

EC/CSFR Agreement

2.12.1 Question

What quantitative restrictions currently are in effect between the European Communities and the Czech Republic and the Slovak Republic? Which of these will not be abolished as the result of this agreement? Which quantitative restrictions will the Czech Republic and the Slovak Republic be required to abolish under Article 14.3 (or Annex XII) of the Association Agreement, given the recent conversation of all such restrictions to higher tariffs?

2.12.1 Answer

The quantitative restrictions referred to in Article 14.3 and Annex XII have been abolished upon entry into force of the Agreement. See also replies 2.5.2 and 2.8.1. For quantitative arrangements maintained by the Community, see Answer 2.10.1.

EC/Hungary Agreement

2.12.2 Question

Annex Xlb lists Hungarian QRs to be eliminated for European Community-origin goods. Are quotas for all these products in force for Hungary's MFN imports? If so, how will the quota allocation process be affected? Does Hungary plan to eliminate these quotas on an MFN basis? If so, by when?

2.12.2 Answer

Annex Xlb does not concern quantitative restrictions. It provides for duty reductions for up to 240 tonnes of soya bean oil and unlimited quantities of olive oil imported by Hungary from the Community.
Article 14 of EC/CSFR and EC/Poland Agreements

2.12.3 Question

Should Article 14 be construed that the European Communities will not abolish all the customs duties on agricultural products in its trade relations with the Czech Republic, Poland and the Slovak Republic?

2.12.3 Answer

Article 14 may be construed in that manner, although paragraph 5 does provide for a regular examination of the possibilities of granting each other further concessions.

Article 14 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.12.4 Question

Article 14 and its related Annexes provide a number of special arrangements in relation to agriculture. What proportion of trade in agriculture between the Community and the Czech Republic, Hungary, Poland and the Slovak Republic will be free of tariffs, levies and quantitative restrictions by the end of the transition period?

2.12.4 Answer

It is not possible to calculate at this time what proportion of agricultural trade will be free of all restrictions at the end of the transitional period. See further under Answer 2.12.6.

2.12.5 Question

Can the Parties confirm that the reduced levy quotas provided for in Annex XI. and the other concessions listed in Annexes XII. XIII and XIV of the European Communities/CSFR Agreement, Annexes VIII. IX. X and XI of European Communities/Hungary Agreement and Annexes VIII. IX. X and XI of European Communities/Poland Agreement, will not affect the access to Community and the Czech Republic, Hungary, Poland and the Slovak Republics' markets under similar quota arrangements currently available to third countries?

2.12.5 Answer

The objective of reduced levy quotas is to facilitate trade between the constituent territories. At the same time Article XXIV:4 stipulates that any such agreement should not "raise barriers to the trade of other contracting parties". The Interim Agreements comply with this provision.

2.12.6 Question

Why does Article 14 not contain a schedule to achieve free trade in agriculture within a reasonable time? Will substantial barriers to trade between the Parties remain at the end of the transition period? Can the Parties comment on how the agriculture provisions are compatible with the requirement of Article XXIV:8(b) that duties and other regulations of commerce be eliminated on substantially all the trade between the Parties?
2.12.6 Answer

It is correct that Article 14 does not contain a schedule for free trade in agriculture. However, specific concessions are given on a range of products and free trade is provided for on a number of items. Furthermore, para 5 does provide for a regular examination of the possibilities of granting each other further concessions. In this respect this Agreement follows the approach of earlier free trade area agreements, like, for example, the European Communities-EFTA country ones, which were discussed in the GATT in the past.

With regard to the criterion of Article XXIV:8(b), that "duties and other regulations of commerce be eliminated on substantially all the trade between the parties", it should be noted that this has never been defined, although a quantitative definition for the term "substantially all" has been proposed in the past. The reason for this is that it was considered inappropriate to fix a general quantitative figure as members felt that each customs union or free trade area should be considered in its particular context.

As to the compatibility with Article XXIV:8(b) of GATT, this should be assessed in the light of the entirety of the Agreements and not only in the context of one or more parts of them. Indeed, the "substantially all the trade" condition that Article XXIV:8(b) establishes with regard to a free-trade area is a notion to be applied to the totality of the trade between the constituent territories and not separately to trade in individual sectors or products. In any case, this notion means less than all trade and therefore does not require that trade in any specific sector between the parties to a free-trade area be totally liberalized. Thus the Parties' firm opinion is that the three Interim agreements are consistent with the provision of Article XXIV:8(b).

2.12.7 Question

Please provide the view of the Czech Republic, Hungary, the Slovak Republic and Poland on the consistency of Article 14 of this Agreement with Article XXIV:8(b) of the GATT.

2.12.7 Answer

See Answer under 2.12.6.

Article 14.2 of EC/CSFR, EC/Hungary, EC/Poland Agreements

2.12.8 Question

Regarding Article 14.2, would the Parties please explain the specific nature and scope of "levies".

2.12.8 Answer

The "levies" referred to in this Article are not specific to this Agreement. these are general Community levies.

Article 14.5 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.12.9 Question

Article 14.5 of the Agreements states that "taking account of the volume of trade in agricultural products between them", and, *inter alia*, of the "consequences of the multilateral trade negotiations under the General Agreement on Tariffs and Trade", the Community shall examine with each of the Parties on a regular basis. in the Joint Committee, product by product and on an orderly and reciprocal
basis the possibilities of granting each other further concessions. Could the Parties please comment on the status of this undertaking and what results may have been achieved to date in this regard?

2.12.9 Answer

To date no specific results have been achieved in this regard. Nevertheless, the Joint Committees have met and will continue to examine, as provided for in Article 14:5, to what extent further concessions can be agreed on a bilateral basis.

Article 14:5 of EC/CSFR, EC/Hungary Agreements

2.12.10 Question

In Article 14.5, Parties raise the possibility of granting each other further concessions in agriculture. Has consideration been given to further concessions to date? If so, what liberalizations are planned? Under what time frame will they be implemented?

2.12.10 Answer

See Answer under 2.12.9.

EC/Poland Agreement

2.12.11 Question

Article 14 seems to imply that agricultural concessions are limited ("with the possibility of further concessions.") What is implied by the statement that "special attention" will be given to agricultural goods produced by "natural techniques"?

2.12.11 Answer

In the context of the regular examination by the Joint Committee, of the possibilities of granting each other further concessions. Article 14:5 provides that special attention be given to agricultural production based on natural techniques, i.e., by means of extensive rather than intensive farming. Poland has a substantial acreage of rural areas suitable for "ecological agriculture".

2.12.12 Question

Does Poland plan to phase out on an MFN basis the current quantitative restrictions on agricultural imports -- specifically, Poland's bans and quotas for certain high proof alcoholic beverages and tobacco products and licensing requirements for dairy products, wine, beer, and low proof alcoholic beverages? If so, what is the schedule for phasing out these restrictions?

2.12.12 Answer

Restrictions presently maintained by Poland on certain high proof alcoholic beverages will be lifted on trade with the Communities before the end of the fifth year after the Agreement has entered into force (see also Answer 2.5.10 above). No specific decisions have been taken as regards other agricultural products referred to in this question. If and when such decisions are made, they will be implemented on an MFN basis.
Article 15 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.12.13 Question

Let us presume that trade in a certain agricultural product or products between the European Communities and a Party to an Agreement resulted in the kind of "serious disturbance to the markets in the other Party" of the kind envisaged by Article 15, and that the affected Party took measures it deemed necessary pending a resolution of the matter. Could the Parties comment on what kind of measure might be envisaged here? How would trade with third countries in the affected product be treated? How would agricultural trade with Poland and Hungary be treated if, for example, the European Communities imposed measures it deemed necessary resulting from concessions granted to the CSFR? Can the Parties to the Agreement provide their assurance that this mechanism would not be used to the detriment of third party supplier interests, and in particular that GATT disciplines on safeguards would be fully respected in such a case?

2.12.13 Answer

The possibility of taking safeguard action, on products subject to concessions granted in Article 14, and after consultations as envisaged in Article 15, would be limited to trade between the Parties to the Agreement concerned. Third country rights, both those of partners under Article XXIV agreements including the two other Interim Agreements, and those of other contracting Parties to the GATT, would be unaffected. It is not at this moment possible to give an indication of the type of measure that would be foreseen, as this Article has not been invoked.

EC/Poland Agreement

2.12.14 Question

Does Poland plan to introduce new temporary protective measures against subsidized agricultural imports?

2.12.14 Answer

Under the existing Polish legislation, subsidized imports may be countered by safeguard action under GATT Article XIX and may be subject to countervailing and anti-dumping measures. Agricultural products may also be covered by variable levies, which so far have not been applied (statement made in June 1993). No other measures are presently foreseen by Poland.

EC/CSFR, EC/Hungary and EC/Poland Agreements

2.12.15 Question

Which European Communities farm products currently face prohibitive restrictions or are banned from entry into the Czech Republic, Hungary, Poland and Slovak Republic for animal or plant health reasons?

2.12.15 Answer

None.
2.13  FREE MOVEMENT OF FISHERIES PRODUCTS

Article 17 of EC/CSFR Agreement

2.13.1 Question

What proportion of bilateral trade in fisheries products will be free of tariffs, levies and quantitative restrictions by the end of the transition period?

2.13.1 Answer

In 1992 CSFR imports of fishery products originating in the European Community amounted to US$22.46 million representing 0.43 per cent of the total CSFR imports from the European Communities. Article 14:5 further applies *mutatis mutandis* to fishery products. The proportion of trade, free of tariffs, at the end of the transition period cannot be specified at this moment. See further under Answer 2.12.6.

EC/Hungary Agreement

2.13.2 Question

What proportion of bilateral trade in fisheries products will be free of tariffs, levies and quantitative restrictions by the end of the transition period?

2.13.2 Answer

In 1991 Hungary imports of fishery products originating in the Community amounted to US$4.8 million representing 0.1 per cent within the total Hungarian imports from the European Communities. See further under Answers 2.12.6 and 2.13.1.

2.13.3 Question

Article 17 and, by reference, Article 14:5 commit Hungary and the European Communities to examine the possibilities of liberalization in fisheries products. Please explain any liberalization in fish which Hungary and the European Communities have considered making to date. When, if ever, is complete liberalization of trade in fisheries products envisioned?

2.13.3 Answer

See Answer under 2.13.1 and 2.13.2.

EC/Poland Agreement

2.13.4 Question

What is the status of European Communities/Poland negotiations on an agreement in fisheries products? What is the expected coverage and scope of such an agreement?
2.13.4 Answer

As indicated in Article 17 of the European Communities/Poland Agreement, the Parties undertake to conclude as soon as practicable negotiations of an agreement on fisheries products. Such negotiations have not yet commenced, so that the scope and coverage cannot at this stage be described.

2.13.5 Question

What is the objective of the negotiations currently taking place on fishery products? What proportion of bilateral trade in fisheries products will be free of tariffs, levies and quantitative restrictions by the end of the transitional period?

2.13.5 Answer

See Answer under 2.13.4.

2.13.6 Question

Article 17 commits Parties to conclude an agreement on fishery products. Has this agreement been concluded yet? If not, what is the status of negotiations? When do you expect to conclude talks with the Parties and notify the Fisheries Agreement to the GATT?

2.13.6 Answer

See Answer under 2.13.4.

General Question

2.13.7 Question

Regarding fishing, what are the fish and fishery products contained in EC Regulations 3687/91?

2.13.7 Answer

EC Regulation 3687/91 covers the following products: CN Code 0301-0307, 05.11.91.10 and 05.11.91.90, 1604-5, 19.02.20.10, 23.01.20.00.

2.14 STANDSTILL

Article 19 of EC/Poland

2.14.1 Question

Will the European Communities, as a result of Article 19, be exempt from Poland’s import surcharge that was announced in December 1992?

2.14.2 Answer

No. See also Article 34.
2.15  INTERNAL FISCAL MEASURES

Article 20 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.15.1 Question

Can the Parties confirm, in implementing the commitments on internal fiscal measures and practices under the Interim Agreements, that the GATT rights of other countries, including non-discriminatory treatment as provided under Article III, will be fully respected?

2.15.1 Answer

The provisions of the Agreements on internal fiscal measures or practices do not establish preferential treatment in that area and do not constitute commitments between the Parties to the Agreements which would go beyond those arising from Article III, paragraphs 1 and 2 of the GATT. The rights of third countries under the GATT, including non-discriminatory treatment under Article III will be fully respected.

2.16  AGREEMENTS WITH THIRD COUNTRIES

Article 21 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.16.1 Question

Will existing trade agreements between any Party(ies) to the Agreements and third countries be affected by the Interim Agreements? Do the Agreements require any Party to renegotiate with third countries any bilateral commitments or commitments under arrangements consistent with Article XXIV, GATT waivers, or other GATT provisions?

2.16.1 Answer

The Interim Agreements do not affect existing trade agreements between any of the Parties and third countries. No renegotiations with any third countries of any of the commitments enumerated are required by the agreements.

2.16.2 Question

How do the European Communities and the Czech Republic, Hungary, Poland and the Slovak Republic expect the provisions of the Agreement to affect their bilateral trade agreements with other countries?

(a) Does the Agreement require either Party to renegotiate with third countries any bilateral or other commitments under arrangements consistent with Article XXIV, GATT waivers or other GATT provisions?

(b) Do the preferential tariff reduction provisions of the Agreement preclude the continued operation of other agreements with third countries that provide for MFN treatment?

2.16.2 Answer

(a) No. See Answer 2.16.1.
2.16.3 Question

Article 21 provides that consultations will take place within the Joint Committee on major issues related to the Parties' respective trade policy with third countries.

- Is the possibility that the Joint Committee may decide on or make recommendation for third country relations compatible with the commonly accepted notion that a free trade area does not interfere with the trade policies of the constituent territories with third countries?

- What are the third country issues likely to be discussed in the Joint Committee?

2.16.3 Answer

All four parties to the Agreements remain free in their conduct of trade policy vis-à-vis third countries. The Joint Committee has no powers to take binding decisions on these issues. Article 21 provides for only consultations within the Joint Committee including the creation of customs unions or free trade areas. Other main issues related to trade policy with third countries may also be discussed when requested.

2.16.4 Question

Article 21.1 states that the Agreement shall not preclude the maintenance of other free trade areas or arrangements for frontier trade "except in so far as they alter the trade arrangements provided in this Agreement". What is meant by "alter the trade arrangements?"

2.16.4 Answer

The notion of "alter the trade arrangements" means that the only limitation to the Parties' right to maintain or establish customs unions, free trade areas or frontier trade arrangements with third countries is that these shall not obstruct or alter the implementation of their obligations or commitments under the Interim Agreements.

2.16.5 Question

(a) Article 21.2 permits consultations between the Parties in the Association Council/Joint Committee on major issues related to respective trade policies with third parties. May tariff concessions or other elements of a trade agreement with a third party be implemented before consultations within the Committee/Council?

(b) What authority does the Committee/Council have in recommending or blocking change in the trade policies of the Parties vis-à-vis third parties?

2.16.5 Answer

(a) Yes.

(b) The Joint Committee and the Association Council have no authority in recommending or blocking change in the Parties' third country trade policies. See answers under 2.1.2 and 2.16.3.
2.17 EXCEPTIONAL MEASURES

Article 22 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.17.1 Question

The requirement in Article 22 that any increase in customs duties by Poland, Hungary or the CSFR maintain an element of preference for products originating in the Community seems to presuppose that tariffs could also be increased on products originating in other (non-European Community) countries. What would be the GATT basis for any such increase in bound tariffs against third countries? How will the Parties to the Agreement ensure that an element of preference so created or maintained for European Communities products, under this or any other Article of the Agreement, is consistent with the "trade-creating" principle contained in GATT Article XXIV:4?

2.17.1 Answer

Since the Agreements do not alter the Parties' respective rights and obligations vis-à-vis third countries under the GATT, the basis for any increase in bound tariffs against third countries will remain Article XXVIII of the GATT. Article 22 thus provides no basis for an increase in duties on products originating in third countries. On the contrary, the provisions of Article 22 only aim to maintain an element of preference for Community products in relation to the MFN rate if one of the partners should wish to derogate temporarily from Article 4 and 19 and impose exceptional measures on products from the European Communities. These exceptional measures may moreover only be taken during the transitional period.

It is recalled that "an element of preference" referred to in Article 22 of the Interim Agreements would not be created by the application of the said Article, since the preference itself would have been already created pursuant to Article 4 as required by Article XXIV:8. The requirement in Article XXIV:4 that any free trade area agreement should not raise barriers to the trade of other contracting parties is fully respected. As to the consistency of the maintenance of an element of preference with the "trade creating" principle contained in Article XXIV:4 of the GATT, nothing in Article XXIV prevents a Party to a customs union or a free trade area to partially withdraw concessions vis-à-vis the other Party under a temporary remedial action.

2.17.2 Question

Regarding Article 22, please explain the specific nature and scope of "an element of preference". What is meant by the statement that the CSFR, Hungary and Poland "shall maintain an element of preference for products originating in the Community"?

2.17.2 Answer

See under Answer 2.17.3.

2.17.3 Question

Article 22 provides, _inter alia_, for the maintenance of an element of preference for Community products in the event that increased duties are implemented by the CSFR, Hungary and Poland. Can the Parties confirm that there is no intention to raise duties applicable to third countries to maintain such preference? How do the Parties reconcile this preference obligation with GATT provisions which are aimed at elimination of trade barriers, not creation of preferences?
2.17.3 **Answer**

Article 22 provides for a derogation from the provisions of Article 4 and 19 by Poland, Hungary or the former CSFR for a limited duration (at maximum until the end of the transitional period) in exceptional cases for sectors undergoing restructuring or facing serious difficulties, or concerning infant industries.

Article 22 is in full conformity with the GATT. It is recalled that "an element of preference" referred to in Article 22 of the Interim Agreements would not be created by the application of the said article, since the preference itself would have been already created pursuant to Article 4 as required by Article XXIV:8. Indeed, the exceptional measures which can be taken by Hungary, Poland or the former CSFR must be eliminated by the end of the transitional period. After this period any measures based on Article 22 shall cease to apply.

During the transitional period measures may moreover not exceed a certain threshold or surpass five years (in the latter case authorization of the Joint Committee is necessary). The Community may request consultations in the Joint Committee before any measure is taken. All measures must be accompanied by a schedule for phasing out. Measures cannot be applied on products benefitting from full liberalization for more than three years. Finally, it is foreseen that measures may only take the form of increased customs duties and must, in so doing, maintain an element of preference for the Community, thus preserving the preferential character of the Agreements.

It should be noted that these measures only concern imports from the Community and that no measures against third countries could be based on Article 22 of the Agreement.

**EC/CSFR Agreement**

2.17.4 **Question**

Article 22 states that exceptional measures in the form of customs duties "shall maintain an element of preference to the Community". Have limits to this margin or preference been set or considered? What margin of preference would the Czech Republic and the Slovak Republic consider appropriate? Do the Czech Republic and the Slovak Republic envision the possibility of invoking the full 25 per cent exceptional duties on its MFN trade while exempting the European Communities from them?

2.17.4 **Answer**

No limit to an element of preference has been set. The element of preference that would be considered appropriate by the Czech Republic and the Slovak Republic will be decided on a case-by-case basis. Exceptional measures provided for by Article 22 of the Agreement only concern imports from the Community and no measures against third countries could be based on this Article. See Answers under 2.17.1 and 2.17.3.

**EC/Hungary Agreement**

2.17.5 **Question**

Article 22 states that exceptional measures in the form of customs duties "shall maintain an element of preference to the Community". Have limits to this margin of preference been set or considered? What margin of preference would Hungary consider appropriate? Does Hungary envision
the possibility of invoking the full 25 per cent exceptional duties on its MFN trade while exempting the European Communities from them?

2.17.5 Answer

No limit to this margin has been set. The margin that would be considered appropriate will be decided on a case-by-case basis. Article 22, as the entire Agreement, applies only to trade with the Community, therefore, the possibility of imposing the "full 25 per cent exceptional duty" may not be invoked vis-à-vis any third country. See also Answer 2.17.3 above.

EC/Poland Agreement

2.17.6 Question

Article 22 states that exceptional measures in the form of customs duties "shall maintain an element of preference to Community". Have limits to this margin of preference been set or considered? What margin of preference would Poland consider appropriate? Does Poland envision the possibility of invoking the full 25 per cent exceptional duties on its MFN trade while exempting the European Communities from them?

2.17.6 Answer

See Answer under 2.17.3.

2.17.7 Question

Has Poland invoked the provisions of Article 22 to increase its duties on any European Communities products? If so, has it consulted with the European Communities? Will the results of these consultations be notified?

2.17.7 Answer

The provisions of Article 22 have not yet been invoked by Poland.

2.18 ANTI-DUMPING

Article 23 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.18.1 Question

Would the European Communities explain the current status of the special anti-dumping rules which the European Communities had been applying to the Eastern European countries prior to the entry into force of the Interim Agreements. Are they still in effect or not?

2.18.1 Answer

Poland, Hungary and the Czech and the Slovak Republics have ceased to be considered and treatment as "state trading countries" and this is reflected in Community legislation. Consequently, since 1 March 1992 the special rules for dumping calculations on imports from non-market economy countries contained in Council Regulation 2423/88 no longer apply to imports from Poland, Hungary and the Czech and Slovak Republics.
2.18.2 Question

Do Hungary and the CSFR have anti-dumping legislation in force and, if so, have they conducted any anti-dumping investigations to date?

Will the Parties notify anti-dumping and safeguards action taken in accordance with the GATT Agreement?

2.18.2 Answer

Hungary has an anti-dumping legislation in force which is currently under review. The legislation emerging from this review process will be notified to the Anti-Dumping Committee. No anti-dumping investigations have been conducted to date.

The Czech Republic and the Slovak Republic became signatories to the Agreement on the implementation of Article VI. It had no implementing legislation and therefore it conducted no anti-dumping investigations. The Czech Republic and the Slovak Republic intend to become signatories of the Anti-dumping code and they intend to introduce respective national legislations.

Poland is a signatory to the Agreement on the implementation of Article VI and has an anti-dumping legislation in force.

All anti-dumping actions and safeguard actions taken in accordance with the GATT Agreement will be notified.

2.19 SAFEGUARD MEASURES

Article 24 of EC/CSFR Agreement

2.19.1 Question

It was understood that pursuant to Article 24 the Community applied a safeguard measure against certain steel products imported from the CSFR.

- From this, it is understood that safeguard measures under this article are applied only between the Parties and only to the products to which the Agreement applies. Could the Parties confirm this understanding.

- Those CSFR steel products subject to the safeguards measures now enter Germany, France and Italy under national quotas. After the advent of the European Single Market on 1 January 1993, will the European Communities continue to apply Article 24 safeguard measures on a national basis or apply them on a Community wide basis?

- When a Party to the Agreement takes a safeguard measure under GATT Article XIX on a product to which the Agreement applies, what will become of the preferential margin existing between imports from the other Party and imports from third countries? For instance, if the m.f.n. duty is to increase by 10 percentage points, will the preferential tariff rate applying to the bilateral trade also increase by the same percentage points?

- When a GATT Article XIX safeguard measure is to be taken on a product on which a safeguard measure is already in existence between the two Parties under Article 24, for instance, the
Community introduces a safeguard measure under GATT Article XIX on those steel products to which it now applies safeguard measures to CSFR, what will be the relationship between these two different measures?

2.19.1 Answer

- A safeguard measure under the Agreement can only be applied between the Parties on products covered by the Agreement.
- The safeguard measures applied on the basis of Article 24 have expired at the end of 1992.
- The provisions of Article XXIV:8(b) have been the subject of extensive debate in the past. Article XXIV:8(b) does not mention Article XIX as one of the restrictive regulations of commerce which do not have to be eliminated between the Parties to a free trade agreement. Consequently, it is the view of the Parties to the Agreements that they are free to exempt another Party's trade from possible restrictions imposed under Article XIX.
- This is clearly a very hypothetical case.

_Articles 24 and 27 of EC/CSFR, EC/Hungary and EC/Poland Agreements_

2.19.2 Question

Could the Parties to the Agreements please comment on the criteria to be used in establishing "serious injury to domestic producers of like or directly competitive products" or "serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region"? What types of "appropriate" measures might be taken by an affected Party here, and how would the concerned Parties to the Agreement propose to deal with any adverse "side effects" experienced by third party suppliers of like or directly competitive products? In particular, how would the Parties ensure full respect of their obligations under GATT Article XIX? Is the meaning of this provision intended to be identical to that of GATT Article XIX? If, on the other hand, the "serious disturbances" provision is intended to be a lower threshold than the Article XIX "serious injury" provision, would this not be contrary to GATT Article XXIV:8(b), which, inter alia, requires the elimination of restrictive regulations of commerce on substantially all the trade between the Parties to a free trade agreement?

2.19.2 Answer

It is not the intention of the Parties to the Agreements to invoke at the same time both Article 24 of the Agreement and Article XIX of the GATT to each other. There are no pre-established criteria of "serious injury" or "serious disturbances" in the framework of the Agreements. However, as the wording of Article 24, first indent, is that of Article XIX of the GATT, it is expected that similar standards will apply when establishing the existence of "serious injury to domestic producers of like or directly competitive products" as under the GATT. The notion of "serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region" has been taken over from the relevant Articles of earlier Agreements between the European Communities and the EFTA countries, which have been examined in the GATT in the past. It should, however, be remembered that these Interim Agreements by their very nature cover imports from one partner only and thus cannot be identical to a safeguard measure taken against all MFN imports on the basis of Article XIX. As regards the interpretation to be given to "appropriate measures", Article 27 stipulates clearly that "in the selection of measures, priority must be given to those which least disturb the functioning of the Agreement".
Since the GATT rights of third country suppliers cannot be affected by the measures adopted by the Parties to the Agreements, the Parties do not envisage that "adverse side effects" will appear.

Article 25 of EC/CSFR, EC/Hungary, EC/Poland Agreements

2.19.3 Question

What sorts of "appropriate" remedial measures are envisaged here? GATT Article XXIV:8(b) requires, inter alia, the elimination of restrictive regulations of commerce - including export controls - on substantially all the trade between the constituent territories of a free trade area, subject to certain limited and specific exceptions. While Article 25(ii) of the Interim Agreements would appear to be consistent with Article XI.2(a) of the GATT, Article 25(i) is less clear. We would, in this regard, appreciate clarification of the intended scope of Article 25(i) and, in particular, the GATT basis for the third country measures envisaged therein, i.e., does Article 25(i) extend to measures beyond GATT Articles XX and XXI?

2.19.3 Answer

As regards "appropriate measures" Article 27 provides that "in the selection of measures, priority must be given to those which least disturb the functioning of the Agreement". It may be noted that the measures foreseen in Article 25 are not "third country measures" but measures relating to trade between the Parties to the Agreements.

At the same time it is clear that the provisions of Article 25(i) do not intend to restrict trade between the Parties to the Agreements of products destined for use or consumption in another Party’s territory. The object of Article 25(i) is to avoid major difficulties for one of the Parties maintaining quantitative export restrictions, export duties or measures having equivalent effect, as a result of trade to another Party being re-exported towards a third country. Needless to say, the GATT-legality of the maintenance by one of the Parties of any third country measure referred to in Article 25(i) can be questioned by any contracting party through normal GATT procedures.

Article 27 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.19.4 Question

It is stated that "in the selection of measures, priority must be given to those which least disturb the functioning of the Agreement". Are we correct in our understanding of this Article that full respect for GATT obligations would be automatically factored into this "selection process", even if doing so resulted in a more disruptive effect on the functioning of the Interim Agreements than might otherwise have been the case? Do the notification and other provisions in Article 27 operate in addition to, or in lieu of, GATT and GATT Code requirements? Would the timetables agreed to in the Joint Committees for the abolition of safeguard measures also be applicable to third countries, or would the application of safeguard measures against third countries be subject to different duration and degressivity?

2.19.4 Answer

In concluding these Agreements the Parties in no way intended to impinge upon their GATT obligations. All the same, as a lex specialis, the trade relations between the Parties to the Agreements will primarily be governed by the terms of these Agreements. Insofar as either of the Parties have GATT or GATT Code obligations relating to, for example, notification, these will be complied with. Any timetable linked to the abolition of a safeguard measure taken on the basis of the Agreement only affects the exports of the Party involved. Any safeguard measures taken in the different context of
the GATT will of course be subject to the disciplines which are imposed on contracting parties in the
GATT context.

2.20 STATE MONOPOLIES

Article 26 of EC/CSFR, EC/Hungary and EC/Poland Agreements

2.20.1 Question

Could the Parties to the Agreement please list the "State monopolies of a commercial character" referred to in this Article, indicating the product areas in which they operate? Secondly, could they elaborate on the kind of "discrimination regarding the conditions under which goods are procured and marketed" which is targeted in this Article? Do such "conditions" include the use of technical regulations and standards? Is the Article intended to cover government procurement activities? Provision for a five-year phase-out period for any such "discrimination" suggests that it is still widely practised as between nationals of the Member States and the central European countries. Would the concerned Parties provide their assurances that in any case, the activities of State monopolies of a commercial character are fully consistent with GATT Articles I and III? Finally, how are the obligations in this Article intended to relate to those in GATT Article XVII?

2.20.1 Answer

Article 26 is of a generic nature and applies to all state monopolies of a commercial character. The Article does not contain any bilateral notification obligation and no lists of these entities have been exchanged between the Parties. Article 26 aims to ensure that the abolition of governmental restrictions on trade between the Parties is not nullified by discriminatory behaviour in the purchasing and marketing activities of state monopolies of a commercial character. In this respect Article 26 is similar to the provisions of Article XVII of the General Agreement. Article 26 does not cover government procurement activities and does not extend to matters dealt with in GATT Articles I and III. All Parties to the Agreements confirm their intention to comply with obligations embodied in GATT Article XVII.

It is incorrect to assume that discrimination is widely practised. A five year period for the phasing out of discrimination is foreseen to provide the necessary time to examine if there are any de jure monopolies, and if necessary review and adjust these.

2.21 EXCEPTIONS

Article 29 of EC/CSFR Agreement

2.21.1 Question

Article 29 states that restrictions/prohibitions on trade justified on the grounds of public morality, protection of health, etc. shall not "constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties". What assurances do third parties have that these restrictions will not constitute discrimination against their exports to the Parties?

2.21.1 Answer

The Parties to the Agreement remain bound by GATT and GATT-related disciplines. No measures against third countries can be based on Article 29 of the Interim Agreement as the Agreement
applies only to trade between the Parties. Furthermore, Article 29 and in particular its non-discrimination and non-disguised restriction clauses are similar to those contained in Article XX of the General Agreement.

*Article 29 of EC/Hungary Agreement*

2.21.2 Question

Article 29 states that restrictions/prohibitions on trade justified on the grounds of public morality, protection of health, etc. shall not "constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties". What assurances do third parties have that these restrictions will not constitute discrimination against their exports to the Parties?

2.21.2 Answer

Firstly, the Agreement, including its Article 29, applies only to trade between the Parties. The Parties to the Agreements remain bound by GATT and GATT-related disciplines. Secondly, Article 29 and in particular its "non-discrimination and non-disguised restriction" clause is essentially the same as in GATT Article XX.

*Article 29 of EC/Poland Agreement*

2.21.3 Question

Article 29 states that restrictions/prohibitions on trade justified on the grounds of public morality, protection of health, etc. shall not "constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties". What assurances do third parties have that these restrictions will not constitute discrimination against their exports to the Parties?

2.21.3 Answer

The Parties to the Agreement remain bound by GATT and GATT-related disciplines. This applies equally to GATT Article XX which is similar to Article 29. Moreover, like the entire Agreement, Article 29 is applicable only to the Parties and no action taken under this Article may be extended to third parties.

*Article 29 of EC/CSFR, EC/Hungary and EC/Poland Agreements*

2.21.4 Question

How would Parties to the Agreements propose to handle interpretive difficulties or disputes under this Article?

2.21.4 Answer

As with any dispute relating to the application or interpretation of the Agreements, these can be referred to the Joint Committee by either of the Parties or to the arbitration procedure under Article 39.
2.22 TRADE WITH SPAIN AND PORTUGAL

Article 30 of EC/CSFR Agreement

2.22.1 Question

Please explain the reason for laying down the specific provisions on trade between the CSFR of the one part and Spain and Portugal of the other part as stipulated in Article 30.

2.22.1 Answer

The specific provisions referred to in Article 30 relate to the measures and undertakings listed in the Acts of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities. These Acts provide for a transitional period which will expire at the end of 1995.

EC/Hungary Agreement

2.22.2 Question

Please explain the reason for laying down the specific provisions on trade between Hungary of the one part and Spain and Portugal of the other part as stipulated in Article 30.

2.22.2 Answer

See answer to 2.22.1.

EC/Poland Agreement

2.22.3 Question

Please explain the reason for laying down the specific provisions on trade between Poland of the one part and Spain and Portugal of the other part as stipulated in Article 30.

2.22.3 Answer

See answer to 2.22.1.

2.23 COMPETITION AND PUBLIC AID

Article 33.3 of EC/CSFR Agreement, Article 32.3 of EC/Hungary Agreement and Article 33.3 of EC/Poland Agreement

2.23.1 Question

The differences in sub-Articles 33.3 in the European Communities/CSFR and European Communities/Poland Agreements and Sub-Article 32.3 in the European Communities/Hungary Agreement respectively in the three texts are noted, with reference to the implementation of this Article for the first three years. Can the Parties to the Agreement explain the reasons for these differences? Do the Parties to the Agreement expect the Joint Committees, which have three years to draw up rules for implementing this Article, to devise similar or identical rules for dealing with cartels, monopolies and
abuse of dominant position as for public aids? If so, would they also explain the reasons for this approach, inasmuch as the GATT deals only with the question of subsidies?

2.23.1 Answer

The Agreements have been negotiated separately and should be assessed in their own context rather than by comparison with each other. Articles 33 for CSFR and Poland (Article 32 for Hungary) aim to provide that practices contrary to the Article be assessed on the basis of criteria arising from the application of the equivalent articles of the EEC Treaty. Until implementing rules have been laid down, the Parties shall deal with incompatible practices according to their national legislation. Parties have not, at this stage, defined the scope or contents of implementing rules.

In cases of practices incompatible with the public aid provisions of paragraph 1(iii), however, measures may only be adopted in accordance with GATT procedures and conditions, where applicable. Due to a typing error the reference in the European Communities/CSFR Agreement in Article 33 para 3 to "paragraph 1 of Article 3" should read "paragraph 1 of Article 33".

It is true that the GATT in this respect deals essentially only with the question of subsidies. However, since the Agreements have as objectives to establish the free movement of goods by abolishing all kinds of barriers to trade, including those which are not governmental measures but due to companies' anti-competitive behaviour, it was necessary to cover areas not dealt with by GATT. Furthermore, it should be borne in mind that the ultimate objectives of these Agreements go beyond those of the GATT system.

Article 33 of EC/CSFR Agreement, Article 32 of EC/Hungary Agreement and Article 33 of EC/Poland Agreement

2.23.2 Question

It is noted that the provisions for public aids do not apply to the agriculture and fisheries sectors, nor to the products covered by the ECSC. Can the Parties to the Agreements explain why these sectors merit different treatment with respect to public aids? Can the Parties also explain why the products covered by the ECSC have been excluded from these provisions, taking into account the fact that the obligations regarding subsidies for these three primary sectors were changed during the Tokyo Round? Why is the question of cartels, monopolies and abuse of dominant position not of concern in the industries covered by the ECSC?

2.23.2 Answer

As indicated by Article 33 (Article 32 for Hungary) paragraph 5, the dispositions on public aids for the agricultural and fisheries sector refer to the relevant provisions in the Treaty of Rome and secondary legislation. As regards the ECSC products, Protocol No. 2 of the Interim Agreements does contain common provisions relating to competition, including public aid. The GATT rights of contracting parties are not affected by these provisions.

Article 33 of EC/CSFR Agreement, Article 32 of EC/Hungary Agreement and Article 33 of EC/Poland Agreement

2.23.3 Question

In Article 33 (Article 32 for Hungary) which relates to the appropriate remedial measures against, among others, distortive public aid, reference is made to the procedures and conditions laid down by
the General Agreement and the relevant GATT Code, while Article 23 (anti-dumping) and Article 24 (safeguards) have no such reference. What is the reason for this?

2.23.3 Answer

In fact both Article 33:6 (Article 32:6 in Hungary's case) (Subsidies) and Article 23 (Dumping) clearly prescribe that appropriate remedial measures be taken only in conformity respectively with "the General Agreement on Tariffs and Trade and any other relevant instrument negotiated under its auspices" and with "the Agreement relating to the application of Article VI of the General Agreement on Tariffs and Trade". As to Article 24 (Safeguards) the bilateral character of the Agreement explains why no reference was made to Article XIX of GATT. See also answer under 2.19.2.

Article 33.4 of EC/CSFR Agreement, Article 32.4 of EC/Hungary Agreement and Article 33.4 of EC/Poland Agreement

2.23.4 Question

In what manner will the Parties to the Agreement ensure that information provided in accordance with this section is also notified to GATT contracting parties in writing, as required by GATT Article XVI?

2.23.4 Answer

All Parties to the Agreements are committed to complying with their respective notification obligations under Article XVI and related GATT instruments.

Article 33 of EC/CSFR Agreement, Article 32 of EC/Hungary Agreement and Article 33 of EC/Poland Agreement

2.23.5 Question

Will the Parties notify anti-dumping and safeguards action taken in accordance with the Agreements to the GATT?

2.23.5 Answer

All Anti-dumping actions taken will be notified in accordance with the GATT Agreement. As to safeguards actions, they will be notified when the measures are taken under Article XIX of GATT. See also answers under 2.18.2 and 2.19.2.

EC/CSFR, EC/Hungary and EC/Poland Agreements

2.23.6 Question

Article 33.2 states that competition rules will be "assessed on the basis of criteria arising from the application of certain European Community rules". To what extent do Parties contemplate that these criteria will be interpreted differently by the Czech Republic, Hungary, Poland and the Slovak Republic than the European Communities or its member States?
2.23.6 Answer

As the Agreements do not provide for one single competition authority, differences of interpretation may potentially arise, although this possibility is limited by the provision of Article 33:2. See further Answer 2.23.1.

EC/CSFR, EC/Hungary/EC/Poland

2.23.7 Question

Article 33.3 stipulates that rules regulating anti-competitive practices shall be adopted by the Joint Committee by 1 January 1995. Do the Parties still expect to meet this schedule? Have any of the rules been adopted yet? When and in what form will these rules be made publicly available? What changes do the Czech Republic, Hungary, Poland and the Slovak Republic envision making in domestic legislation to implement these rules?

2.23.7 Answer

Yes. No rules have been adopted yet. Such rules will be published in the same way as the Agreements themselves were subject to publication. The Parties to the Agreements will take the necessary steps to ensure the implementation of the rules.

EC/Poland Agreement

2.23.8 Question

Article 33.2 stipulates that rules regulating anti-competitive practices shall be adopted by the Joint Committee by 1 January 1995. Do the Parties still expect to meet this schedule? Have any of the rules been adopted yet? When and in what form will these rules be made publicly available? What changes does Poland envision making in domestic legislation to implement these rules?

2.23.8 Answer

(a) The Parties expect to meet the schedule of 1 January 1995.

(b) No rules have been adopted yet, but the parties have already agreed on general principles and the Subcommittee on Competition of the Joint Committee has been working, for some months now, on the elaboration of detailed rules to be presented to the Joint Committee in a near future.

(c) Such rules will be published in the same way as the Agreement itself.

(d) No decision has yet been made by the Polish authorities on whether implementing rules referred to in Article 33 would be incorporated into the Polish law separately (e.g., through a general requirement to apply competition rules contained in international agreements concluded by the Polish Government) or whether they would be written into the existing anti-monopoly provisions in a more specific way.
2.24 BALANCE-OF-PAYMENTS MEASURES

Article 34 of EC/CSFR Agreement, Article 33 of EC/Hungary Agreement and Article 34 of EC/Poland Agreement

2.24.1 Question

Would the time schedule for the removal of balance-of-payments safeguard measures against the other party to an Interim Agreement also be applicable to third countries or would the application of such measures against third countries be subject to a different duration and degressivity schedule?

2.24.1 Answer

As Article 34 (Article 33 of European Communities/Hungary Agreement) explicitly mentions that any restrictive measures on balance-of-payments grounds may only be adopted in accordance with the conditions established under the GATT, these provisions would not affect the rights and obligations of the parties under the relevant Articles of the General Agreement, including Articles XII and XIII.

EC/CSFR Agreement

2.24.2 Question

Does any party to the Agreement anticipate the introduction of new import restrictions or charges? For example, does any party anticipate imposing an import surcharge for balance of payments reasons?

- If such new import restrictions or charges are imposed, will they be applied on an equal basis to imports from parties to the agreement as well as to MFN trading partners?

2.24.2 Answer

No new import restrictions are currently foreseen. As regards balance-of-payments measures, Article 34, paragraph 1 provides that one or more Member States of the Community or one of the Parties to the Agreements may only take balance-of-payments measures in accordance with the General Agreement. Other GATT obligations will be complied with.

2.25 INTELLECTUAL PROPERTY RIGHTS

Article 36 of EC/CSFR Agreement, Article 35 of EC/Hungary Agreement and Article 36 of EC/Poland Agreement

2.25.1 Question

CSFR, Hungary and Poland are required to improve the protection of intellectual property rights in order to provide, by the end of the fifth year from the entry into force of the Agreement, a level of protection similar to that provided in the Community by Community Acts.

- Apart from three categories listed in Annex XVII Czech and Slovak Republics, Annex XIII Hungary and Poland, what other IPR’s are to be improved under this article?

- When are the Czech and Slovak Republics, Hungary and Poland going to introduce a product patent system?
2.25.1 Answer

All intellectual property rights which are protected in Poland, Hungary, the Czech Republic and the Slovak Republic are to be improved by the end of 1996 to a level of protection similar to the one provided for in the Community.

This obligation includes the introduction of product patent protection in the partner countries concerned.

2.25.2 Question

Will the improved protection of intellectual, industrial, and commercial property rights as outlined in this Article be extended by the Parties to all GATT signatories?

2.25.2 Answer

Insofar as the IPRs of this Article are covered by MFN obligations, existing or future, of the Parties, the improved protection is or will be extended to the countries concerned.

Article 36 of EC/CSFR Agreement

2.25.3 Question

Article 36 provides that the CSFR shall continue to improve the protection of intellectual, industrial and commercial rights in order to provide a level of protection similar to that provided in the European Communities. Article 42 provides that the results of this improvement shall be applied on a non-discriminatory basis among the EC member countries. Will the results of improvements be applied to non-member countries to the Interim Agreements as well?

2.25.3 Answer

See answer under 2.25.2.

Article 35 of EC/Hungary Agreement

2.25.4 Question

Article 35 provides that Hungary shall continue to improve the protection of intellectual, industrial and commercial rights in order to provide a level of protection similar to that provided in the EEC. Article 42 provides that the results of this improvement shall be applied on a non-discriminatory basis among the EEC member countries. Will the results of improvements be applied to non-member countries to the Interim Agreements as well?

2.25.4 Answer

See answer under 2.25.2.
2.25.5 Question

Article 36 states that "Poland shall continue to improve the protection of intellectual, industrial and commercial rights in order to provide ... a level of protection similar to that provided in the EEC". Article 42 provides that "the arrangements applied by Poland in respect of the Community shall not give rise to any discrimination between the Member states, ...". Are these improvements made by Poland applied to non-member countries to the Interim Agreements as well?

2.25.5 Answer

See answer under 2.25.2.

EC/CSFR, EC/Hungary and EC/Poland Agreements

2.25.6 Question

Is it correct to understand that the Czech Republic, Hungary, Poland and the Slovak Republic will accept and implement the results of the Uruguay Round negotiations regarding the protection of intellectual property rights?

2.25.6 Answer

The Parties recall that the Draft Final Act is intended to be signed as a single undertaking.

2.26 DISPUTE SETTLEMENT

Articles 38 and 39 of EC/CSFR Agreement, Articles 37 and 39 of EC/Hungary Agreement and Articles 38 and 39 of EC/Poland Agreement

2.26.1 Question

What is the overall dispute settlement philosophy of the Interim Agreements? Are the Parties' full GATT rights retained in the event of a dispute? Articles 37 and 38 state that the Joint Committee "shall, for the purposes of attaining the objectives of this Agreement, have the power to take decisions in the cases provided for therein. The decisions taken shall be binding on the Parties which shall take the measures necessary to implement the measures taken". These powers are further qualified in selected areas such as safeguards where difficulties "shall" be referred for examination to the Joint Committee, which may take "any decision needed" to put an end to such difficulties (Article 27). How does this Article relate to Article 39 which states that "each of the two parties may refer to the Joint Committee any dispute relating to the application or interpretation of this Agreement"? Are there any limitations on the powers of the Joint Committee once it is seized of a dispute? What are its rules of procedure? Finally, irrespective of any involvement of the Joint Committee at any stage of dispute between the Parties to an Agreement, would either Party be free to exercise its rights under GATT Articles XXII and XXIII?

2.26.1 Answer

As the Parties have already explained in the reply to question 2.19.4, as a lex specialis the trade relations between the Parties to the Agreements will primarily be governed by the terms of these
Agreements. In consequence, in the case of a dispute relating to the application or interpretation of the Agreements the provisions of Articles 37, 38 and 39 (Articles 36, 37 and 38 in the case of the European Communities/Hungary Agreement) will apply. Thus, the Joint Committee may settle any dispute by means of a decision, which is drawn up by agreement between the two Parties. Should it not be possible to come to an agreement, an arbitration procedure is provided for in Article 39. The arbitrator's decisions, taken by majority vote, are binding on the parties to the dispute.

At the same time, however, it is clear that GATT dispositions can be relevant for the parties, for example, reference is made to GATT instruments regarding anti-dumping and subsidies. As the Agreements do not make GATT rights and obligations ineffective between the Parties, GATT dispute settlement procedures are available to them. In fact, the Parties' full GATT rights are retained in the event of a dispute.

As to the relationship between Article 27 on Safeguards and Articles 38 and 39 on Disputes Relating to the Application of the Agreement, the procedures described in the former article would apply to the safeguard situation which it covers: only if a dispute arose in its application thereafter, could the dispute settlement procedures of Article 38 and 39 be invoked.

2.26.2 Question

Will the Joint Committee's powers under these Articles extend to the resolution of anti-dumping and subsidies and countervailing disputes? If so, how would this compare procedurally with dispute settlement under the GATT and relevant GATT Codes?

2.26.2 Answer

As provided in these Articles, the Joint Committee are empowered to settle any dispute relating to the application or interpretation of the Agreements. Regarding procedure it is foreseen that the Association Council to be established after ratification of the Europe Agreements will establish such rules. These will also determine the duties of the Association Committee, which will replace the Joint Committee as soon as the Treaties are ratified.

2.27 AMENDMENTS

EC/CSFR Agreement

2.27.1 Question

(a) Will amendments to either the Interim or European Agreement, e.g., those decided by the Joint Committee or the Association Council, be made public? If so, how and where? Will recommendations by these Councils be made public? Will these be notified to the GATT or made public in some other way? What is the schedule of meetings of the Joint Committee? What are the "powers necessary to implement the Interim Agreement" to be given to Committee?

(b) Can observers attend Committee meetings? Are there provisions for third countries to bring concerns regarding the operation of Agreements to the attention of the Joint or Interim Councils? Can private individuals attend or bring concerns to the Councils?
2.27.1 Answer

(a) Any amendment to the Interim Agreements will be made public through publication in the European Communities's Official Journal, the Collection of Laws (Sbirka zakonu) of the Czech Republic and the Collection of Laws (Zbierka zakonov) of the Slovak Republic. If a substantial change of the Interim Agreement is foreseen, this will be notified as required by Article XXIV:7(c). As "recommendations" within the meaning of the Agreement do not automatically imply specific trade actions, they will not necessarily be published. They will also not be notified in the GATT, unless they result in measures which fall under GATT Article XXIV obligations, e.g., modification of schedules. As regards the Joint Committee, see under answer 2.1.2.

(b) It is not foreseen for observers or individuals to attend Committee meetings. Third parties may communicate their views and concerns addressed to the Parties either in the appropriate GATT forum or through normal diplomatic channels.

EC/Hungary Agreement

2.27.2 Question

(a) Will amendments to either the Interim or European Agreements, e.g., those decided by the Joint Committee or the Association Council, be made public? If so, how and where? Will recommendations by these Councils be made public? Will these be notified to the GATT or made public in some other way? What is the schedule of meetings of the Joint Committee? What are the "powers necessary to implement the Interim Agreement" to be given to Committee?

(b) Can observers attend Committee meetings? Are there provisions for third countries to bring concerns regarding the operation of Agreements to the attention of the Joint or Interim Councils? Can private individuals attend or bring concerns to the Councils?

2.27.2 Answer

(a) Any amendments to the Interim Agreements will be made public, for example, through publication in the European Communities's Official Journal and Hungary's Magyar Közlöny. As "recommendations" within the meaning of the Agreement are not measures directly applicable to trade, these will not necessarily be published. Recommendations as such will not be notified to GATT, but measures ensuing from such recommendations which are relevant to GATT Article XXIV obligations of the Parties, e.g., modification of the lists annexed to the Agreement, will be notified. As regards the Joint Committee, see under Answer 2.1.2.

(b) It is not foreseen for observers or individuals to attend Committee meetings. The Agreement being of a bilateral contractual nature, there is no observership in any of the bodies established thereunder. Third countries can bring their views to the Parties to the Agreement either in the appropriate GATT forum or through normal diplomatic channels.

EC/Poland Agreement

2.27.3 Question

(a) Will amendments to either the Interim or European Agreements, e.g., those decided by the Joint Committee or the Association Council, be made public? If so, how and where? Will recommendations by these Councils be made public? Will these be notified to the GATT
or made public in some other way? What is the schedule of meetings of the Joint Committee? What are the "powers necessary to implement the Interim Agreement" to be given to Committee?

(b) Can observers attend Committee meetings? Are there provisions for third countries to bring concerns regarding the operation of Agreements to the attention of the Joint or Interim Councils? Can private individuals attend or bring concerns to the Councils?

2.27.3 Answer

(a) Any amendments to the Interim Agreements will be made public, for example, through publication in the European Communities's Official Journal and the Polish Journal of laws. If a substantial change in the schedule of the Interim Agreement is foreseen, this will be notified as required by Article XXIV:7(c). As "recommendations" within the meaning of the Agreement do not automatically imply specific trade actions they will not necessarily be published. They will also not be notified in the GATT, unless they result in measures which fall under GATT Article XXIV obligations. As regards the Joint Committee, see under Answer 2.1.2.

(b) The Agreement being of a bilateral contractual nature, it does not foresee observership in any of the bodies established thereunder. Third parties may communicate their views and concerns to the Parties either in the appropriate GATT forum or through normal diplomatic channels.

2.28 ANNEXES

EC/CSFR Agreement

2.28.1 Question

The annexes to the Europe and Interim Agreements apparently are designed to encompass, when taken together, all of the CSFR's tariff line items. However, several hundred line items at the six-digit level do not appear to be covered under any annex. Some line items listed in the documentation submitted to the Secretariat are illegible. Certain other line items seem to be covered by than one annex. Please explain these discrepancies.

2.28.1 Answer

There is no discrepancy. The Annexes to the Interim Agreement exclude CSFR tariff lines where the MFN rate is already zero or which are not the subject of concessions. Steel products covered by the Treaty establishing the European Coal and Steel Community are contained both in Annex 4 and in Protocol No. 2.

2.29 EXCHANGE OF LETTERS

EC/Hungary and EC/Poland Agreements

2.29.1 Question

Agreement in the form of an exchange of letters between the European Economic Community and Poland concerning certain arrangements in the pig and poultry sectors: What is the context within which the European Communities would impose "supplementary levies" on products in the pig and
poultry sectors imported from Poland and Hungary? How would such supplementary levies relate to other safeguard provisions?

2.29.1 Answer

The context within which the European Communities would impose "supplementary levies" on products in the pig and poultry sector is not specific to Poland or Hungary, but is part of the general Community import regime of this sector. These levies have no relation to the safeguard provision of Article 15.

2.30 MISCELLANEOUS

EC/CSFR, Hungary and Poland Agreements

2.30.1 Question

We understand that Parties have discovered errors in the text of the Agreement that are being corrected. Will a corrected/revised version be published? If so, when? Will this version be notified to the GATT?

2.30.1 Answer

Errors have effectively been discovered in the text of the Agreement. They have been corrected by a corrigendum to the Agreement published in the OJ L 13, 21.1.1993, pages 21, 22 and 23. The corrigendum is included in Annex.

2.30.2 Question

Have Hungary and the European Communities made substantive changes to the provisions of Title III of their Agreement since its implementation? For example, have quotas been expanded and/or have elimination phasing schedules been modified?

2.30.2 Answer

The areas referred to are contained in Title I and not Title III of the Interim Agreement. No substantive modifications have yet been made to Title 1 of the Agreement.
3. OTHER QUESTIONS

3.1 TRADE COVERAGE

3.1.1 Question

Could the Parties provide the following data?

- Latest annual bilateral trade volume by Chapters of the Combined Nomenclature of tariffs.
- Percentage of trade that will benefit from the application of the Agreements again by the same Chapters.

3.1.1 Answer

European Communities imports from (in thousands ECUs):

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</tr>
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<tbody>
<tr>
<td>Poland</td>
<td>3.857.413</td>
<td>5.156.444</td>
<td>6.212.028</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>2.557.394</td>
<td>2.689.505</td>
<td>4.061.006</td>
</tr>
<tr>
<td>Hungary</td>
<td>2.586.976</td>
<td>2.933.969</td>
<td>3.624.486</td>
</tr>
</tbody>
</table>

European Communities exports to:

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<th></th>
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</thead>
<tbody>
<tr>
<td>Poland</td>
<td>3.944.419</td>
<td>4.393.317</td>
<td>7.873.594</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>2.384.153</td>
<td>2.607.758</td>
<td>3.815.799</td>
</tr>
<tr>
<td>Hungary</td>
<td>2.987.805</td>
<td>2.875.147</td>
<td>3.484.141</td>
</tr>
</tbody>
</table>

Bilateral trade balance (for the European Communities):

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<tr>
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<tbody>
<tr>
<td>Poland</td>
<td>87.006</td>
<td>-763.127</td>
<td>1.661.566</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>-173.241</td>
<td>- 81.747</td>
<td>- 245.207</td>
</tr>
<tr>
<td>Hungary</td>
<td>400.829</td>
<td>- 58.721</td>
<td>- 140.345</td>
</tr>
</tbody>
</table>

A breakdown by HS chapter is provided in Annex (pages 65 to 72).

(Source: Eurostat)

3.1.2 Question

What is the rough estimate on the expansion of the bilateral trade? What is the present market share in each other's market and prospects for the future?
3.1.2 **Answer**

No estimates on the expansion of bilateral trade can be considered accurate or reliable, in view of the myriad of uncertain factors involved. Figures on the present shares of the European partners in the European Communities import market are available as follows:

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Poland</td>
<td>0.89%</td>
<td>1.11%</td>
<td>1.25%</td>
</tr>
<tr>
<td>Czechoslovakia</td>
<td>0.57%</td>
<td>0.58%</td>
<td>0.82%</td>
</tr>
<tr>
<td>Hungary</td>
<td>0.57%</td>
<td>0.63%</td>
<td>0.73%</td>
</tr>
</tbody>
</table>

Share of the Community in total Hungarian imports:

1989 29 per cent  
1990 33 per cent  
1991 42 per cent

Share of the Community in total imports of the former CSFR:

1989 19 per cent  
1990 32 per cent  
1991 35 per cent

Share of the Community in total Polish imports:

1989 34 per cent  
1990 43 per cent  
1991 50 per cent

**EC/CSFR Agreement**

3.1.3 **Question**

What percentage of trade (value) in each direction will be affected by the agreement, initially and by 2002? Please respond to this question twice: a) with respect to all trade and b) with respect to agricultural and fisheries trade only. As trade patterns evolve, how do you anticipate the agricultural/fisheries percentage growing or declining and why? Please submit comprehensive eight-digit trade data for 1992.

3.1.3 **Answer**

Trade figures are provided in Annex (pages 65 to 72), based on 1991 statistics (1992 is not yet available). As regards the more distant future, it is at this stage not possible to predict the share of trade in agricultural and fishery products (HS Chapters 1-24) that will be affected by the Agreement by the year 2002.
EC/Hungary Agreement

3.1.4 Question

What percentage of trade (value) in each direction will be affected by the agreement, initially and by 2002? Please respond to this question twice: a) with respect to all trade and b) with respect to agricultural and fisheries trade only. As trade patterns evolve, how do you anticipate the agricultural/fisheries percentage growing or declining and why? Please submit comprehensive eight-digit trade data for 1992.

3.1.4 Answer

Trade figures are provided in Annex, based on 1991 statistics (1992 is not yet available). It is not possible, at this stage, to predict the evolution of trade in 2002.

EC/Poland Agreement

3.1.5 Question

What percentage of trade (value) in each direction will be affected by the agreement, initially and by 2002? Please respond to this question twice - 1) with respect to all trade and 2) with respect to agricultural and fisheries trade only. As trade patterns evolve, how do you anticipate the agricultural/fisheries percentage growing or declining and why? Please submit comprehensive eight-digit trade data for 1992.

3.1.5 Answer

Trade figures concerning the initial impact of the Agreement are provided in the Annex. As regards the more distant future, it is not possible to predict the share of trade in agricultural and fishery products (CN chapters 1-24) that will be affected by the Agreement by the year 2002.

3.2 ELIMINATION OF "RESTRICTIVE DUTIES AND OTHER REGULATIONS OF COMMERCE" AND COVERAGE OF "SUBSTANTIALLY ALL THE TRADE"

EC/CSFR, EC/Hungary and EC/Poland Agreements

3.2.1 Question

In the communication from the Parties to the Agreements contained in L/6992, it is stated that "the object of the Interim Agreements is to gradually establish free-trade areas between the Community and each of the three countries in the sense of Article XXIV of the General Agreement". It is further stated that these free-trade Agreements will be established over a maximum period of ten years, at the end of which "duties and other restrictive regulations of commerce will have been eliminated on substantially all the trade between the signatories". We are thus interested in obtaining assurances from the Parties that the Agreements meet all the requirements of an "interim agreement leading to the formation of a free-trade area" within the meaning of GATT Article XXIV. Accordingly, will the Parties to the Agreement provide their assurances that:

(a) the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the adoption of the interim Agreements (i.e., 1 March 1992) to the trade of third countries are no higher or more restrictive than the corresponding duties and
other regulations of commerce existing in the same constituent territories prior to the formation of the interim Agreements (i.e., prior to 1 March 1992).

(b) It is noted that while the Interim Agreements abolish tariffs on a range of industrial products and contain special Protocols for the dismantling of trade barriers and quantitative restrictions for sensitive products such as textiles, coal, and steel, liberalization in agricultural trade is modest. Given that agricultural products, together with steel and textiles, account for significant percentages of Eastern European merchandise exports to the Community despite an effective rate of protection which has reportedly been calculated at over 100 per cent, we must question whether the Interim Agreements will lead to free-trade agreement areas covering "substantially all the trade" between the Parties. What assurances can the Parties to the Agreements provide in this regard? Please provide data estimating trade coverage which will be achieved under the Agreements over the 10-year phase-in period.

3.2.1 Answer

The Parties confirm that, in accordance with the provisions of Article XXIV, the Agreements to which they are signatories do not have as their cause or effect an increase in duties or other restrictive regulations of commerce towards third countries. As to the changes in some of the tariff bindings of the Czech Republic and Slovak Republic, Article XXVIII procedures were implemented (see reply 2.4.2).

The Parties consider that the Agreement fully comply with Article XXIV and specifically the "substantially all the trade" criterion which should not be assessed on the basis of the degree of liberalization of one specific sector. We refer to our replies to questions from another delegation, under 2.12.6. In the context of the question it is to be stressed that trade in industrial products will be liberalized totally by the end of the transitional period, including in the textiles, coal and steel sector. It is, unfortunately, not possible to provide data with trade coverage estimates for the ten year phase-in period. The Parties do not have such estimates.

3.2.2 Question

GATT Article XXIV:8(b) requires that a free trade area eliminate duties and other restrictive regulations of commerce on "substantially all" the trade between the constituent territories. However, the Interim Agreements seem to leave many holes where duties and/or restrictions are maintained, particularly in the sectors of agriculture, textiles, chemicals and steel and coal. In the light of this, could the Parties to the Agreements explain how they justify that the Agreements meet the "substantially all" requirement?

3.2.2 Answer

The Interim Agreements provide for a phasing out of duties and all restrictions in the industrial sector including textile, steel and coal by all Parties to the Agreements within the transitional period. As regards agricultural and processed agricultural products, specific concessions are granted on a range of products and free trade is provided for on a number of items. The firm opinion of the Parties to the Agreements is that the three Interim Agreements are consistent with the provision of Article XXIV:8(b). (See replies under 2.12.6).
3.2.3 Question

Can you confirm that substantially all trade between the Parties to the Agreement will be free upon the final staging of tariff and non-tariff reductions in February 2002, as stipulated in GATT Article XXIV:8(b)?

3.2.3 Answer

Yes.

EC/CSFR Agreement

3.2.4 Question

One of the standards to which free-trade areas are to be held under Article XXIV is that the free trade area agreements should lead to trade creation, as opposed to trade diversion. To what extent will this Agreement create trade and to what extent will it divert trade? Please also answer the question with respect to creation or diversion of agricultural trade.

3.2.4 Answer

No estimations of the degree of trade creation are available. However, it is assumed that the Interim Agreement will increase trade between the Parties and, in so doing, have beneficial commercial effects on third countries. It is the view of the Parties to the Agreement that the trade-creating effects will outweigh those of trade diversion.

EC/Hungary Agreement

3.2.5 Question

One of the standards to which free-trade areas are to be held under Article XXIV is that the free trade area agreements should lead to trade creation, as opposed to trade diversion. Have the Parties to the Agreement estimated the trade creation versus trade diverting effects of the Agreement? To what extent will this Agreement create trade and to what extent will it divert trade? Please also answer this question with specific attention to the creation or diversion of agricultural trade.

3.2.5 Answer

No estimations of the degree of trade creation of the Agreement are available. However, although trade creation is not a legal criterion under Article XXIV, it is the view of the Parties to the Agreement that the trade creation effects will outweigh those of trade diversion. Trade in agriculture will not be free of all restrictions at the end of the transitional period, although the Agreement does provide for the possibility of granting each other further concessions (see Article 14:5). Consequently, neither the benefits of trade creation nor the negative effects of trade diversion will be as explicit as in the industrial sector.

EC/Poland Agreement

3.2.6 Question

One of the standards to which free-trade areas are to be held under Article XXIV is that the free trade area agreements should lead to trade creation, as opposed to trade diversion. Have the Parties
to the Agreement estimated the trade creation versus trade diverting effects of the Agreement? To what extent will this Agreement create trade and to what extent will it divert trade? Please also answer this question with specific attention to the creation or diversion of agricultural trade.

3.2.6 Answer

No estimations of the degree of trade creation of the Agreement are available. However, although trade creation is not a legal criterion under Article 14, it is the view of the Parties to the Agreements that the trade creation effects will outweigh those of trade diversion. Regarding trade in agriculture, this will not be free of all duties at the end of the transitional period, although the Agreement does provide for the possibility of granting each other further concessions (see Article 14:5). Consequently, neither the benefits of trade creation nor the negative effects of trade diversion will be as relevant as in the industrial sector.

3.3 TARIFF CONCESSIONS TO THIRD PARTIES

EC/CSFR, EC/Hungary and EC/Poland Agreements

3.3.1 Question

Do any provisions of the Agreement place constraints on the ability of any Party to make tariff concessions, including reductions to zero, in the future on an MFN basis? If so, which ones?

3.3.1 Answer

The Parties to the Agreement remain free in their conduct of trade policy vis-à-vis third countries. Consequently, there are no constraints on the ability of any Party to make tariff concessions in the future.

EC/CSFR and EC/Hungary Agreements

3.3.2 Question

Please list any situations where the Agreement permits or requires one Party to the Agreement to provide a margin of tariff preference for the other Party over goods originating in countries not party to the Agreement. Please include in your answer, inter alia, a discussion of Article 21.

3.3.2 Answer

The Agreement provides for the abolition of customs duties and other restrictive regulations of commerce on substantially all the trade between the Parties. It does not foresee the creation of impediments to trade with third countries. Regarding Article 22, see answers under 2.17.1 and 2.17.3.

Article 21 is a recognition of the Parties' rights to maintain or establish Article XXIV type agreements with third countries and provides for consultations concerning such agreements.
**EC/Poland Agreement**

3.3.3 Question

Please list any situations where the Agreement permits or requires one Party to the Agreement to provide a margin of tariff preference for the other Party over goods originating in countries not Party to the Agreement. Please include in your answer, *inter alia*, a discussion of Article 21.

3.3.3 Answer

The objective of the Agreement is to establish free trade between the Parties on substantially all the trade and not to create impediments to trade with third parties. As regards Article 21 see answers under 2.17.1 and 2.17.3.

Article 21 is a recognition of the Parties' rights to maintain or establish Article XXIV type agreements with third countries and provides for consultations concerning such agreements.

**EC/CSFR Agreement**

3.3.4 Question

Does the Agreement permit the Czech Republic or the Slovak Republic to make bound tariff concessions which would equalize rates of duties payable by the European Communities and third Parties?

3.3.4 Answer

Insofar as the percentage reductions to be implemented by the Czech Republic and Slovak Republic are based upon the prevailing MFN duty rates, tariffs cannot be equalized as such during the phasing-out timetable, with the exception of zero duties. There are no constraints on Parties to negotiate reductions of their tariff schedules, including down to zero duties.

**EC/Poland Agreement**

3.3.5 Question

Does the Agreement permit Poland to make bound tariff concessions which would equalize rates of duties payable by the European Communities and third Parties?

3.3.5 Answer

Insofar as the percentage reduction to be implemented by Poland are based upon the prevailing MFN duty rates, tariffs cannot be equalized as such during the phasing-out timetable. See Article 1, paragraphs 3 and 4. There are, however, no constraints on Parties to negotiate reductions of their tariff schedules, including down to zero duties.

**EC/CSFR, EC/Hungary and EC/Poland Agreements**

3.3.6 Question

Will Parties explain the manner in which they intend to determine principal supplier rights under Article XXVIII of the GATT? Will preferential trade (i.e., trade with parties to Europe Agreements and/or other preferential trade arrangements) not be included?
3.3.6 Answer

The usual GATT practice will be followed.

3.4 AGREEMENTS WITH THE EFTA COUNTRIES

EC/CSFR Agreement

3.4.1 Question

To what extent will the Agreement provide preferential trade treatment to the EFTA countries under the European Economic Area established on 1 January 1993 and the recently implemented Free Trade Area Agreement between the CSFR and the EFTA countries?

3.4.1 Answer

Whether or not specific products can benefit from the preferences granted under the Agreement is determined by the rules of origin set forth therein. Products originating in the EFTA countries will not benefit from tariff preferences under the Agreement.

3.5 URUGUAY ROUND NEGOTIATIONS

EC/CSFR, EC/Hungary and EC/Poland Agreements

3.5.1 Question

Do both Parties intend to harmonize the relevant provisions in the Agreement with rules and disciplines deriving from the Uruguay Round negotiations? In all of the relevant sectors or only in specific sectors? If only in specific sectors, which sectors?

3.5.1 Answer

The Parties intend to comply with the disciplines ensuing from the Uruguay Round.

3.6 SCOPE OF THE INTERIM AGREEMENTS

3.6.1 Question

It appears that the Interim Agreements do not cover trade in services; can the Parties confirm this? If any of the provisions are intended to cover trade in services, please specify.

3.6.1 Answer

Although the Interim Agreements do not contain any provisions on services, such provisions are comprised in the Europe Agreements themselves. Dispositions include a chapter on establishment and one on the supply of services; the scope of the provisions are covered by Article V of the draft text of GATS. The Europe Agreements further include a clause allowing for an adjustment of the provisions on services in the light of the result of the Uruguay Round GATS negotiations.
4. EUROPEAN AGREEMENTS

**EC/CSFR Agreement**

4.1 Question

EA 48 defines "Community companies" and "CSFR companies" as those whose operations "possess a real and continuous link with the economy of one of the Member States of the European Communities or the CSFR". What constitutes a "real and continuous link"? If this concept is based on any European or international jurisprudence, please provide relevant specific information.

4.1 Answer

As this Article is outside the scope of GATT and specifically its Article XXIV, it was not part of the trade provisions notified to Contracting Parties under L/6992/Add. 1 and is not under examination by the Working Party.

**EC/Hungary Agreement**

4.2 Question

EA 48 defines "Community companies" and "Hungarian companies" as those whose operations "possess a real and continuous link with the economy of one of the Member States of the European Communities or Hungarian." What constitutes a "real and continuous link"? If this concept is based on any European or international jurisprudence, please provide relevant specific information.

4.2 Answer

As this Article is outside the scope of GATT and specifically its Article XXIV, it was not part of the trade provisions notified to Contracting Parties under L/6992/Add. 1 and is not under examination by the Working Party.

**EC/Poland Agreement**

4.3 Question

EA 48 defines "Community companies" and "Polish companies" as those whose operations "possess a real and continuous link with the economy of one of the Member States of the European Communities or Poland." What constitutes a "real and continuous link"? If this concept is based on any European or international jurisprudence, please provide relevant specific information.

4.3 Answer

As this Article is outside the scope of GATT and specifically its Article XXIV, it was not part of the trade provisions notified to Contracting Parties under L/6992/Add. 1 and is not under examination by the Working Party.
**EC/CSFR Agreement**

4.4 Question

With respect to EA 68, what assurances can Parties provide that the Czech and the Slovak measures undertaken to ensure the future legislation is compatible with the European Communities (under Article 68) do not discriminate against third parties (e.g., the European Communities's Broadcast Directive or Utilities Directive). Explain how the process of approximation of laws will be accomplished and on what schedule.

4.4 Answer

GATT obligations will be respected. See further Answer 4.1.

**EC/Hungary Agreement**

4.5 Question

With respect to EA 68, what assurances can Parties provide that Hungarian measures undertaken to ensure the future legislation is compatible with the European Communities (under Article 68) do not discriminate against third parties (e.g., the European Communities's Broadcast Directive or the European Communities's Utilities Directive). Explain how the process of approximation of laws will be accomplished and on what schedule.

4.5 Answer

As far as Hungarian measures to be taken in the framework of approximation of laws are covered by GATT obligations, no discrimination will take place against third parties. Trade in services (e.g., in broadcast services) is not covered by GATT. See further answer under 4.2.

**EC/Poland Agreement**

4.6 Question

With respect to EA 68, what assurances can Parties provide that Polish measures undertaken to ensure that future legislation is compatible with the European Communities (under Article 68) do not discriminate against third parties (e.g., the European Communities’s Broadcast Directive or Utilities Directive)? Explain how the process of approximation of laws will be accomplished and on what schedule.

4.6 Answer

See answer under 4.3.

**EC/CSFR Agreement**

4.7 Question

EA 72 addresses industrial cooperation to strengthen the private sector in the Czech Republic and the Slovak Republic. How do the Parties envision this co-operation taking place? Do Parties envision use of any economic incentive such as taxation policy to encourage this cooperation? If so,
will these incentives be available to entities established in third Parties or not yet established in European Communities member States or the Czech Republic and the Slovak Republic?

4.7 Answer
See Answer 4.1.

EC/Hungary Agreement

4.8 Question

EA 71 addresses industrial co-operation to strengthen the private sector in Hungary. How do the Parties envision this co-operation taking place? Do Parties envision use of any economic incentive such as taxation policy to encourage this co-operation? If so, will these incentives be available to entities established in third parties or not yet established in European Communities member States or Hungary?

4.8 Answer
See reply 4.2.

EC/Poland Agreement

4.9 Question

EA 72 addresses industrial co-operation to strengthen the private sector in Poland. How do the Parties envision this co-operation taking place? Do Parties envision use of any economic incentives such as taxation policy to encourage this co-operation? If so, will these incentives be available to entities established in third parties or not yet established in European Communities member States or Poland?

4.9 Answer
See answer under 4.3.

EC/CSFR Agreement

4.10 Question

EA 73 calls for cooperation to maintain, and if necessary improve, the investment climate in the CSFR, and provides for the exchange of information on laws, regulations and administrative practices in the field of investment. Does the Czech Republic and the Slovak Republic expect to make information fully available to third Parties at the same time as they provide it to the European Communities?

4.10 Answer
See Answer 4.1.

EC/Hungary Agreement

4.11 Question

EA 72 call for co-operation to maintain, and if necessary improve, the investment climate in Hungary, and provides for the exchange of information on laws, regulations and administrative practices
in the field of investment. Does Hungary expect to make information fully available to third parties at the same time as they provide it to the European Communities?

4.11 Answer

See Answer 4.2.

EC/Poland Agreement

4.12 Question

EA 73 calls for co-operation to maintain, and if necessary improve, the investment climate in Poland, and provides for the exchange of information on laws, regulations and administrative practices in the field of investment. Does Poland expect to make information fully available to third parties at the same time as it is provided to the European Communities? Will any measures taken under this article by Poland to improve its investment climate be applied on an MFN basis?

4.12 Answer

See answer under 4.3.

EC/CSFR Agreement

4.13 Question

In Poland’s EA 90 (EA 91 for Hungary), the European Communities and Poland/Hungary agree to coordinate and harmonize cross-border broadcasting services. Why is this commitment omitted from the CSFR Agreement’s EA 90? Does the European Communities and the Czech Republic and the Slovak Republic envision negotiating such a provision in the future? If so, when?

4.13 Answer

See answer 4.1.

EC/Hungary Agreement

4.14 Question

In EA 91, the European Communities and Hungary agree to co-ordinate and harmonize cross-border broadcasting services. Does Hungary envision adopting legislation similar to European Communities Broadcast Directive, which constitute discriminatory quota against non-European Communities origin programming?

4.14 Answer

See Answer 4.2.
EC/Poland Agreement

4.15 Question

In EA 90, the European Communities and Poland agree to co-ordinate and harmonize cross-border broadcasting services. Does Poland envision adopting legislation similar to European Communities Broadcast Directive, which constitutes a discriminatory quota against non-European Communities origin programming? If so, when?

4.15 Answer

See answer under 4.3.
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**Note:** Statistical Regime 4 - Base Year 1989  
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