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## II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

### (1) OVERVIEW

1. Poland's goal of accession to the European Union (EU) has been the main factor shaping its foreign trade policies and orientation in recent years. This has presented a fresh opportunity for economic reform and modernization of domestic institutions. Poland signed an Association Agreement in 1991, and formally applied for full membership in 1994; negotiations on joining the EU commenced in 1998. The accession process has already affected most aspects of Polish trade-related policies and practices. Legislation was enacted in several areas, aimed at taking on board the body of EU laws and regulation, the *acquis communautaire*. Poland also maintains close relations with the Czech Republic, Hungary, and Slovakia through its membership in the Central European Free Trade Agreement (CEFTA). More recently, Slovenia, Romania, and Bulgaria have also joined. Poland has recently concluded bilateral free-trade agreements with the Baltic States (Estonia, Latvia, and Lithuania), Israel, and Turkey. Poland's trade under free-trade agreements accounted for almost three quarters of its merchandise trade in 1997; the EU is by far its most important trading partner.

2. Legislation on foreign direct investment has been designed to fulfil European standards; the revised law provides for equal treatment of foreign and domestic investors. The number of sectors subject to restrictions has been reduced, and the restrictions on land acquisitions by foreigners relaxed. Capital flow restrictions have been eased, further enhancing Poland's investment attractiveness.

3. While the thrust of Poland's trade policy is clearly towards greater liberalization, the trade and trade-related regime has been characterized by frequent changes in its laws and regulations. Recent changes have introduced some trade restrictive measures, including substantive tariff increases. Frequent changes of regulations can create an element of uncertainty for traders and investors, with possible detrimental consequences on trade and investment.

### (2) THE INSTITUTIONAL FRAMEWORK

#### (i) General framework

##### (a) Parliament and legislative powers

4. The Republic of Poland returned to parliamentary democracy in 1989, after decades of socialism. The 1952 Constitution was replaced by an interim Constitution in 1992 to facilitate Poland's transition to a parliamentary democracy. The current Constitution was adopted by referendum in October 1997.<sup>1</sup>

5. Parliament is bicameral. The legislative power in Poland is vested in the Sejm (the lower house) and the Senate (the upper house). The Sejm consists of 460 members and the Senate of 100 members. Members of both houses are elected in public elections for four-year terms. The members of the Sejm are elected by proportional representation at the national level or within regional constituencies (requiring a minimum of 5% of votes to obtain seats), while the members of the Senate are elected by simple majority within voivodships (regions). In order to guarantee representation for minorities in the Sejm, there is a provision exempting their lists from the 5% minimum rule. The two houses may be dissolved by a two-thirds majority vote in the Sejm. The President has the power to dissolve Parliament if it fails to approve the formation of a new Government, or to adopt the Budget within the prescribed time limit of four months.

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<sup>1</sup> Government of Poland (1997).

6. The Constitution grants the Sejm the dominant role in the legislative process. The Sejm also has responsibility over budgetary matters, and passes laws with the support of at least 50% of its members. Members of both parliamentary houses, the President, and the Council of Ministers can introduce legislation, as can citizens through petition to Parliament with a minimum of 100,000 names. Bills, once passed, must be signed by the President within 21 days and are promulgated in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*). The President may veto laws passed by Parliament, although this may be overridden by a three-fifths majority in the Parliament. The National Assembly – comprising both houses of parliament sitting jointly – must pass statutes involving amendment to the Constitution.

(b) The Executive

7. The President is the supreme representative of the State in both domestic and foreign relations. The Constitution vests executive power in the President, elected by universal suffrage for a five-year term, and the Council of Ministers. The President designates the Prime Minister, who forms and heads the Government, and appoints government members. The Council of Ministers is the head of the State administration and is responsible for domestic and foreign policy. It is made up of the President of the Council (the Prime Minister), vice-presidents, and ministers.

8. The process of approximation of the Polish legal system to EU law, as well as those of international organizations, was reinforced by the 1997 Constitution. This states that the Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.

9. Local authorities have no direct role in trade policy formulation or implementation. Regional governments are organized on the basis of 16 voivodships (regions), in which the voivod or local governor represents the Central Government.<sup>2</sup>

(c) The Judiciary

10. Judicial power is vested by the Constitution in the courts and tribunals. Judges are appointed for an indefinite period by the President on motion by the National Council of the Judiciary. The President may block an appointment nominated by the National Council, but cannot appoint as a judge someone who has not been proposed by the Council. Poland's highest court is the Supreme Court.

11. Administrative measures are subject to a code of procedures and are handled by the chief administrative court and lower administrative courts. Decisions by these courts may be appealed to higher courts, including the Supreme Court. The Supreme Court has developed a body of case law to safeguard citizens' rights.

12. The Constitutional Tribunal is responsible for ensuring that laws and other legislative Acts conform to the Constitution. It also issues legally binding interpretations of the laws. The Sejm elects tribunal members for a nine-year term.

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<sup>2</sup> The voivodships are divided into 308 poviats (county-level governments) and 65 urban gminas (larger towns). The basic unit of local government is the gmina, of which there are 2,489. Regional and local governments are elected by universal suffrage.

**(ii) Economic and trade policy formulation and implementation**

13. Poland's economic and trade policy formulation process has changed since the previous Trade Policy Review in 1992. The responsibilities of several ministries have been transferred to the Ministry of Economy, which has become the main policy-setting body in Poland and is now responsible for trade, economic, and industrial policies. The scope of the activities of the Ministry of Economy includes:

initiating the policy and decisions of the Council of Ministers on foreign economic relations, including the inflow of foreign capital, agreements on mutual protection of investment, tariff and non-tariff policies, as well as regulating foreign trade;

cooperating with the Ministry of Foreign Affairs in representing the Government in foreign economic relations;

undertaking and developing bilateral and multilateral relations, securing improved access to foreign markets, developing cooperation with appropriate organizations;

initiating and overseeing the implementation of industrial policy, including export policy;

preparing short- and medium-term economic programmes, as well as export-development schemes and promotional programmes abroad; and

evaluating the economy's situation, including the trends in international trade and the effectiveness of economic policies.

14. A number of departments within the Ministry are concerned with trade policy. These include the Department of European Integration and International Organizations; the Department of Foreign Economic Relations (bilateral and CEFTA); the Department of Economic Policy Instruments (tariffs, quotas, rules of origin); the Department of Goods and Services Turnover Administration (licensing); the Department of Safeguard Procedures (anti-dumping, countervailing measures, safeguards); the Department for Economic Promotion; the Department of Export Control (military and dual-use products); and the Department of Trade in Services.

15. The Ministry of the Economy plays an important role in economic policy formulation through the Economic Strategy Department and the Economic Analysis Department. The Ministry also has major responsibilities in industrial policy with its Industrial Policy Department and the Craft, Small and Medium Size Enterprises Department. The Energy and Environment Department sets guidelines on energy policy, including prices for electricity and gas, and formulates policies regarding the environmental impact of the energy sector.

16. Other important ministries in setting trade and economic policies include the Ministry of Finance and the Ministry of Treasury, the latter having taken over the responsibility for the privatization programme from Finance in 1997. The independent central bank, the National Bank of Poland, plays an important role in managing the country's monetary and exchange rate policies. It has the sole right to determine and implement monetary policy and for managing the exchange rate. The Bank's overriding statutory objectives are to maintain price stability, while supporting the Government's economic policies insofar as they do not conflict with this objective. Policy is determined by the Monetary Policy Council and is submitted to Parliament annually as part of the Bank's monetary policy guidelines. The Council is chaired by the President of the Central Bank, and

consists of other members appointed by the President of Poland and Parliament.<sup>3</sup> Council resolutions are implemented by the Bank's Management Board. The Bank's statutory responsibility for banking supervision is handled by its Commission for Banking Supervision. Its decisions are implemented by the General Inspectorate of Banking Supervision.

17. Excise and trade taxes are set by the Ministry of Economy in consultation with the Ministry of Finance, and implemented by the Central Board of Customs. The Office of Competition and Consumer Protection is concerned with controlling monopolistic behaviour and protecting consumer rights. The Foreign Investment Agency monitors and promotes inward investment. Other important bodies involved in formulating trade-related policies include sector-specific ministries, such as the Ministries of Agriculture and Rural Development; Post and Telecommunications; Transport and Maritime Economy; Environment; and Culture and National Heritage.

18. Poland has no independent statutory body to review or advise the Government on economic policies, including the provision of government assistance to industry. Public research into Poland's foreign trade policies is conducted by the government-funded Foreign Trade Research Institute. It publishes research on Poland's trade policies, including analysis of trade forecasts and surveys of economic activity. Much of this material is published in the Institute's annual report. The World Economy Research Institute at the Warsaw School of Economics also regularly publishes economic material on the Polish economy, including in its annual *International Economic Report on Poland*.

19. The Government interacts with the private sector mainly through regular consultations with the Chamber of Commerce.

### **(iii) Main trade laws**

20. Poland's main laws covering trade and trade-related policies are summarized in Table II.1. Many laws and regulations have changed considerably since 1992, mainly as part of Poland's process of accession to the EU. Most of its laws and regulations are being replaced with legislation that is aligned to EU requirements.

21. The main recent legislative changes include the replacement of the Law on Customs of 1977 with the Customs Code of 1997. A revised Law on Administering Foreign Trade of Goods and Services was also introduced in 1997.

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<sup>3</sup> The President of the National Bank of Poland is appointed for a six-year term by the Sejm and can only be removed for criminal activity or if considered unworthy of occupying such position by the Tribunal of State.

**Table II.1**  
**Poland's main legislation related to trade, 1999**

Area	Legislation
Main trade legislation on exports and imports	The basic rules and regulations on foreign trade are laid down in the Law on Economic Activity of 1988; the Customs Code of 1977; the Law on Administering Foreign Trade of Goods and Services and on Special Trade of 1997; the Law on Principles of Special Control of Foreign Turnover in Goods and Technologies in Connection with International Agreements and Obligations of 1993; the Law on State Standardization and Supervision of Food and Agricultural products in Foreign Turnover of 1996. The Customs Code provides the legal framework for the Polish tariff system, including rules on the imposition of anti-dumping and countervailing duties, import bans, export and import licensing, the establishment of export and import quotas and safeguard measures.
Anti-dumping and countervailing duties and safeguard measures	Law on Protection Against Importing Goods into the Polish Customs Territory at Dumped Prices of 1997; Law on Safeguards Against an Excessive Importation of Goods into the Polish Customs Territory of 1997.
Government procurement	Law on Public Procurement of 1994.
Competition	Law on Counteracting Monopolistic Practices of 1990; Law on Preventing Unfair Competition of 1993.
Standards	Law on Standardization of 1993.
Sanitary and phytosanitary measures	Law on Commercial Inspection of 1958; Law on Inspection of Purchase and Processing of Agricultural Products of 1970; Law on Health Requirements Towards Food and Alimentation; Law on Pharmaceuticals, Medical Materials, Pharmacies, Medical Wholesalers and Pharmaceutical Inspection of 1991; Law on Testing and Certification of 1993.
Intellectual property rights	Act on Copyright and Neighbouring Rights of 1994; Law on the Protection of Topographies of Integrated Circuits of 1992; Ordinance on the Protection of Topographies of Integrated Circuits of 1993; Law on the Inventive Activity of 1972; Law on Patent Office of the Republic of Poland of 1962; Law on Patent Agents of 1993; Law on Trademarks of 1985.
Special economic zones	Law on Special Economic Zones of 1994.
State aid	Law on Corporate Income Tax of 1992; Law on Public Finance of 1997; Law on Financial Restructuring of Enterprises and Banks of 1993; Law on Restructuring of Cooperative Banks and Food Economy Bank 1994; Laws on Sureties and Guarantees Granted by the State Treasury of 1997; Law on Adjustment of Hard Coal Mining to Functioning in a market Economy and Special Rights and tasks of Mining Districts of 1998; Tax Ordinance of 1997; Law on Export Contracts Insurance Guaranteed by the Treasury of 1994; Law on Establishment of Agency for Agriculture Restructuring and Modernization of 1993.
Privatization	Law on Economic Activity of 1988; Law on Commercialization and Privatization of State Enterprises of 1996; Law on State-Owned Enterprises of 1981.
Price control	The Law on Prices of 1982.
Foreign investment	Law on Principles of Conducting Economic Activity in a Small Industry by Foreign Legal and Natural Persons in the Territory of the Polish People's Republic; Law on Companies with Foreign Shareholdings of 1991.

Source: Polish authorities.

### (3) TRADE AGREEMENTS AND ARRANGEMENTS

#### (i) Poland and the EU

22. The most important factor affecting the Polish trading system in recent years has been the goal of EU membership by 2003.<sup>4</sup> Integration within the EU should accelerate economic development, promote further economic modernization, and increase the country's competitiveness. Adapting Poland's legal and administrative system to the *acquis communautaire* requires profound changes to Poland's trade and related economic policies, as well as to its legal, administrative, and institutional structures. In this respect, Poland will need to adapt about 7,000 Acts and other

<sup>4</sup> The Polish authorities have set a date of readiness for accession on 31 December 2002. While the EU has set no such date, it has indicated that new members that have fully complied with membership requirements may be accepted from 2002.

regulations. While it has already made considerable progress in aligning many of its trade policies and measures with those of the EU, major changes are still needed in key areas. EU accession talks commenced in March 1998 with the adoption of an Accession Partnership. So far, Poland has provisionally completed negotiations on nine legislative chapters of the EU, while six remain open.<sup>5</sup> Areas still to be negotiated include agriculture, the environment and freedom of movement of people.

23. Membership of the EU requires comprehensive negotiations to ensure that Poland meets the Copenhagen criteria for EU enlargement (Box II.1). Screening of Poland's legislation to compare it with EU law was completed in November 1999. A revised National Programme of Preparation for Membership in the European Union was adopted in May 1999. The Programme is said to need greater clarity in a number of areas, such as the free movement of goods, and on how the specific priorities set out in the Accession Partnership are to be financed.<sup>6</sup>

24. The European Commission concluded that while Poland was considered to be a functioning market economy, overall it had not progressed significantly in aligning further its legislation and in adapting and strengthening the structures required in a large-sized country. Areas of major concern included corruption; certification and standardization; state aids, in particular regarding restructuring of the steel and automobile industries; intellectual property protection, including data security; regional and agriculture policy where, although progress had been made in the veterinary and phytosanitary *acquis*, the cost of implementation had not been adequately budgeted, and Poland still needed to transform its agriculture and fishery policies<sup>7</sup>; social fields; customs; and justice.<sup>8</sup> The EC also noted the need to accelerate the privatization and restructuring of the many state-owned enterprises, and that further alignment was required in public procurement and competition (anti-trust and mergers) policies.

25. The reforms taking place within the framework of the Europe Agreement and the EU accession process will continue to have a significant impact on the Polish economy. Poland has already achieved a considerable degree of integration with the EU. Bilateral trade with the EU already accounts for over two thirds of its trade, and about the same share of inward foreign investment. Removing barriers to the movement of goods, services, and factors should further benefit Poland through increased domestic competition and improved access to the Single Market.

26. Poland's tendency to focus on preferential trade with the EU as well as other regional partners could nevertheless divert Polish imports away from non-preferential sources. MFN tariffs in 1999, for example, were on average almost three times higher than preferential levels. This could reduce the economic gains to Poland from trade liberalization if, as a result, its imports are not sourced from the most efficient world supplier. The precise impact of EU accession on Poland's trade patterns remains unclear. Adoption of the EU common external tariff, which would lower substantially Poland's tariffs overall – falling by as much as two thirds based on 1999 levels – could be expected to lessen the potential trade diversion induced by Poland's preferential arrangements. On the other hand, trade diversion of imports away from non-preferential sources is likely to increase in some important

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<sup>5</sup> Chapters yet to be concluded are culture and audio-visual; company law; free movement of goods; fisheries; customs union; and competition policy. Those provisionally closed cover science and research; education and training; small and medium-sized enterprises; statistics; industrial policy; telecommunications and information technology; consumer protection and health; external relations; and common foreign and security policy (CFSP).

<sup>6</sup> EC (1999).

<sup>7</sup> According to the EC, in view of the importance of these sectors to the Polish economy and the EU, Poland needed to develop a strategy that would facilitate the necessary adjustments in these sectors prior to accession.

<sup>8</sup> EC (1999).

sectors, especially in agriculture, where EU membership would raise protection levels. Thus, although Poland's trade-related reforms will continue to benefit third-country traders and investors, its emphasis on preferential trade liberalization is likely to skew these benefits in favour of regional trading partners.

**Box II.1: Steps leading up to Poland's EU membership**

**EU steps towards Poland's membership:** at the 1993 European Council Summit in Copenhagen, Poland and all other Europe Agreement partners were offered the possibility of EU membership. The Summit established broad membership requirements, the so-called Copenhagen criteria. Apart from adopting EU laws and requirements, the *acquis communautaire*, these criteria include: (i) stability of institutions guaranteeing democracy, rule of law, human rights, and respect for and protection of minorities; (ii) a functioning market economy, as well as the capacity to cope with the competitive pressures and market forces within the EU; and (iii) adherence to the aims of political, economic and monetary union. The Maastricht Treaty criteria on government deficits, debt, inflation etc., for participation in the Economic and Monetary Union (EMU) are not part of the Copenhagen criteria.

In April 1994, Poland submitted its formal application for full membership to the EU, and in December 1994, at the European Council Summit in Essen, a strategy for preparing Central European countries was launched. A White Paper on the internal market, prepared by the European Commission in 1995, identifies the high priority items in the *acquis communautaire* that allow the internal market to function. The White Paper proposed a logical sequence for adapting the national legislation within selected sectors, and highlighted the requirements of a proper implementation and monitoring of legislation to ensure compliance with EU law. Moreover, the EU decided to allow for diagonal accumulation of rules of origin across EFTA, the EU, and the Europe Agreement countries from 1 January 1997, allowing traders to use originating material from any country within the zone to produce an originating product while retaining preferential origin. Poland joined this system on 1 July 1997; the delay resulted from the necessity to adjust legislation. The EU accession talks started in March 1998; its final stage, involving the screening of Poland's legislation in order to compare it with the EU law was completed in November 1999.

**Poland's steps toward EU membership:** in January 1997, the Polish Government adopted the National Strategy for Integration, summarizing the integration measures to be implemented and formulating the adjustment tasks preceding accession. In June 1998, the Council of Ministers accepted a National Programme of Preparation for Membership in the European Union (NPPM); an amended version was subsequently accepted by the Council in May 1999. The NPPM sets the direction of adjustment measures and provides a schedule for their implementation over the period 1998-2002 within the context of Poland's accession to the EU. Some of these priorities are of a horizontal nature as they are prerequisites for efficient functioning of the economy (e.g. macroeconomic priorities, adjustments in competition rules, public orders, intellectual and industrial property law, and company law), whereas others relate to separate sectors (i.e. agriculture, transport, and fisheries).

*Source:* EC (1997), *Agenda 2000: For a Stronger and Wider Europe, Commission's Opinion on Poland's Application for Membership of the European Union*, Press Release IP/97/660 of 16 July 1997, Brussels; Foreign Trade Research Institute (1997a), *Poland's Foreign Trade Policy 1996-1997*, Warsaw; Government of Poland (1999a), *Poland - National Programme of Preparation for Membership in the European Union*, modified version, Warsaw, May.

**(ii) Poland and the WTO**

27. Poland joined the GATT in 1967 and became a founding member of the WTO on 1 July 1995. The Uruguay Round Agreements were ratified by the President of Poland under

legislative authority granted by Parliament.<sup>9</sup> They are part of Poland's domestic legislation, and take precedence over domestic laws where they do not conform.

28. Poland's main commitments on trade in goods in the Uruguay Round were to: (i) bind, for the first time, close to 94% of its tariffs; (ii) reduce tariffs by 38% on industrial products and 36% on agricultural goods over six years; and (iii) limit domestic support to agriculture by 20% in value terms by the year 2000, and cut agricultural export subsidies by 36% in value and 21% in volume.

29. In services, Poland made a number of commitments under the General Agreement on Trade in Services (GATS). Its Schedule covers 54 activities (out of a total of 161).<sup>10</sup> It made commitments in ten sectors: business services, communications, construction, distribution, education, environment, financial services, health care services, tourism, and transport services.<sup>11</sup> Poland primarily bound its existing policy framework for allowing market access, rather than making liberalizing commitments *per se*. It subsequently participated in the WTO agreements on basic telecommunications (1997) and financial services (1997), where it agreed to open its long-distance and international telephone markets by 1 January 2003, and to improve market access for foreign insurance companies by allowing them to operate branches as from 1 January 1999. Foreign banks had been previously permitted to operate branches in Poland.

30. Poland also participated in the 1997 Information Technology Agreement (ITA); it agreed to eliminate tariffs by 1 January 2002 on a range of imported information technology products covering 346 (nine-digit) tariff lines, including computers, telecommunications equipment, semiconductors, software, and scientific instruments.<sup>12</sup> Poland is an observer to the plurilateral WTO Agreement on Government Procurement.

31. The status of Poland's WTO notification obligations is presented in Table AII.1. As regards dispute settlement in the WTO, India had requested consultations in April 1996 regarding Poland's preferential treatment of EU automobiles. These were concluded on 16 July 1996 when both parties notified a mutually agreed solution to the WTO Dispute Settlement Body.<sup>13</sup> As a complainant, Poland is currently involved in two cases: one concerns the imposition of final anti-dumping duties by Thailand (a Panel was established in November 1999)<sup>14</sup>; and the other, in which Poland is a third party, concerns patent protection of pharmaceuticals by Canada (a Panel was established in February 1999).<sup>15</sup>

### (iii) Regional agreements

#### (a) Relations with the European Union

32. Poland signed an Association (Europe) Agreement with the EU in December 1991, which became fully effective in February 1994 (Table II.2).<sup>16</sup> An Interim Agreement had operated since

<sup>9</sup> The WTO Agreement was ratified by Parliament in February 1995. The full text of the Agreement was published in the Journal of Laws (*Dziennik Ustaw*) No. 98/1995 dated 24 August 1995, pos. 483 (WTO document G/TBT/2/Add.31, February 1997; and Foreign Trade Research Institute (1996a).

<sup>10</sup> GATT (1994).

<sup>11</sup> WTO document GATS/SC/71, 15 April 1994.

<sup>12</sup> Poland participated in the ITA negotiations as an observer, and signed the ITA in May 1997.

<sup>13</sup> WTO document WT/DS19/2, 11 September 1996.

<sup>14</sup> WTO document WT/DS122/1, 15 April 1998.

<sup>15</sup> WTO document WT/DS114/6, 29 March 1999.

<sup>16</sup> A first agreement signed in September 1989, the Trade and Economic Cooperation Agreement, provided for reciprocal MFN treatment and foresaw the gradual abolition by 1994 of the EC's quantitative restrictions on imports of Polish origin.



March 1992. The Europe Agreement aims to establish a free-trade area over a maximum period of ten years, on the basis of reciprocity by Poland and asymmetry by the EU (i.e. requiring more rapid liberalization by the EU). Polish industrial exports to the EU have benefited from duty-free treatment since 1 January 1995, except for coal and steel, and textiles, which have been duty free since 1996 and 1997, respectively. Poland eliminated tariffs on EU imports of industrial products from 1 January 1999, except for steel, and petroleum products, abolished in 2000, and automobiles, which are to be removed on 1 January 2002. Tariffs on some non-industrial products have also been lowered. In addition to trade, the agreement covers movement of capital and workers, and the alignment of Polish legislation and processes to the EU *acquis communautaire*.<sup>17</sup> The agreement provides a framework for Poland's integration into the EU.

**Table II.2**  
**Poland's preferential trade agreements, 1999**

Country	Date of signing agreement	Major Polish exports and imports covered by the agreement	Other major areas of co-operation (excluding WTO commitments)
European Union (EU) <sup>a</sup>	16 December 1991 (entry into force 1 February 1994) <sup>b</sup>	<i>Imports</i> - phased reduction of duties on industrial products; duty free by 1 January 1999 (except steel and petroleum products from 2000, and vehicles by 1 January 2002) <i>Exports</i> - duty free on industrial products by 1 January 1995; duty free on coal and steel by 1 January 1996; duty free on textiles by 1 January 1997 Tariff rate quotas on some agricultural products	Competition; intellectual, industrial and commercial property; movement of workers; procurement; standstill and services
European Free Trade Agreement (EFTA) <sup>c</sup>	10 December 1992 (provisionally 15 November 1993, entry into force 1 September 1994)	<i>Imports</i> - phased reduction of duties on industrial products; duty free on industrial products by 1 January 1999 (except steel, petroleum products and automobiles by 2002) <sup>d</sup> <i>Exports</i> - duty free on industrial products by 1 November 1993 (except chemical products to Norway by the beginning of 1996, tariffs and quotas on textiles and clothing to Norway by the end of 1997, and tariffs on oil products to Iceland) Duty free on some fish, marine and processed agricultural products (bilateral arrangements covering some agricultural products)	Competition, intellectual property, investment, monopolies, procurement and services
Central European Free Trade Agreement (CEFTA) <sup>e</sup>	21 December 1992 (provisionally 1 March 1993, entry into force 1 July 1994)	Phased reduction of duties on industrial products; duty free on industrial products since 1 January 1999 (except cars by 1 January 2002) <sup>d</sup>	Competition, intellectual property, monopolies, and procurement
Estonia	5 November 1998 (provisionally 1 January 1999)	Phased removal of duties on industrial products by 1 January 2002; duty free; tariff quotas on some agricultural products on exports to Poland (except fish exports - free from 1 January 2000); Polish exports of agricultural products duty free immediately	Competition, intellectual property, monopolies and procurement
Latvia	28 April 1997 (provisionally 1 April 1998, entry into force 1 June 1999)	Phased removal of tariffs on industrial products by 1 January 2001 (except cars by 1 January 2002); tariff concessions on certain agricultural products; for certain fish products duty free in mutual trade from 1 January 2000.	Competition, intellectual property, monopolies and procurement

**Table II.2 (cont'd)**

<sup>17</sup> Some 30% of the *acquis communautaire* is incorporated into the Europe Agreement (Lippert and Becker, 1998).

Country	Date of signing agreement	Major Polish exports and imports covered by the agreement	Other major areas of co-operation (excluding WTO commitments)
Lithuania	27 June 1996 (entry into force 1 January 1997)	Phased removal of duties on industrial products by 1 January 2001 (except cars by 1 January 2002) Tariff rate quotas on some agricultural products	Competition, intellectual property, monopolies and procurement
Israel	1 July 1997 (provisionally 1 March 1998, entry into force 1 May 1999)	Phased reduction on industrial products; complete elimination by 1 January 2001 (except cars by 1 January 2002); tariff rate quotas on some agricultural products	Competition, intellectual property, monopolies and procurement
Turkey	4 October 1999	Phased removal of duties on industrial goods by 1 January 2002; tariff concessions on some agricultural products	Competition, intellectual property, monopolies and procurement

- a A free-trade agreement with Finland, which became a member of the EU in 1995, has been in place since 1985.
- b The trade accord replaced a trade agreement from September 1989, the Trade and Economic Co-operation Agreement. The agreement provided for reciprocal MFN treatment and foresaw the gradual abolition by 1994 of quantitative restrictions applied by the Community on imports of Polish origin.
- c Member countries are Iceland, Liechtenstein, Norway, and Switzerland.
- d Products excluded are products originally falling within Chapters 1-24 in the nomenclature preceding the Harmonized Description and Coding System (HS), but which were transferred at the time of the introduction of the Harmonized System into HS Chapters 25-97. However, the products may be covered by bilateral agricultural arrangements or by the provisions relating to processed agricultural products.
- e Member countries are the Czech Republic, Hungary and the Slovak Republic (in 1994 as the founding members), Slovenia (since 1 January 1996) and Romania (since 1 July 1997).

*Source:* WTO Secretariat, based on information provided by the Polish authorities.

### 33. The Europe Agreement covers a broad range of areas, including<sup>18</sup>:

on industrial products: elimination of Polish customs duties on EU imports on 1 January 1999, and by 1 January 2002 for vehicles; elimination of EU tariffs and quantitative restrictions on imports from Poland on 1 January 1995, except for coal and steel imports, which became duty free from 1 January 1996 and for textiles from 1 January 1997 (quantitative restrictions were terminated on textiles from 1 January 1998);

on agricultural products: reciprocal concessions in the form of reduced tariffs on a number of products and increased quotas; veterinary and phytosanitary protocols being negotiated;

exemptions from the standstill clause for both parties (safeguard, anti-dumping, shortage, agricultural policy, and balance-of-payments measures) and only for Poland in cases of protecting infant industries, restructuring or for overcoming social problems;

progressive liberalization in services;

establishment and movement of workers: since 1 February 1994, national treatment by EU Member States of Polish enterprises and their operations and gradual national treatment by Poland of EU enterprises by the end of the transition period (10 years);

public procurement: since 1 February 1994, Polish companies have had access to public procurement award procedures in the EU under the same conditions as EU companies; Polish reciprocity is to be extended during the transition period;

<sup>18</sup> EU (1998).

competition rules: (agreements between undertakings, practices and abuse of a dominant position leading to a distortion of competition, as well as state-aid distorting competition) based on Rome Treaty rules; implementing rules were introduced by the end of 1994;

intellectual, industrial, commercial property: legislation giving the same protection as in the EU as of the end of 1996, and adherence to international conventions;

approximation of legislation: Poland to approximate its legislation to EU legislation with the EU's assistance; and

cooperation: economic cooperation covering 23 areas of mutual interest; cultural cooperation; and financial cooperation, including support through PHARE (Polish-Hungarian Assistance for Restructuring of Economies).

(b) European Free Trade Agreement (EFTA)

34. Poland and the EFTA member States concluded a free-trade agreement in December 1992. EFTA countries, comprising Iceland, Liechtenstein, Norway, and Switzerland, account for a small share of Poland's trade.

35. The Agreement covers mainly trade in industrial products as well as some marine and processed agricultural products (Table II.2). EFTA members eliminated most obstacles to Polish imports upon entry into force of the agreement in November 1993.<sup>19</sup> Under Poland's transitional period, tariff duties and quantitative restrictions on EFTA imports were phased out by 1 January 1999 (except for steel, petroleum products, and automobiles). In addition, Poland has bilateral arrangements with individual EFTA members that either remove or lower tariffs on certain agricultural products. All export duties were abolished upon entry into force of the agreement.

(c) Central European Free Trade Agreement (CEFTA)

36. Poland, along with the Czech Republic, Hungary and the Slovak Republic, is a founding member of CEFTA, established in 1992. Slovenia joined on 1 January 1996; Romania on 1 July 1997; and Bulgaria on 1 January 1999 (Table II.2). The primary objective of CEFTA is to establish a free-trade area by 2001, based on a system of bilateral liberalization schedules between members that adopt a framework of common rules.

37. CEFTA covers all goods (HS Chapters 1-97), except for a few agricultural products. Some 95% of Poland's total tariff lines are covered by concessions under CEFTA.<sup>20</sup> By 1996, almost 80% of CEFTA trade in industrial products were free of tariffs.<sup>21</sup> By 1 January 1999, tariffs had been abolished on almost all industrial products, except mainly for certain cars, which are due to be removed by 1 January 2002.<sup>22</sup> Import quotas on industrial goods are also being phased out. Poland undertook to abolish quantitative restrictions on all industrial products by 1997, except for automobiles and related products, on which quotas will be removed by 2002.

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<sup>19</sup>The main exceptions were tariffs maintained by Norway on chemical products until 1996 and, along with quotas, on textiles and clothing until end-1997; and tariffs on oil products imposed by Iceland.

<sup>20</sup> WTO document WT/REG11/9/Add.3, 5 August 1998.

<sup>21</sup> WTO document WT/REG11/2, 30 October 1997.

<sup>22</sup> Automobiles of 10 years or older and chassis and bodies thereof, utility cars of six years and older, two-stroke engines for automobiles, and certain automobiles with two-stroke engines (WTO document WT/REG11/9, 16 February 1998).

38. Although CEFTA does not specifically provide for free trade in agricultural products, parties have negotiated tariff concessions, subject to quotas, on such goods. Two tariff reduction schemes have been applied on agricultural products. In 1997 tariff preferences applied to four fifths of trade in agricultural products between the Czech Republic, Hungary, Poland, Romania, and the Slovak Republic.

39. Poland has been engaged in several disputes under CEFTA since 1997, with Hungary and the Czech and Slovak Republics, mainly concerning agricultural trade. Products affected include wheat, maize, pork, poultry, sugar, certain starch products, and tomato paste. Poland has invoked safeguard provisions of CEFTA to temporarily suspend preferential tariffs on these imports in order to protect domestic producers.

40. The CEFTA countries have also embarked on activities extending the scope of their cooperation to other issues, including mainly trade in services and capital movements.

**(iv) Bilateral agreements**

41. Since 1992, Poland has signed bilateral free-trade agreements with the Baltic States (Estonia, Latvia and Lithuania), Israel, and Turkey. An agreement has also been negotiated with Croatia, but is yet to be signed. These agreements provide for phased reductions of tariff duties on industrial goods, coupled with tariff rate quotas on a number of agricultural products (Table II.2). In addition, the agreements include provisions on trade-related areas, including competition, intellectual property, monopolies, and government procurement.

**(v) Generalized System of Preferences (GSP)**

42. Poland extends GSP preferences to 45 developing countries with a lower per capita GDP than itself, and to the 49 least developed countries (LDCs). Except for certain sensitive items, imports from developing countries are dutiable at tariff rates equivalent to 70% of the MFN level. Imports from LDCs are duty free. Sensitive products excluded from the concessional schemes are certain agricultural, textile, and electronic products; tobacco; cosmetics; cars; and precious metals. GSP sources represent a relatively minor share of Poland's imports.

43. Polish exports receive preferential treatment under the GSP schemes of Australia, Canada, Japan, New Zealand, and the United States. Although Poland's exports to the EU are eligible for GSP, they enter in accordance with the preferential trade agreement.

**(4) FOREIGN DIRECT INVESTMENT POLICIES**

**(i) Domestic regime and incentives**

**(a) Domestic regulatory regime**

44. Poland's capacity to attract foreign direct investment has improved considerably in recent years. One contributing factor has been the liberalization of policies controlling capital movements as part of Poland's accession to the OECD in November 1996. Since 1997, inward foreign direct investment (FDI) has increased substantially. The stock of FDI in Poland amounted to US\$39 billion at end-1999. Some 90% is sourced from OECD countries; EU members alone account for two thirds of inward FDI. Germany is the largest single source, followed by the United States, France, the Netherlands, and Italy.

45. The Polish Agency for Foreign Investment (PAIZ), established in 1992, is responsible for promoting and monitoring foreign investment in Poland. It provides foreign investors with information; matches Polish and foreign partners; organizes meetings of investors; and carries out promotional activities.

46. The main law on foreign direct investment, the 1991 Law on Companies with Foreign Shareholders, was amended to fulfil European standards. Foreign companies are also subject to the Commercial Code of 1934. The amended law generally provides for equal treatment of foreign and domestic investors. Foreign participation by way of limited liability or a joint-stock company is allowed. Until 1996, a joint-stock company was required for the operation of sea ports and airports; dealing in real estate or acting as an intermediary in real estate transactions; in parts of the defence industry not covered by licensing requirements; for wholesale trading in imported consumer goods; and in providing legal services. A limited liability company is to exclusively carry out economic activity, while the establishment of a joint-stock company allows the foreign investor to perform other activities, including non-profit making activities.<sup>23</sup>

47. Foreign investment in some activities is restricted or controlled (Table II.3). Permits from the relevant authority are required for mineral exploration and processing, as well as for certain manufacturing activities, including production of alcoholic beverages, tobacco, and pharmaceuticals. These are granted under the Economic Activity Act. Special provisions also require foreign investors to obtain a permit in some other activities, including radio and television broadcasting, brokerage, buses, and taxis. Restrictions on land acquisition have been relaxed to allow foreigners to purchase small parcels of land without needing governmental approval (up to 0.4 hectares within cities or one hectare within villages). Applications for permits are considered within two months of submission. The relevant Minister may deny a permit to protect Poland's interests or security, or to protect confidential material.

48. The only areas closed to foreign investors by law are those concerned with gambling and lotteries; international telecommunication services of a universal nature for the use of radio and television broadcasting equipment; telecommunication lines and networks connected directly by cable, wireless equipment or international satellites to equipment or networks outside Poland; and fishing on inland as well as territorial sea waters.

49. Polish law permits foreign ownership up to 100% of most corporations, but certain controls remain. For example, broadcasting legislation restricts foreign ownership to 33%, foreign stakes in air and maritime transport are capped at 49%, and foreign ownership in telecommunications is limited to 49% for international and domestic long-distance services (including cellular).

50. Foreign partners in companies based in Poland have a legal right to transfer their profits abroad. Until December 1999, this was based on the condition that they presented to their Polish bank a certificate issued by the authorized auditors of the company's annual financial report. Similarly, foreign partners can immediately transfer sums acquired from the sale or annulment of equity or stock owned, profits from the liquidation of a company, or damages acquired as a result of expropriation or other such measures.<sup>24</sup> The Law on Companies with Foreign Participation guarantees payment of

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<sup>23</sup> A limited liability company may be established by one or more parties and be active in any economic activities (except banks, insurance companies, and investment funds) with a minimum capital of Zł 4,000, and must be fully paid up on the incorporation. The establishment of a joint-stock company requires a minimum of three founding members. The minimum capital requirement is Zł 100,000 and at least 25% of the cash capital must be paid up on incorporation (Polish Agency for Foreign Investment, 1999a).

<sup>24</sup> Foreign Trade Research Institute (1996b).

compensation to foreign investors, up to the extent of their participation in the assets of a company, for losses resulting from the nationalization or expropriation of their assets.

**Table II.3**  
**Sectors subject to foreign direct investment restrictions, 1999**

Sectors	Legal source
<b>A. Up to 49% equity participation</b>	
1. Air and maritime transport	Maritime Code of 1969 and Law of Air of 1962
2. International and domestic long-distance telecommunication services (including cellular)	Law on Communications of 1990
<b>B. Up to 33% equity participation</b>	
1. Broadcasting (radio and television)	Law on Communications of 1990
<b>C. Special permit</b>	
1. Banking	The Banking Law of 1997 The Act on Mortgage Bonds and Mortgage Banks of 1997(Commission for Banking Supervision)
2. Insurance	Law on Insurance of 1990 (Minister of Finance)
3. Management of seaports and airports	Law on Companies with Foreign Participation of 1991 (Minister of Privatization)
4. Arms industry	Law on Companies with Foreign Participation of 1991 (Minister of Foreign Economic Relations)
5. Tourism	Regulations of the Council of Ministers of 6 February 1976 (Minister of Foreign Economic Relations)
6. Legal counselling	Law on Companies with Foreign Participation of 1991 (Minister of Privatization)
7. Trade in wholesale of imported consumer goods	As above
8. Culture	Regulation of the Council of Ministers of 6 February 1976 (Minister of Foreign Economic Relations)
<b>D. Licensing<sup>a</sup></b>	
1. Exploration, prospecting for and extraction of common minerals and mineral raw materials found in waste minerals after mining works and after mineral dressing processes	Law on Economic Activity of 1988 (Voivode with jurisdiction over the location)
2. Exploration, prospecting for and extraction of basic minerals, bulk storage of substances in rock mass and storage of waste materials in mining workshops	Law on Economic Activity of 1988 (Minister of Environmental Protection, Natural Resources and Forestry)
3. Manufacturing of and trading in explosives, arms and ammunition	Law on Economic Activity of 1988 (Minister of Internal Affairs and Administration)
4. Manufacturing and bottling of wine products	Law on Economic Activity of 1988 (Minister of Agriculture and Food Economy)
5. Manufacturing of tobacco products	Law on Economic Activity of 1988 (Minister of Agriculture and Food Economy)
6. Air transport and other air services	Law on Economic Activity of 1988 (Minister of Transport and Maritime Economy)
7. Maritime transport and management of sea ports	As above
8. Railway transport services	As above
9. Operation of pharmacies	Law on Economic Activity of 1988 (Voivodship Inspector of Pharmaceutical Inspection)
10. Wholesale trading in ready-made medications and pharmaceutical raw materials intended for production or preparation of medications in pharmacies; wholesale trading in sanitary articles	Law on Economic Activity of 1988 (Minister of Health and Social Welfare, Minister of Agriculture and Food Economy)
11. Packing of and trading in pesticides	Law on Economic Activity of 1988 (Voivodship Inspector of State Inspection of Plant Protection)

**Table II.3 (cont'd)**

Sectors	Legal source
12. Foreign trade in goods and services specified by the Minister of Economy	Law on Economic Activity of 1988 (Minister of Economy)
13. Trade in cultural goods created before 9 May 1945	Law on Economic Activity of 1988 (Minister of Culture and Art, Office of the General Conservator of Monuments)
14. Services in the field of protection of persons and their belongings, detective services and passport matters	Law on Economic Activity of 1988 (Minister of Internal Affairs and Administration)
15. Courier services, common postal services consisting of transport and delivery, in domestic and foreign trading, of letters above 2,000 gr. weight and registered letters above 2,000 gr.	Law on Economic Activity of 1988 (Minister of Communication)
16. Transfer of sound recording or sound and picture recording onto tapes, records, cassettes, video cassettes and video records	Law on Economic Activity of 1988 (Minister of Culture and Art)
17. Telecommunication services	Law on Economic Activity of 1988 (Minister of Telecommunication)
18. Domestic and foreign trading in live game and carcass of slaughtered animals and their parts; sale of tourist services including hunting services for foreigners in the country and hunting abroad	Law on Economic Activity of 1988 (Minister of Environmental Protection, Natural Resources and Forestry)
19. Customs Agency	Law on Economic Activity of 1988 (President of the Central Customs Office)
20. International road transport	Law on Economic Activity of 1988 (Minister of Transport and Maritime Economy)
21. Manufacturing, processing, storing, distributing, and trading in fuel and energy	Energy Law of 1997 (President of the Energy regulation Office)
22. Production and distribution of registration plates	Law on Economic Activity of 1988 (Minister of Transport and Maritime Economy)
23. Tourist services	Law on Economic Activity of 1988 (President of the State Sports and Tourism Administration)
<b>E. Closed to foreign investors</b>	
1. Games of fortune and mutual wagers	Law on Games of Fortune and Mutual Wagers of 1992
2. International telecommunications services of universal nature for the use of radio and television broadcasting equipment, as well as telecommunications lines and networks connected directly by cable, wireless equipment or international satellites to equipment or networks outside Poland	Law on Communications of 1990
3. Fishing on inland waters and territorial sea waters (unless international agreements provide otherwise)	Law on Sea Fishing of 1963

a According to the Government, the majority of licensing requirements are applied to both foreign and Polish investors.

Note: The issuing authority is provided in parenthesis.

Source: WTO Secretariat, based on information provided by the Polish authorities; Polish Agency for Foreign Investment (1999b), *Concessions and Permits to Carry Out Activity of 1 April 1998, No. 5* [online]. Available at: [www.paiz.gov.pl/07ULGI.htm](http://www.paiz.gov.pl/07ULGI.htm); and Polish Agency for Foreign Investment (1995), *Foreign Investment in Poland*, Warsaw.

## (b) Incentives

51. Poland provides a wide range of investment incentives, such as grants, concessional loans, loan guarantees, full or partial corporate income tax exemptions, accelerated depreciation, and exemptions from payment of duties. Eligibility for investment incentives is at the discretion of the Minister of Finance. Foreign investors generally receive the same incentives afforded domestic investors. Investment incentives, apart from being fiscally costly, may have the potential to distort

resource allocation and undermine the economy's efficiency by favouring more capital-intensive activities. Moreover, frequent changes in the incentives regime may create investor uncertainty.<sup>25</sup>

52. While most incentives are generally available, specific incentives apply to exporting firms and to the pharmaceuticals industry. To qualify for investment incentives, companies must record profits of 8% of total revenue, or 4% for firms engaged in food processing, construction, fishing, and tourism, and 2% for waste recycling.

53. Partial corporate income tax exemptions were commonly used to provide investment relief. These enabled a prescribed amount of investment expenses to be deducted from revenue. The rates generally ranged between 10% and 30% of income (Table II.4). For example, a firm that derived more than 50% of its profits from exports, or earned export receipts above ECU 8 million, could deduct investment expenses of 30% of income. Such exemptions were terminated from 1 January 2000, but continue to apply to previously allowed investments until 31 December 2002. Special incentives are also provided to companies locating in special economic zones. At a minimum, foreign investors locating in such zones are offered a tax holiday for ten years (with 50% tax relief for a further ten years) and accelerated depreciation. Currently there are 17 such zones.

**Table II.4**  
**Reduced corporate income tax exemptions available to foreign investors, 1999**

Type of activity	Condition	Amount to be deducted from revenue
Revenue earned	The income/revenue ratio in previous year is not lower than 8% (2% on procurement of waste; 4% on agricultural processing, construction, fishery and tourism)	Investment expenses up to 10% of income
Investment	The subject is commencing his/her activity and the amount of investment is at least ECU 2 million	Investment expenses up to 10% of income per year (beginning in the year of investment)
Export	Revenue from export exceeds 50% of the total amount of revenue in the tax year; or revenue from export in the tax year in which the tax payer acquired the right to apply deductions exceeds ECU 8 million	Investment expenses up to 30% of income
Licence	Purchase and assembly of machinery and equipment pertinent to the implementation of licenses, patents and results of domestic research projects	Investment expenses up to 30% of income
Pharmaceutical industry	Purchase and assembly of machinery or equipment pertinent to starting of production of pharmaceuticals	Investment expenses up to 30% of income
Waste usage	If waste constitutes at least 10% of total raw materials used in production in a previous year	Investment expenses up to 30% of income
ISO 9000	Purchase and assembly of measuring-and-control equipment essential for introduction of ISO 9000 Quality System	Investment expenses up to 10% of income
Employment of handicapped persons	Minimum employment level of 50% and minimum 7% of handicapped persons employment rate	Rate varies with the number of employed handicapped (up to complete tax exemption)

Note: The total amount of deductions from tax under the first six items may not exceed 30% (25%) in calendar year 1999 (2000). These tax exemptions were terminated from 1 January 2000 but continue to apply to existing investments until 31 December 2002.

Source: Polish Agency for Foreign Investment (1999), *Investment Relieves of 1 January 1999*, No. 7 [online]. Available at: [www.paiz.gov.pl/07ULGI.htm](http://www.paiz.gov.pl/07ULGI.htm).

<sup>25</sup> According to the Government, at the end of 1999, the incentives system was replaced by a new tax system.



**(ii) International initiatives and agreements**

54. Poland has recently concluded many bilateral agreements aimed at protecting foreign investors. They generally provide for symmetrical obligations and include such provisions as national treatment, expropriation and compensation rights, transfer of capital, intellectual property rights, and settlement of disputes.<sup>26</sup>

55. In most cases, these agreements are complemented with double taxation agreements, further enhancing the private sector investment environment. Poland has concluded agreements with numerous countries on avoiding double taxation, most of them styled on the OECD model agreement. All these agreements recognize the principle that the profits of a company are taxed only in the country in which the company is based, unless it has a branch located in the country of the partner, in which case profits earned in that country are taxed there. Also, profits obtained from international transport are exempt from taxation "at source".<sup>27</sup>

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<sup>26</sup> WTO document WT/WGTI/W/13, 3 December 1997.

<sup>27</sup> Foreign Trade Research Institute (1997b).