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THE ASSOCIATION AGREEMENT BETWEEN THE REPUBLIC OF POLAND AND THE EUROPEAN COMMUNITY: AN ECONOMIC AND POLITICAL ANALYSIS

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- I. INTRODUCTION
- II. THE PROVISIONS OF THE EC ASSOCIATION AGREEMENT
 - A. *Preamble and Political Dialogue*
 - B. *Free Movement of Goods*
 - 1. Industrial Products
 - a. Community Concessions
 - b. Concessions by Poland
 - 2. Textile Products
 - 3. ECSC Products
 - a. Steel
 - b. Coal
 - c. Competition Rules
 - 4. Agriculture
 - 5. Fisheries
 - C. *Movement of Workers, Establishment, Supply of Services*
 - D. *Payments, Capital, Competition and Other Economic Provisions*
 - E. *Approximation of Laws*
 - F. *Economic Cooperation*
 - G. *Cultural Cooperation*
 - H. *Financial Cooperation*
 - I. *Institutions*
- III. THE IMPACT OF THE AGREEMENT ON THE POLISH ECONOMY AND THE AGREEMENT'S POLITICAL RAMIFICATIONS
- IV. CONCLUSION

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I. INTRODUCTION

The Association Agreement between the Republic of Poland and the European Community (the "EC")¹ and its Member States (the "Agreement")² evidences the profoundness of the political and economic transition in Poland and its desire for closer links with the European Community. The Agreement was ratified by the Polish Parliament on July 24, 1992,³ and by the European Parliament on September 16, 1992.⁴ While an interim agreement (the "Interim Agreement") covering trade matters has already entered into force,⁵ the Agreement is yet to be ratified by the parliaments of the Member States.⁶

Due to its wide coverage, many commentators have lauded the Agreement as an important step to a free trade area between the EC and Poland. A detailed examination of the provisions of the Agreement reveals, however, that the main industrial exports from Poland (apparel, steel, and coal) will continue to face substantial tariffs and non-tariff barriers during the next five years, and that trade liberalization in agricultural goods, one of Poland's most important exports, has not been adequately addressed.

1. The term "European Community" comprises the European Economic Community ("EEC"), the European Coal and Steel Community ("ECSC") and the European Atomic Energy Community ("EURATOM").

2. The Association Agreement was signed on December 21, 1991. Europe Agreement with Poland, Dec. 21, 1992, E.C.- Pol., O.J. (L114).

3. *Senate Approves Ratification of EC Association Treaty*, PAP POLISH PRESS AGENCY (July 25, 1992).

4. *Parliament Approves Association Agreements with Poland, Hungary*, EUROWATCH, Sept. 21, 1992. The Agreement with Poland was signed contemporaneously with agreements with Hungary and the Czech and Slovak Federative Republic. While the agreement with Hungary has been approved, the European Parliament has not approved the agreement with the Czech and Slovak Federative Republic in light of the uncertain legal implications of the national breakup. *Id.* Similar agreements were signed on December 18, 1992 between the EC and Latvia, Lithuania and Estonia. An Association Agreement with Romania and the EC was signed on February 5, 1993. *EC/Romania Association Agreement Signed*, EUROPE INFORMATION SERVICE EUROPEAN INSIGHT, Feb. 5, 1993. A Trade and Economic Cooperation Agreement between the EC and Slovenia was signed on April 5, 1993. *EC/Slovenia: Economic Cooperation Pact Signed and Political Dialogue Launched*, EUROPEAN REPORT, Apr. 8, 1993.

5. The Interim Agreement entered into force on March 1, 1992. The Interim Agreement is comprised of Title III of the Agreement and covers the free movement of goods.

6. In light of the fact that the Agreement covers not only trade, but also political and cultural matters, the Agreement has to be approved by the parliaments of all Member States before it enters into force. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY] art. 238. As of April 1, 1993, only four out of the twelve Member States have approved the Agreement. It is currently anticipated that the rest will ratify the Agreement by the end of 1993. *See Community Promises*, THE WARSAW VOICE, April 4, 1993, at 7.

Section II of this article presents the main provisions of the Agreement. The Agreement's impact on the Polish economy and its political ramifications are discussed in Section III. Finally, the author balances the economic and political benefits and drawbacks of the Agreement as it relates to Poland. The author concludes that the Agreement fails to accomplish one of its main goals -- open EC markets to Polish imports — because exports from Poland will still be subject to substantial EC tariffs and non-tariff barriers, and because it is unclear whether trade in agricultural goods will be liberalized.

II. THE PROVISIONS OF THE EC ASSOCIATION AGREEMENT

The Agreement is comprised of titles regarding: political dialogue; general principles; free movement of goods; movement of workers; establishment; supply of services; payments, capital, competition and other economic provisions; approximation of laws; economic and cultural cooperation; financial cooperation; and general institutional and final provisions. In addition, the Agreement has thirteen annexes and seven protocols. As reflected in the presentation below, many of the provisions contain general declarations regarding the desire for furthering cooperation and it is expected that more specific agreements will be entered into on particular topics in the future.

The Agreement provides for a transition period of a maximum of ten years, divided into two successive stages, each in principle lasting for five years.⁷ This period applies to all provisions other than the provision dealing with the free movement of goods.

A. *Preamble and Political Dialogue*

The EC Member States and Poland entered into the Agreement recognizing "the importance of the existing traditional links between the Community, its Member States and Poland and the common values."⁸ Moreover, while the parties also recognized that the final objective of Poland is to become a member of the Community, it is important to note that EC membership is not expressly guaranteed by the Agreement as neither the requirements

7. See Europe Agreement with Poland, *supra* note 2, art. 6, § 1.

8. See Europe Agreement with Poland, *supra* note 2, Preamble.

for membership nor the schedule for EC integration are specified.⁹

The Agreement provides that regular meetings, including meetings at the highest political level, will take place on all subjects of mutual interest with the aim of supporting the reforms and of achieving convergent views on matters of foreign policy.¹⁰

B. Free Movement of Goods

The Agreement calls for the establishment of a free trade area in accordance with the Agreement and the provisions of the General Agreement on Tariffs and Trade ("GATT").¹¹ A preferential treatment will be given and a free trade area will be established progressively for industrial goods.¹² The trade concessions will be reciprocal, but implemented in an asymmetric manner, meaning that the Community's concessions will be introduced sooner than those of Poland. Upon entry into force of the Agreement, about 60% of the Community's imports from Poland will enter free of duties, and all quantitative restrictions except those for textiles will be abolished. The remaining trade barriers applied by the Community on industrial imports will be abolished within five years, except for textiles for which the tariff barriers will be abolished within six years, and for which the elimination of quantitative restrictions will be linked to the results of the Uruguay Round.¹³

9. As aptly stated by a Polish commentator, the decision whether to commence discussions regarding the future membership of Poland in the EC results in a clash of political and economic viewpoints. Marek Ostrowski, *Wspolnota na Dystans [The Community at a Distance]*, 45 *POLITYKA [POLITICS]* 11 (1992).

10. Europe Agreement with Poland, *supra* note 2, art. 2 provides in relevant part: "A regular political dialogue shall be established between the parties. It shall accompany and consolidate the rapprochement between the Community and Poland, support the political and economic changes underway in that country and contribute to the establishment of new links of solidarity."

11. See Europe Agreement with Poland, *supra* note 2, art. 7, §1. The Agreement further provides that if there are future reductions resulting from the tariff agreement concluded as a result of the GATT Uruguay Round, such reduced duties shall replace the duties set forth in the Agreement as from the date when such reductions are applied. See Europe Agreement with Poland, *supra* note 2, art. 7, §4.

12. Depending on the type of product, the reduction of custom duties ranges from immediate complete abolition of such duties to complete abolition on the seventh anniversary of the Agreement's enactment, except for automobiles, for which the duties have to be abolished within ten years.

13. The Uruguay Round negotiations, which aim to reduce tariffs and bring most of world commerce under agreed rules, were launched in 1986 under the auspices of GATT. Deadlines for completion of the negotiations have not been met (as of the time this article

In addition to the consolidation of the temporary trade concessions granted to Poland such as the Generalized System of Preferences ("GSP") and the suspension of quantitative restrictions, further concessions for trade in agricultural products will be applied on a reciprocal basis. Trade in processed agricultural products and in fishery products will be governed by specific agreements to be concluded in the future.

The Agreement provides that no new customs duties or quantitative restrictions on imports or exports or charges, or measures having equivalent effect will be introduced, and those already applied shall not be increased.¹⁴ Quotas are also prohibited.¹⁵

The Agreement provides "exceptional measures of limited duration" which would permit Poland to derogate from its obligations under the Agreement and increase custom duties.¹⁶ These measures are, however, restricted to infant industries or certain sectors undergoing restructuring or facing serious difficulties, particularly if such difficulties produce important social problems.¹⁷ The customs duties on imports applicable in Poland to products originating in the Community introduced by such measures may not exceed 25% ad valorem and shall maintain an element of preference for products originating in the Community. The total value of imports on products which are subject to these measures may not exceed 15% of total imports of industrial products from the Community. Moreover, such measures cannot be applied for a period longer than five years, unless a longer duration is authorized by the Association Council, and cannot be introduced in respect to a product if more than three years have passed since the elimination of all duties and quantitative restrictions or charges, or measures having an equivalent effect concerning that product.¹⁸

was published) and it is presently unclear when the negotiations will be completed. See Robert Evans, *UN Body Urges Uruguay Round Table Accord*, THE REUTER EUROPEAN BUSINESS REPORT, March 15, 1993, BC cycle.

14. See Europe Agreement with Poland, *supra* note 2, art. 26, §§1-2. Section 3, however, provides that these provisions "shall not restrict in any way the pursuance of the respective agricultural policies of Poland and the Community or the taking of any measures under policies."

15. Article 27 §1 of the Agreement provides that "The two parties shall refrain from any measure or practice of an internal fiscal nature establishing, whether directly or indirectly, discrimination between the products of one party and like products originating in the territory of the other party."

16. See Europe Agreement with Poland, *supra* note 2, art. 29.

17. *Id.*

18. *Id.*

The Agreement does not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver.¹⁹

If one of the parties finds that dumping is taking place in trade with the other party, it may take appropriate measures against this practice in accordance with Article VI of GATT and applicable administrative procedures provided for in the Agreement.²⁰

The Community or Poland, whichever is concerned, may take appropriate measures in accordance with administrative procedures provided for in the Agreement in the following circumstances; (a) Where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause either serious injury to domestic producers of like or directly competitive products in the territory or one of the parties, or (b) serious disturbances in any sector of the economy, or difficulties which could bring about serious deterioration in the economic situation of a region.²¹

If the abolition of customs duties or quantitative restrictions on exports and similar charges or measures,²² or the prohibition against any new or increased restrictions,²³ leads to either the re-

19. See Europe Agreement with Poland, *supra* note 2, art. 36. Such prohibitions or restrictions cannot, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the parties.

20. See Europe Agreement with Poland, *supra* note 2, art. 30. Dumping is to be defined in accordance with Article VI of GATT. The Association Council must be informed of the dumping case as soon as the authorities of the importing party have initiated an investigation. If the dumping does not stop or if no other satisfactory solution is reached within thirty days of the matter being referred to the Association Council, the importing party may adopt the appropriate measure. See Europe Agreement with Poland, *supra* note 2, art. 34, §3(b).

21. See Europe Agreement with Poland, *supra* note 2, art. 31. The difficulties arising from the situation must be referred for examination to the Association Council which may take any decision needed to put an end to such difficulties. If the Association Council or the exporting party does not take a decision remedying the difficulties or no other satisfactory solution is reached within thirty days of the matter being referred, the importing party may adopt the appropriate measure to remedy the problem. These measures must not exceed the scope of what is necessary to remedy the difficulties which have arisen. See Europe Agreement with Poland, *supra* note 2, art. 34, §3(a).

22. See Europe Agreement with Poland, *supra* note 2, art. 13.

23. See Europe Agreement with Poland, *supra* note 2, art. 26.

export to a third country against which the exporting party maintains quantitative export restrictions, export duties or measures having equivalent effect; or causes a serious shortage, or threat thereof, of a product essential to the exporting party, and where such situations give rise or are likely to give rise to major difficulties for the exporting party, that party may take appropriate measures in accordance with administrative procedures provided for in the Agreement.²⁴ However, such measures must be nondiscriminatory and must be eliminated when justifiable conditions no longer exist.²⁵

Before any of the extraordinary measures are used, the party who desires to employ such measure must supply the Association Council with all relevant information with a view to seeking a solution acceptable to the two parties.²⁶ Such measures must be announced to the Association Council and will be subject to periodic consultations with the Council. The goal of such consultations will be to establish a timetable for the abolition of any such measure, as soon as circumstances permit.²⁷

1. Industrial Products

a. Community Concessions

After the entry of the Interim Agreement into force, the majority of industrial products originating from Poland (more than two-thirds) can enter the Community duty-free. However, for certain categories of sensitive products included in the GSP, duties will be abolished progressively.²⁸

Duties on commodities, which were excluded from preferences under the GSP, will be abolished over one year for the least sensitive (in two successive 50% reductions) and in four years for the most sensitive (in five steps of 20%).²⁹ Zero-duty tariff quotas and

24. See Europe Agreement with Poland, *supra* note 2, art. 32. The difficulties must be referred for examination to the Association Council. The Council may make any decision needed to put an end to the difficulties. If it has not taken such a decision within thirty days of the matter being referred to it, the exporting country may apply appropriate measures on the exportation of the product concerned. See Europe Agreement with Poland, *supra* note 2, art. 34, §3(c).

25. See Europe Agreement with Poland, *supra* note 2, art. 32.

26. See Europe Agreement with Poland, *supra* note 2, art. 34, §2.

27. *Id.*

28. See Europe Agreement with Poland, *supra* note 2, art. 9, §§1-2.

29. See Europe Agreement with Poland, *supra* note 2, art. 9, §3.

ceilings will be applied following the model of the GSP to other sensitive products, increasing annually by 20%. At the same time, duties levied on quantities in excess of these amounts will be reduced annually by 15%.³⁰

From the date of entry into force of the Agreement, industrial products imported duty free into the Community will alone account for approximately half of the value of total exports (including agriculture) from Poland and almost 80% of its industrial exports, including textiles and European Coal & Steel Community ("ECSC") products. Quantitative restrictions on these products and measures having equivalent effect have been abolished upon the entry into force of the Interim Agreement.³¹

The following table sets forth the reductions of customs duties on Polish goods, excluding agricultural goods,³² for the period of 1992-1997 (as a percentage of the base customs duty per annum):³³

Product	1992	1993	1994	1995	1996	1997	Polish exports in 1992	
							in million ECU	in %
Textiles	71	71	57	43	29	43	593	15.1
Steel	80	60	40	20	10	0	217	5.5
Coal ³⁴	0	0	0	0	0	0	40	1.0
Group A ³⁵	50	0	0	0	0	0	7	0.2
Group B ³⁶	80	60	40	20	0	0	17	0.4
Group C ³⁷	80	60	40	20	0	0	17	0.4
Others	0	0	0	0	0	0	2153	54.8
In aggregate							3927	100.0

30. *Id.*

31. See Europe Agreement with Poland, *supra* note 2, art. 9, §4.

32. See *infra* table at note 50.

33. Anna Zielińska-Głębocka, Krystyna Gawlikowska-Hueckel, *Polska-Wspólnota Europejska, Problemy i Dylematy [Poland-European Community, Problems and Dilemmas]* 12 (1992) [hereinafter, Głębocka, Hueckel].

34. Excluding Germany and Spain.

35. Group A includes mineral products and chemical raw materials as listed in Annex Ia.

36. Group B includes non-ferrous metals as listed in Annex Ib.

37. Group C includes "sensitive" products of the Community such as: cars, mineral fertilizers, artificial fibers, leather products, shoes, fur products, porcelain, steel products not covered by the European Coal and Steel Community, TV's, audio equipment, electronic components, furniture and toys as listed in Annex II.

b. Concessions by Poland

Poland will abolish its customs duties and quantitative restrictions in accordance with specific timetables, as shown in the annexes to the Agreement.

Upon entry into force of the Interim Agreement, certain products could be imported duty-free into Poland.³⁸ These represent approximately 25% by value of total exports of industrial products from the Community to Poland (including textiles and ECSC products). Duties on the most sensitive products will be abolished over seven years.³⁹ Only cars will be covered by a special arrangement for imports to Poland. This will involve the abolition of duties over ten years, but preferential zero-duty quotas increasing annually will be introduced from entry into force of the Agreement. Poland abolished most of its quantitative restrictions upon entry into force of the Interim Agreement.⁴⁰

2. Textile Products

Textile products belong to the category of so-called "sensitive products." Since 1979, the EC and Poland have been entering into four-year bilateral agreements in accordance with the Multifiber Agreement of GATT. Under the Agreement, as far as tariffs on textile products from Poland are concerned, the Community will abolish duties progressively over six years.⁴¹ Poland, on the other hand, will progressively reduce its customs starting in 1995 by 20% annually.

On the quantitative side, an interim arrangement shall be in place, because the protocol on textiles includes a commitment to negotiate a new protocol when the outcome of the Uruguay Round is known.⁴² However, quantitative restrictions must be phased out

38. See Europe Agreement with Poland, *supra* note 2, art. 10, §1.

39. See Europe Agreement with Poland, *supra* note 2, art. 10, §3.

40. See Europe Agreement with Poland, *supra* note 2, art. 10, §4 (providing for some limited exceptions).

41. See Europe Agreement with Poland, *supra* note 2, art. 15 and Protocol No.1. Poland tried unsuccessfully to obtain liberalization of quotas during the negotiation of the Agreement. See Elzbieta Berkowska, Dorota Stankiewicz, Zygmunt Paluch, Mirosław Sobolewski, *Polski Eksport Towarów Tekstylno-Odziewowych w Świetle Umowy Stowarzyszeniowej z EWG [Export of Polish Textiles and Clothing Products in Light of the Association Agreement between Poland and EC]* 36 INFORMATIONAL MATERIALS FOR THE POLISH PARLIAMENT 3 (1992).

42. See *EC to Remove Barriers to Polish Imports by 1998*, PAP POLISH PRESS AGENCY

over a period equal to half of the period fixed in the Uruguay Round,⁴³ but not less than within 5 years.

3. ECSC Products

a. Steel

The Community will phase out customs duties over five years.⁴⁴ Poland will follow the same schedule of reductions as for the other industrial products. Both sides will abolish quantitative restrictions upon entry into force of the Agreement.⁴⁵

b. Coal

The Community will abolish customs duties and quantitative restrictions on Polish coal products over one year, except for the importation of certain products into Spain and Germany, where the period will be four years from the date of entry of the Agreement.⁴⁶

Duties on Community steel products imported into Poland will be abolished in accordance with the same plan as for other industrial products (upon entry into force or within seven years). Poland will abolish quantitative restrictions and measures having equivalent effect when the Agreement enters into force.

c. Competition Rules

Under the terms of article 63 of the Agreement, all agreements or decisions which have as their object or effect the prevention, restriction or distortion of competition; the abuse by one or more parties to the Agreement of a dominant position in the territories

(Dec. 12, 1992) stating that quotas on imports of Polish textiles and clothing will be eliminated by 1997, and Polish imports will be imported duty-free beginning in 1998.

43. See *supra* discussion in note 13.

44. See Europe Agreement with Poland, *supra* note 2, art. 16, Protocol No. 2.

45. Poland plans to drastically reduce its steel-making capacity over the next ten years. See Bobinski, *Poland to Reduce its Steel Capacity*, FINANCIAL TIMES, Dec. 3, 1992.

46. See Europe Agreement with Poland, *supra* note 2, art. 16, Protocol No. 2. It should be noted that almost all of the EC Member States (with the exception of Spain, Germany and Italy) did not impose any duties or restrictions on Polish coal products prior to the signing of the Agreement. See Janusz Jeziorski, Mirosław Sobolewski, *Perspektywy Eksportu Polskiego Węgla w Kontekście Umowy Stowarzyszeniowej z EWG*, 31 INTERNATIONAL MATERIALS FOR THE POLISH PARLIAMENT 1 (1992).

of the Community or of Poland; or any public aid which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods is deemed to be "incompatible with the proper functioning of the Agreement." Further, the Association Council is required to adopt, within three years of the entry into force of the Agreement, the necessary rules for the implementation of this prohibition.⁴⁷

Moreover, the Member States and Poland have agreed to progressively adjust any state monopolies of a commercial character so as to ensure that, by the end of the fifth year following the entry into force of the Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and of Poland.⁴⁸

4. Agriculture

The Agreement consolidates the benefits resulting from the application of the GSP to Poland and confirms the elimination by the Community of quantitative restrictions on agricultural products, which have become applicable upon entry into force of the Interim Agreement. For its part, Poland will abolish its quantitative restrictions progressively. The parties to the Agreement will also grant each other concessions on a reciprocal basis.

As compared to concessions on industrial products, the Community's concessions regarding farm and food products are considerably more limited. The limited scope of concessions in this area is a result of the particular character of the Community's trade policy which is aimed at protecting the Community's farm products from competition from third countries. This policy is evidenced by the common agricultural policy ("CAP") of the EC as implemented through various methods, such as supplementary charges, quantity and customs quotas, minimum price systems,

47. See Europe Agreement with Poland, *supra* note 2, art. 63. Until these rules are adopted, the provisions of the Agreement on interpretation and application of Articles VI, XVI and XXIII of the GATT shall be applied as the rules for the implementation of paragraph 1(iii) and related parts of paragraph 2. *Id.* This Article does not apply to the products covered by the Treaty Establishing the European Coal and Steel Community which are the subject of Protocol No. 2 of the Agreement.

48. See Europe Agreement with Poland, *supra* note 2, art. 33. An exception is granted for public aid in the areas of public education services, health related and social services and cultural services, to which the ten-year period applies. See Europe Agreement with Poland, *supra* note 2, art. 59, §3.

etc.⁴⁹ Liberalization measures cover six groups of Polish products and will consist of the reduction of supplementary charges, with no quantity limits or with growing quantity limits applied, as well as of the inclusion of some Polish imported products (for example, berries) in the minimum price system. The following table presents the general outline of liberalization program with regard to the six groups of products:⁵⁰

	Reduction of customs or supplementary charges	Quotas —increase in %
Group 1 ⁵¹	50% when the Agreement comes into force	5% to 10%
Group 2 ⁵²	30-100% when the Agreement comes into force	not included
Group 3 ⁵³	75% when the Agreement comes into force	5% to 10%
Group 4 ⁵⁴	3 x 20%	8% to 12.5%
Group 5 ⁵⁵	varies, depending on the product	6% to 10%
Group 6 ⁵⁶	gradual	10%

49. Some commentators perceive the EC concessions in agriculture as uncertain because the EC customs are not eliminated but only reduced by a predetermined percentage. This does not guarantee any decline in EC protection to Polish exporters because the level of customs is an endogenous outcome of the CAP and of the world markets. See, e.g., Patrick Messerlin, *The Association Agreements Between the EC and Central Europe: Trade Liberalization vs. Constitutional Failure?*, reprinted in TRADE, PAYMENTS AND ADJUSTMENT IN CENTRAL AND EASTERN EUROPE (1992), 17; Zygmunt Paluch, Dorota Stankiewicz, Hanna Zebrowska-Rasz, *Układ o Stowarzyszeniu Miedzy EWG i Polska, Przepływ Towarow Rolnych [Association Agreement between EC and Poland, Trade in Agricultural Goods]* 34 INFORMATIONAL MATERIALS FOR THE POLISH PARLIAMENT 7 (1992) (stating that the priority of the EC with respect to agricultural goods is clearly the protection of markets of Member States).

50. Glebocka, Hueckel, *supra* note 33, at 13.

51. Group 1 includes ducks, geese, and pork. The export quotas have been increased from 5% for such products as ducks and to 10% for pork.

52. Group 2 includes horses for slaughter, pigs, rabbits, flowers, berries, mushrooms, onions and apple juice.

53. Group 3 includes live cattle. If imports of 425,000 heads are exceeded, however, the Community will have the right to apply protective measures.

54. Group 4 includes beef, pork, poultry, and dairy products. The export quotas vary; the lowest is for milk and the highest is for powdered yolks.

55. Group 5 includes fruits and vegetables, mushrooms, and fruit products.

56. Group 6 includes food products. These processed foodstuffs are subject to the so-called complex customs duty, i.e., the customs duty is calculated for each ingredient separately (for example, for chocolate — cocoa, milk, sugar, etc.).

The scope of Poland's concessions with regard to imports from the Community is narrower than the EC-proposed liberalization of imports of Polish products. The Agreement provides for a 10% reduction of customs duties on some farm products (the reduction will cover approximately 15% of Polish imports from the EC), and for a gradual lifting of quantity limitations. The feasibility of expanding the scope of mutual trade liberalization will be subject to regular investigation by the Association Council.

A special safeguard clause has also been included in case of serious disturbance of the market of either of the parties as a result of the application of the concessions accorded by the Agreement. Lastly, there is a protocol on processed agricultural products which sets out tariff concessions between the parties for these products.⁵⁷

5. Fisheries

The parties undertook to conclude an agreement on fisheries as soon as possible and this should include measures concerning access to resources and market access. Afterwards, the parties will be able to examine the possibility of granting further trade concessions to each other on a reciprocal basis in the Association Council.⁵⁸

C. Movement of Workers, Establishment, Supply of Services

The Agreement aims at improving the situation of workers legally employed and their families. The Member States are encouraged to favorably consider the possibility of concluding bilateral agreements on access to labor markets.⁵⁹ Moreover, the

57. See Europe Agreement with Poland, *supra* note 2, Protocol No. 3.

58. See Europe Agreement with Poland, *supra* note 2, art. 23 ("The Parties shall conclude as soon as practicable negotiations of an agreement on fishery products."). Poland has attempted to separate the issue of tariff reductions from the issue of obtaining greater access to fish sources. Poland is reluctant to grant access to the Baltic Sea, however, as it would not be able to compete effectively. See Elzbieta Berkowska, Robert Kijak, Zygmunt Paluch, Mirosław Sobolewski, *Problemy Rybolowstwa Morskiego w Kontekście Stowarzyszenia Polski z EWG [The Problems of Sea Fishing in the Context of the Association of Poland and the ECJ]* 32 INFORMATIONAL MATERIALS FOR THE POLISH PARLIAMENT 5 (1992).

59. Article 41 of the Agreement states that the provisions adopted by the Association Council pursuant to the Agreement shall not affect agreements providing for more favorable treatment of nationals of Poland or of the Member States. Article 42 of the Agreement further provides that the existing facilities for access to employment for Polish workers accorded by Member States under bilateral agreements ought to be preserved and, if possible,

Agreement provides for adoption of provisions by the Association Council to implement decisions aimed at coordinating social security systems,⁶⁰ and for technical assistance for the establishment of a suitable social security system in Poland.⁶¹

It is agreed in principle that the EC and Poland will grant each other's companies and nationals "national treatment" (i.e., non discriminatory treatment) for establishment and operation of economic and professional entities in each other's territories.⁶² The Community will grant national treatment upon entry into force of the Agreement with respect to both establishment and operation, while Poland will only accord national treatment with respect to operation. Transitional periods concerning rules on establishment of EC companies in Poland are foreseen.⁶³ During the transition period, Poland may also derogate from granting national treatment to Community companies and nationals in order to protect newly emerging industries and sectors undergoing restructuring.⁶⁴

improved, and the other Member States should consider favorably the possibility of concluding similar agreements.

60. See Europe Agreement with Poland, *supra* note 2, art.40. Article 39 of the Agreement provides, *inter alia*, for the coordination of social security systems for workers' family members. In calculating the amount of pensions and annuities in respect of old age, handicap and death, and for the purpose of medical care for such workers and such family members, the duration of employment or residence of such workers outside of their native country (in Poland or in any Member State) should be considered in the aggregate with the duration of domestic employment or residence.

61. See Europe Agreement with Poland, *supra* note 2, art. 44.

62. Article 38 of the Agreement provides, in part, that "the treatment accorded to workers of Polish nationality, legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals. . .[and] the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and of workers. . .shall have access to the labor market of that Member State, during the period of that worker's authorized stay of employment."

63. See Europe Agreement with Poland, *supra* note 2, art. 45. Upon entry into force of the Agreement, Poland is under an obligation to grant Community companies and nationals established in Poland a treatment no less favorable than that accorded to its own companies and nationals. If the existing laws and regulations do not grant such treatment to Community companies and nationals for certain economic activities in Poland, Poland shall amend such laws and regulations to ensure such treatment by the fifth anniversary of the entry of the Agreement.

64. Article 51 of the Agreement provides that "Poland may introduce measures which derogate from the provisions. . .as regards the establishment of Community companies and nationals if certain industries: are undergoing restructuring, or are facing serious difficulties, particularly where these entail serious social problems in Poland, or face the elimination or a drastic reduction of the total market share held by Polish companies or nationals in a given sector or industry in Poland, or are newly emerging industries in Poland." Such measures will cease to apply in accordance with periods set forth in the Agreement and must be reasonable and necessary in order to remedy the situation and must "only relate to establishments in Poland to be created after the entry into force of such measures and shall not introduce discrimination concerning the operations of Community companies or nationals

The Agreement provides that parties should "take the necessary steps to allow progressively the supply of services by Community or Polish companies or nationals."⁶⁵ Special rules apply to transport services.⁶⁶

D. Payments, Capital, Competition and Other Economic Provisions

The parties undertake to authorize freely convertible currency and any payments on the current account of balance of payment to the extent that the transaction underlying the payments concerns the movement of goods, services, or persons between the parties.⁶⁷ From the entry into force of the Agreement, the Member States and Poland will have to ensure the free movement of capital relating to direct investments, and the liquidation or repatriation of these investments.⁶⁸ Until a full convertibility of the Polish currency is introduced, Poland may, in exceptional circumstances, apply exchange restriction connected with the granting or taking upon short and medium-term credits to the extent that such restrictions are imposed on Poland for the granting of such credits and are permitted according to Poland's status under the International Monetary Fund.⁶⁹

Competition rules, similar to those applied in the Community, will have to be introduced in Poland. The Agreement prohibits all agreements which prevent, restrict or distort competition, the abuse of a dominant position in the territories of the Community or Poland, or any public aid which distorts or threatens to distort

already established in Poland at the time of introduction of a given measure compared to Polish companies or nationals." *Id.*

65. See Europe Agreement with Poland, *supra* note 2, art. 56, §1. The Association Council is obligated to implement progressively the provisions to take such steps, taking into account the developments of the service sector in the countries of the parties to the Agreement.

66. Article 57 of the Agreement includes specific provisions regarding international maritime transport, dry and liquid bulk trade, air and inland transport. In particular, "[w]ith a view to assuring a coordinated development and progressive liberalization of transport between the parties adapted to their reciprocal commercial needs, the conditions of mutual market access in air transport and in inland transport shall be dealt with by special transport agreements to be negotiated between the parties after the entry into force of this Agreement."

67. See Europe Agreement with Poland, *supra* note 2, art. 60.

68. See Europe Agreement with Poland, *supra* note 2, art. 61, §1. Notwithstanding this provision, such free movement, liquidation and repatriation shall be ensured by the end of five years from entry into force of the Agreement for all investments linked to establishment of nationals establishing in Poland as self-employed persons.

69. See Europe Agreement with Poland, *supra* note 2, art. 62 bis.

competition by favoring certain undertakings or the production of certain goods.⁷⁰ However, Poland will be considered as low income regions where, according to the EEC Treaty, development-oriented governmental subsidies may be authorized.⁷¹ Specific rules to be applied to the coal and steel sectors are provided.

Within five years from the entry into force of the Agreement Poland will provide levels of protection of intellectual, industrial and commercial property, similar to that existing in the Community, including comparable means of enforcing such rights.⁷²

Finally, the Agreement provides that the parties will consider the opening up of the award of public contracts on the basis of non-discrimination and reciprocity, in particular in the GATT context, to be a desirable objective.⁷³

E. Approximation of Laws

It is recognized that the approximation of Polish laws to the Community's law is a major precondition for economic integration into the Community.⁷⁴ Poland will ensure compatibility of its legislation with Community laws and the Community will provide tech-

70. See Europe Agreement with Poland, *supra* note 2, art. 63, §1. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles 85, 86, and 92 of the EEC TREATY. See Europe Agreement with Poland, *supra* note 2, art. 63, § 2.

71. See Europe Agreement with Poland, *supra* note 2, art. 63, §4(a) This treatment will be accorded during the first five years after the Agreement enters into force, although the period may be extended by the Association Council.

72. See Europe Agreement with Poland, *supra* note 2, art. 66, §1. By the end of the fifth year from the entry into force of the Agreement, Poland is required to apply to accede to the MUNICH CONVENTION ON THE GRANT OF EUROPEAN PATENTS of 5 October 1973, and to the other multilateral conventions on intellectual, industrial and commercial property rights to which member states are parties, or which are de facto applied by Member States (such conventions are listed in an Annex to the Agreement). *Id.*

73. See Europe Agreement with Poland, *supra* note 2, art. 67, §1. Polish companies will be granted access to contract award procedures in the Community pursuant to Community procurement rules under a treatment no less favorable than that accorded to Community companies as of the entry into force of the Agreement. Community companies will be granted access to contract award procedures in Poland under a treatment no less favorable than that accorded to Polish companies at the latest at the end of the ten-year transitional period. *Id.*

74. See Europe Agreement with Poland, *supra* note 2, art. 68. For an in-depth article on the harmonization of corporate laws, see Carolyn Brzezinski, *The EC-Poland Association Agreement: Harmonization of an Aspiring Member State's Company Law*, 34 HARVARD INT'L L. J. 105 (1993) (stating that "aside from full membership in the EC, the nation's [Poland's] dire need for foreign investment and economic reform provides a strong incentive for Poland to successfully harmonize its company law with EC law").

nical assistance for this purpose.⁷⁵ The following areas are of major importance: customs laws, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, protection of health and life of humans, animals and plants, consumer protection, indirect taxation, technical rules and standards, transport and the environment.⁷⁶

Currently, the Constitution of the Republic of Poland does not contain any provisions regarding the application of international law in internal relations. The Constitution does not address whether international norms override conflicting domestic legislation. In light of the requirements of the Agreement, the Constitution will have to be amended to specify that international norms, including EC directives and decisions, override conflicting Polish norms. Further, in light of the fact that the laws enunciated by the organs of the EC are applicable in Member States without further enactment, the Polish Constitution will have to be amended to provide that such regulations will be directly applicable in Poland.⁷⁷

75. See Europe Agreement with Poland, *supra* note 2, art. 70. The Community will provide Poland with technical assistance for the implementation of these measures which may include, *inter alia*, the exchange of experts, the provision of information, organization of seminars, training activities and aid for the translation of Community legislation in the relevant sectors. *Id.* Poland is under an obligation to use its best endeavors to ensure that future legislation is compatible with Community legislation. See Europe Agreement with Poland, *supra* note 2, art. 68.

76. See Europe Agreement with Poland, *supra* note 2, art. 69.

77. In 1991, the Commission on International Law of the Legislative Council of the Polish Parliament proposed that the following text be included in the new Polish Constitution:

"1. On the basis of an international agreement, statutory, administrative and judicial rights may be granted to an international organization, if this is required for membership in such organization.

2. An act, on the basis of which the Parliament approves such agreement, must be passed by a qualified majority of votes.

3. If the international agreement establishing the international organization so provides, the law that it establishes shall be directly applicable in internal relations in the Country."

Galicki, *Prawo polskie a normy EWG [Polish law and EC norms]* 33 INFORMATIONAL MATERIALS FOR THE POLISH PARLIAMENT 4 (1992). The new Constitution has not yet been adopted. It should be noted that the Constitutions of EC Member States contain similar provisions. *Id.* For example, the Dutch Constitution states, in relevant part, that "[t]he provisions of treaties and resolutions of international organizations which, in accordance with the text of such treaties and resolution, may be applicable to all members, come into force upon announcement." DUTCH CONST. art. 93 (Feb. 17, 1983).

F. Economic Cooperation

A major objective of economic cooperation is to enable Poland to meet the challenge of restructuring its economy and achieving competitiveness by the end of the transitional period.⁷⁸ Economic cooperation refers to a wide variety of areas of mutual interest.⁷⁹ It ranges from such areas as industry, agriculture, investment, banking, cooperation in science and technology, and the environment, to education, social cooperation, and tourism.⁸⁰

G. Cultural Cooperation

The parties undertook to promote cultural cooperation to increase mutual understanding between their peoples. To that end, existing cultural cooperation programs may be extended to Poland.⁸¹ The areas of cooperation may include, in particular, translation of literary works; conservation and restoration of historic and cultural monuments and sites; training of persons working in the cultural field; cultural events with a European character.

H. Financial Cooperation

In order to achieve the objectives of the Agreement, Poland will benefit from temporary financial assistance in the form of grants and loans designed to accelerate economic transformation to help Poland to cope with the economic and social consequences of structural readjustment.⁸² This assistance will include the continuation of that assistance currently provided under PHARE⁸³ and

78. Article 71 §1 of the Agreement states: "[t]he Community and Poland shall establish cooperation aimed at contributing to Poland's development. Such cooperation shall back up Poland's achievements and shall strengthen existing economic links on the widest possible foundation, to the benefit of both parties."

79. The cooperation has as its aim the support of Poland's achievements and strengthening existing economic links "on the widest possible foundation, to the benefit of both parties." *Id.*

80. See Europe Agreement with Poland, *supra* note 2, arts. 72-94. Poland's economy is in dire need of such aid. For example, energy consumption by Polish industry is three to four times higher than in the Community's most developed economies. See *Cabinet Approves Program to Harmonize Economy with EC Association Agreement*, (THE BRITISH BROADCASTING CORPORATION, Dec. 4, 1992).

81. See Europe Agreement with Poland, *supra* note 2, art. 94.

82. See Europe Agreement with Poland, *supra* note 2, art. 95.

83. See Europe Agreement with Poland, *supra* note 2, art. 96. Operation PHARE (Poland and Hungary Assistance to the Restructuring of Economies), Council Regulation EEC No.3906/89, as amended, would cover financial assistance until the end of 1992; thereafter,

European Investment Bank⁸⁴ ("EIB") loans. In addition, the Community will, in cases of special need, examine the possibility of granting temporary financial assistance to support measures with the aim of stabilizing and maintaining the convertibility of the Polish currency; to support medium-term stabilization and economic restructuring efforts, including balance of payments support.⁸⁵ The Community's assistance will continue to be coordinated with that assistance from other sources including: G24 and international financial institutions.⁸⁶

I. Institutions

An Association Council will be created at the ministerial level.⁸⁷ The Council's task will be to monitor the implementation

grants will be made available by the Community, either within the framework of Operation PHARE, on a multiannual basis, or within a new financial multiannual framework established by the Community following consultations with Poland. At first, the EC assistance took the form of aid in kind easing the shortages of staple foods (1989/1990). The total amount of such aid was USD 400 million. On December 2, 1992, the Committee managing the PHARE Assistance program approved of the separation of ECUs 60 million (of the total amount of ECUs 200 of the PHARE grants for 1992) for the structural development program in four regions of Poland. In 1990, Poland was given access to loans from the European Investment Bank. After their expiry, this access will be extended under the Agreement. As of February, 1993, five credit agreements have been signed to finance projects in transport, power industry, telecommunications and the development of small and medium-sized businesses, for a total amount of USD 305 million. The European Investment Bank may also co-finance further investment projects in the area of production and infrastructure. *The White Book: Initial Report*, PAP POLISH PRESS AGENCY (February 26, 1993). *The White Book: Initial Report — Economic Aspects* was prepared by the Polish government as an attachment to the text of the government's program of adjusting the Polish economy to the requirements of the Treaty [hereinafter, *White Book*].

84. See Europe Agreement with Poland, *supra* note 2, art. 96. Any loan(s) provided by the EIB will be available until their expiration date. Poland shall have access to EIB loans according to the provisions of Article 13 of the Statute of the EIB for subsequent years; following consultations with Poland, the Community shall fix the maximum amount and period of availability of loans for Poland from the EIB.

85. See Europe Agreement with Poland, *supra* note 2, art. 98, §1. This financial assistance is subject to Poland's presentation of IMF-supported programs in the context of G-24, as appropriate, for convertibility and/or for restructuring its economy, to the Community's acceptance thereof, to Poland's continued adherence to these programs and, as an ultimate objective, to rapid transition to reliance on financing from private sources. See Europe Agreement with Poland, *supra* note 2, art. 98, §2.

86. Art. 100 of the Agreement states that: "In order to permit optimum use of the resources available, the Contracting Parties shall ensure that Community contributions are made in close coordination with those from other sources such as the Member States, other countries including the G-24 and international financial institutions, such as the International Monetary Fund, the International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development."

87. See Europe Agreement with Poland, *supra* note 2, art. 102, §1. The Association

of the Agreement.⁸⁸ The Association Council will, for the purpose of attaining the objectives of the 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 decisions taken.⁸⁹ Disputes shall be settled by the Association Council and if it cannot reach a decision, the dispute will be settled through arbitration.⁹⁰

The Association Council will be assisted by the Association Committee, to which it may delegate any of its powers.⁹¹ An Association Parliamentary Committee will also be established for Parliamentary members of the associated countries, and the European Community, to meet and exchange views.⁹² The Association Parliamentary Committee will have the right to request information from the Association Council and to make recommendations to it. The Association Council must also inform the Association Parliamentary Committees of all decisions taken.

III. THE IMPACT OF THE AGREEMENT ON THE POLISH ECONOMY AND THE AGREEMENT'S POLITICAL RAMIFICATIONS

The Gross Domestic Product (the "GDP") per capita in Poland is now equal to a half of the GDP in the weakest EC countries, such as Greece and Portugal, and to only a quarter of the GDP in the most affluent countries.⁹³ Accounting for about 10% of

Council shall consist of the members of the Council of the European Communities and members of the Commission of the European Communities, on the one hand, and of members of the Government of Poland, on the other. The Council will be presided in turn by a member of the Council of the European Communities and a member of the Government of Poland, in accordance with the provisions to be laid down in its rules of procedure. See Europe Agreement with Poland, *supra* note 2, art. 102, §4.

88. See Europe Agreement with Poland, *supra* note 2, art. 101.

89. See Europe Agreement with Poland, *supra* note 2, art. 103. Furthermore, the Association Council may also make appropriate recommendations. *Id.*

90. See Europe Agreement with Poland, *supra* note 2, art. 104.

91. See Europe Agreement with Poland, *supra* note 2, art. 105. The Association Committee will be composed of representatives of the members of the Council of the European Communities and of members of the Commission of the European Communities, on the one hand, and of representatives of the Government of Poland on the other, normally at senior civil servant levels.

92. See Europe Agreement with Poland, *supra* note 2, art. 107.

93. The differences in effectiveness is evidenced by the fact that, in the EC countries, the average energy consumption is 220 kg of oil per USD 1,000 of the GDP; from 115 kg in Greece to 223 kg in Germany and 248 kg in Belgium. Poland needs about 700 kg to generate USD 1,000 worth of GDP, i.e. 3-4 times more. *White Book*, *supra* note 83. It is also worthwhile to point out that only in Denmark and Belgium do workers have a shorter working

the population of the EC, Poland generated the GDP equal to 1.2% of the GDP generated by the Communities in 1990, which made this country rank eighth in this respect. The only countries which generated lower GDPs than Poland were Ireland with a population of 3.5 million, and Greece and Portugal, with populations of 10 million each.⁹⁴

Reaching the level of GDP per capita equal to that generated by Spain would give Poland a total GDP of USD 460 billion and the sixth position within the Community.⁹⁵ In order to reach the Spanish level of GDP per capita, it would be necessary to more than double the output per capita and increase labor productivity nearly five times. This evidences well how difficult it is for Poland to catch up with the EC.

If Poland could repeat the success of the less affluent countries of the EC and achieve a 5% annual economic growth rate, it would take 15-20 years for Poland to reach the current Portuguese level of GDP per capita. There is no simple answer, however, to the question of whether the 5% annual growth rate of GDP per capita is feasible. While there exists a relatively skilled labor force in Poland, there are difficulties created by foreign debt,⁹⁶ and many reforms are yet to be implemented, especially in such important areas as privatization⁹⁷ and banking.⁹⁸

The free trade zone which will result once the Agreement is implemented may bring a number of important benefits to the Polish marketplace and economy. Due to foreign competition, prices in Poland may be lowered to the level of prices offered by its trade

week than in Poland; in Great Britain their working week is 7.3 hours longer (by 1/5), in Greece 6.2 hours, and in most EC countries 4-5 hours longer. *Id.*

94. *Id.*

95. Such GDP would place Poland ahead of Belgium, Denmark, Portugal, Greece and Ireland. *Id.*

96. At the beginning of February, 1993, the Polish public debt equalled approximately 85% of the country's GDP. The servicing of foreign and domestic debt amounted to around 14.5%. See Slawomir Lipinski, *Public Debt Tops Zl 1,000 Trillion*, POLISH NEWS BULLETIN, Feb. 9, 1993.

97. As of April 15, 1993, the program of mass privatization of the state-owned enterprises, considered to be crucial to the continuation of the privatization process, has not been approved. See *Polish Parliament Rejects Move to Throw Out Privatization Bill*, THE REUTER BUSINESS REPORT, April 3, 1993, BC cycle.

98. Approximately 25% of bank's portfolios are made up by bad debts (most of them to big industries whose markets collapsed along with the Soviet Union). The Polish government is planning to stabilize banks through a program including a USD 1.4 billion bond issue and loans of USD 450 million from the World Bank. See Richard W. Stevenson, *Poles Forge Private Bank System*, N.Y. TIMES, Feb. 23, 1993, at D1.

partners, which may generate greater consumption and production. As a result of lower prices, demand for imports is likely to increase, and while domestic production of certain goods is likely to decrease, a shift in the use of domestic resources toward more effective uses should occur. Moreover, the access to a larger market should increase the scale of production. Finally, the establishment of a free trade zone between Poland and the EC creates an opportunity for the intensification of mutual trade in the adjustment period and an improvement in the structure of exports and imports between Poland and the EC.

Up until the present time, only those countries with strong economic ties to the EC had the ability to enter into agreements similar to the Agreement.⁹⁹ While the Agreement does not state conclusively when Poland would be granted membership status, it nevertheless constitutes an important step in the integration process. The decision regarding membership status will have to be made by appropriate organs of the EC and can be positive only when the reforms that have commenced in Poland are successful.¹⁰⁰ One of the aims of the Agreement is to provide an appropriate framework for Poland and gradual integration into the Community.¹⁰¹ The required economic reforms may prove to be overwhelming for Poles initially, but in the long run, they will result in an economic system similar to that of Western European countries.¹⁰²

99. For example, agreements were signed with countries that were members of the European Free Trade Association. Presumably, such countries could undergo a faster transition and adapt their economies to the EC standards. The agreement with Greece, for example, entered into force on January 12, 1962 with Greece becoming an EC member on January 1, 1981.

100. Poland has proposed that the Community should develop concrete criteria to evaluate when East European countries will be ready for membership, focusing on their economic health rather than their absolute level of GDP. In response to a request for setting a timetable for the East European Countries to join the EC, the Community stated such a timetable would be "premature" at this stage. See *Commission Rules on the East Europe Timetable for EC*, REUTERS, Dec. 4, 1992. An EC commissioner has been quoted as saying that the former socialist countries of Central Europe could be considered for EC membership as early as 1986, once applications from EFTA countries have been dealt with. *How quick to Europe?* EAST EUROPEAN MARKETS, March 5, 1993.

101. See Europe Agreement with Poland, *supra* note 2, art.1, §2. Poland also expressly undertook to "work towards fulfilling the necessary conditions" for membership. It is clear that "necessary conditions" will be present only after the complex process of legal, administrative, and economic reforms is completed.

102. As explained in documents presented to members of the Polish Parliament at the time of ratification of the Agreement, the main threat of the Agreement is that Polish products will have to compete on a more even footing with products produced in the EC. Accord-

As stated by the Polish Minister of Foreign Affairs, Krzysztof Skubiszewski, Poland's "current relations with the Community and [its] future membership will be crucial to the stabilization of [Poland's] security. Our aim is to forever remove the specter of totalitarianism and to ensure the future of democracy in our country."¹⁰³ The members of the Community similarly recognize that "the countries of Central Europe, who are our neighbors, are looking beyond normalization to a special type of relationship reflecting geographic proximity, shared values and increased independence."¹⁰⁴

Following the signing of the Agreement, Poland has become a noticeably more attractive market than before. Foreign investment in Poland rose markedly, chiefly by EC investors. The biggest investment of 1992 was the estimated USD 1.8 million paid by the Fiat company of Italy for a controlling interest in the FSM small car company.¹⁰⁵ Another large investment was the purchase of the Huta Warszawa steel mill by Lucchini.¹⁰⁶

The elimination of most customs duties and quantity import restrictions by the EC is an important concession. Almost all of the most important goods that Poland desires to export into the EC (the so-called "sensitive products"), however, will have unrestricted access only after four to six years from entry into force of the Interim Agreement.¹⁰⁷ The list of such products covers those sectors in which Poland has the highest comparative advantage and the best potential for increasing exports.

At a recent meeting of the EC-Poland joint committee to re-

ing to some Polish analysts, the types of products produced must be radically changed or Polish firms will lose the competitive war. See Glebocka, Hueckel, *supra* note 33, at 19.

103. See Krzysztof Skubiszewski, Minister of Foreign Affairs, Address Before the 15th Meeting of the Sejm (May 21, 1992). The Minister further stated that "[t]he linkage with the Community will allow our country to participate, as much as our tradition and abilities permit, in the evolution which is mandated by the political and international future of the world." As stated by an eminent economist, for Poland, "the urge to harmonize with and eventually join the European Community has deep roots. Poland desires to regain its place in the mainstream of European society and culture." Jeffrey Sachs, *Building a Market Economy in Poland*, SCI. AM., March 1992, at 34.

104. See *Background Brief Association Agreements with Poland, Czechoslovakia and Hungary*, COMMISSION OF THE EUROPEAN COUNTRIES (1992).

105. See *Review of Foreign Investment*, BBC SUMMARY OF WORLD BROADCASTS, April 1, 1993, at EE/W0275/A.

106. See Christopher Bobinski, *Polish Steel Deal Finalized*, FINANCIAL TIMES, Dec. 15, 1992, at 4. Lucchini committed to a USD 200 million modernization plan over 18 months.

107. Such goods include agricultural goods, textiles, coal, steel, fisheries, many chemicals, glass, leather goods and furniture.

view the workings of the trade elements of the Agreement with the Community, the EC put off all action on Polish requests for improved market access until after the Summer of 1993. Some EC countries such as Britain, Germany and Denmark are pushing for more liberal trade access and attach the highest importance to the policy review. They agree with the Commission that the EC should speed up the elimination of quotas and other barriers. In view of the problems with trade, Poland is trying to get compensation through EC financial programs. That, however, is likely to meet strong resistance from the poorer EC members such as Spain and Portugal.¹⁰⁸

During the interim period, however, it is necessary to support the development of processing industries in Poland and stimulate the development of infant industries through appropriate customs policies permitting the inflow of new technologies. Moreover, it is necessary to introduce financial and organizational mechanisms facilitating the modernization and restructuring of the most endangered industries. It is also necessary to take protective measures (customs policy, non-tariff instruments) to shield those industries against excessive competition during the period of modernization. This applies to the Polish textile industry, for instance. In agriculture, it is necessary to endorse restructuring through development of the service sector in rural areas and the policy of preferential loans to improve the structure of farm management and to develop the rural infrastructure.

The Agreement does not provide for free trade areas in two sectors of economy that are important for Poland: trade in agricultural goods and fishery products. With respect to agricultural goods, Poland did not obtain substantial concessions apart from the increase of several quotas, elimination of limited import quotas and the gradual reduction of customs duties on some food products. Poland agreed to reduce some of its import quotas. With respect to the remaining areas, the parties agreed to grant each other concessions on a reciprocal basis, "product by product." The Member States did not undertake to eliminate agricultural subsidies or import quotas. The Agreement does not provide for elimination of quotas on agricultural products, even within the ten-year transi-

108. In particular, Poland hopes to get into a position where some of the money spent by the EC on structural development might be available for Poland, for example, in developing boarder regions. See *Poland Fears EC Will Miss Copenhagen Target for New Policy*, THE REUTER EUROPEAN COMMUNITY REPORT, March 31, 1993, BC cycle.

tion period. Furthermore, with respect to fishery products, the Agreement does not contain any provisions aimed at trade liberalization. As a result of the failure to reach a specific agreement, it is very likely that EC countries will have a competitive advantage over Poland with respect to the agricultural products. It should be noted that, historically, the Member States have offered substantial subsidies to their farmers, while Poland does not have resources to maintain such a level of subsidies.¹⁰⁹ The EC products could displace Polish exports into third countries, such as the Republics of the former Soviet Union.

Under the terms of the Agreement, Poland will have the ability to impose temporary measures which increase customs duties, but it is currently unclear to what extent Poland will utilize such measures. It seems, however, that most of the Polish industry either should be restructured or are undergoing privatization. In reality, most enterprises have encountered serious balance of payments problems and are faced with a threat of substantial layoffs. Numerous new industrial branches (so-called "infant industries") exasperate the problem.

In light of the fact that under the Agreement the aggregate value of imports subject to additional protection cannot exceed 15% of the total imports of industrial products from the EC, it will be imperative for Poland to select a limited number of branches that should be protected from foreign imports and should benefit from such measures. It appears that especially agriculture may be an area in dire need of such protective measures.¹¹⁰ Farming accounts for 27% of national employment. Rural unemployment has been soaring. In 1992, farmer households' incomes dropped 18%, or 4 times more than incomes of all remaining household

109. In 1990, the subsidies in the EC amounted to 300 ECU per inhabitant. In Poland, the subsidies were approximately 13-30 ECU per inhabitant. See Wladyslaw Bielski, *Farming Has Gone Into Recession Again*, POLISH NEWS BULLETIN, Feb. 5, 1993 [hereinafter, Bielski].

110. A proposal to increase tariffs on agricultural and processed food imports, promoted by the Polish Ministry of Agriculture and Food Management, has caused a lot of controversy. The tariffs will probably be so-called equalizing payments for some goods and will be in force only temporarily. The list of products remains unknown, but it primarily involves goods the production of which is subsidized in the country of origin. Ironically, the Polish farmers, who have been pressing for higher tariffs, could lose out the most if their trade partners impose retaliatory tariffs since Poland's food exports are greater than its imports. See Miroslaw Glogowski, *Customs Duties: Middle of the Road*, THE WARSAW VOICE, March 28, 1993.

categories.¹¹¹

It should be noted that the imposition of temporary import restrictions in certain areas may encourage direct foreign investment in those branches of Polish industry providing investment will not be restricted. The imposition of protective measures may result in the flow of capital into Poland and the opening of enterprises by foreign firms in underdeveloped areas of industry. While such investment may provide added competition, benefiting the consumers, it may also prove destructive to Polish producers.

After the association period, the Polish food industry will be less integrated with the EC economy than other industries which will have fully incorporated free trade mechanisms by that time. Trade in food and related products will still be under the control of slightly loosened mechanisms of the EC agricultural policy. During the association period, Poland is likely to adopt stricter EC regulations, and standards for its food industry, since otherwise exports to the EC market would not be possible. Poland is also likely to introduce a system enforcing the observance of such regulations. It should be noted, however, that the provisions of the EEC Treaty do not impose any restrictions on Poland that might effect this country's fully independent agricultural policy or the selection of methods of its implementation. It is doubtless, however, that Poland will apply measures close to the ones applied by the Communities.¹¹²

Another restriction on the free access to the EC market results from rules of origin requirements. The Protocol on the rules of origin provides two definitions. First, products originating in Poland are those which are wholly obtained in that country.¹¹³ A list of products, mainly minerals and agricultural goods are cited as examples.¹¹⁴ Second, products originating in Poland are defined as those obtained in Poland in the manufactures of which products

111. Bielski, *supra* note 109.

112. It is estimated that the cost of "closing the agricultural gap" between Poland and the EC is exorbitant: around USD 4 billion per year for the next 10 years. *Id.* (citing estimated of the Polish Council for the Development of Rural Regional and Agriculture). While these estimates may not exactly be precise, their order of magnitude shows how formidable the barriers to solving problems of rural areas and agriculture are.

113. See Europe Agreement with Poland, *supra* note 2, Protocol No. 4, art. 1(2)(a).

114. An interesting example of the complexity of these rules is that fisheries are considered as wholly obtained in a country only when they are caught by national vessels (the definition of a "national vessel" may depend upon the ownership and nationality of the members of the management or directors of the firm and the crew).

(not wholly obtained in the country and not obtained in the EC) are used, provided that said products have undergone "sufficient working or processing."¹¹⁵ The basic definition for these purposes is that there be a change in customs headings: a product is sufficiently worked or processed when it is classified in a heading of the Harmonized System which is different from that in which all the non-originating materials are classified.¹¹⁶ However, for most industrial products this rule of origin is suppressed in favor of a threshold expressed in terms of value added to the products in Poland: inputs from non-EC sources should not represent more than 50% of the production value.¹¹⁷

Given the relatively small size of the Polish economy, foreign direct investment in the area of traded goods is unlikely to occur based solely on the domestic market opportunities. Rather, foreign firms are most likely to be willing to invest in export-oriented activities. While the rules of origin are especially important for Poland, with a good supply of relatively skilled labor, the country lacks the technical and managerial skills to produce complex products.¹¹⁸ As a result, future production depends on the availability of foreign parts and services. The rules of origin may prove to be a serious constraint. Assembly plants in Poland (other than those based on bilateral trade between the EC and Poland) are in effect excluded from the scope of the Agreement. The harm done to Poland by these restrictive rules of origin will also hurt the EC, however, because the EC will not be able to invest in as many plants as Poland may desire.

As a result of lower barriers between the EC and Poland, trade between Poland and the non-EC member states is likely to decrease, as imports from those countries will be more costly than imports from EC-member countries. In effect, Poland may become dependent on the EC for the majority of its imports. The Community should not, however, become the sole exporter to Poland.¹¹⁹

115. See Europe Agreement with Poland, *supra* note 2, Protocol No. 4, art. 1(2)(b). The Commission has itself recognized that the Agreement is not sufficient to meet the needs of Poland, and that Poland should not rely on the Community market as the sole source of economic prosperity. See *Parliament Approves*, *supra* note 4.

116. See Europe Agreement with Poland, *supra* note 2, Protocol No. 4, art. 4. See Jedrzejewska, *Customs Preferences in Trade with the EEC*, POLISH NEWS BULLETIN, May 26, 1992 (discussing criteria used to determine country of origin).

117. See Europe Agreement with Poland, *supra* note 2, Protocol No. 4, Annex II.

118. See *Why the EC Should Accept Poland, Hungary and the Czech Republic*, THE ECONOMIST, March 13, 1993.

119. The Commission has itself recognized that the Agreement is not sufficient to meet

Poland should consider entering into agreements providing for the reduction of customs with other countries. The United States, for example, has been trying to negotiate lower tariffs for its products but has been unsuccessful thus far. However, it does not appear likely that a free-trade agreement between the United States and Poland will be entered into anytime in the near future.¹²⁰

The elimination of barriers between the EC and Poland may prove more beneficial to the EC as Polish producers may not be able to compete on an equal footing with producers from the EC. The restructuring of the Polish market place will be costly and time consuming. During the transformation, Polish products may be less competitive than products manufactured in the EC member states because they may not meet certain EC quality or technological standards. This may result in the elimination of some Polish domestic producers due to their inability to compete effectively.¹²¹

The current economic policy of the EC may negatively effect the export of certain Polish industrial products. The EC has adhered to a policy of protectionism for certain branches of its industry, such as production of textiles, clothing, shoes and steel. The provisions of the Agreement evidence such protection since these products are exempted from the general schedules of tariff reductions.¹²²

The Agreement permits the enforcement of anti-dumping pro-

the needs of Poland, and that Poland should not rely on the Community market as the sole source of economic prosperity. *See Parliament Approves, supra* note 4.

120. Presentation of Joan Edwards, Director of US Trade Development Center in Warsaw, Poland, at a meeting of US business executives (February 1, 1993). *See also*, Glogowski, *Poland and GATT: Arm's Length Membership*, THE WARSAW VOICE, Feb. 7, 1993 (stating that GATT members worry over the possibility of "Deformed Trade" due to the Agreement, with countries outside of the EC being discriminated against). In the absence of a free trade agreement between Poland and the US, the Agreement will have a negative impact on the flow of commerce between the U.S. and Poland. The Polish-American Business and Economic Treaty was signed on March 20, 1990, but has not been ratified. For a discussion see Todd Ewing, *The Treaty with Poland Concerning Business and Economic Relations: Does it Provide More Incentive to the American Investor?*, 11 Nw. J. INT'L L. & Bus., 352 (1990).

121. One Polish commentator has suggested that, in order to compete more effectively with EC producers, smaller Polish enterprises should merge with other Polish enterprises. *See* Glowacki, *Stowarzyszenie Polski z EWG, Szanse i Zagrozenia dla Polskiego Przemyslu [The Association between Poland and the EC, Opportunities and Threats to Polish Industry]* 35 INFORMATIONAL MATERIALS OF THE POLISH PARLIAMENT 5 (1992) (noting that after the signing of the adoption of the Single European Act in 1986, many smaller companies merged with other regional companies to gain a competitive advantage).

122. It should be noted that the trade in agricultural and other "sensitive products" account for 23% of Polish exports to the EC. *See* Zielinski, *Poland's Rights and Obligations Under the EC Association Treaty: An Outline*, POLISH NEWS BULLETIN, May 26, 1992.

visions, which are sometimes misused as a mechanism of protectionism. The imposition of provisional anti-dumping duties on the import of certain types of steel tubing originating in Poland serves as a good example of how this measure can be misused. In August of 1992, the Commission evaluated the complaints of the EC steel industry and subsequently imposed the anti-dumping duties.¹²³ The Commission's decision to impose such duties has been criticized as being based on conditions "artificial and unrelated to the actual conditions" in Poland.¹²⁴

It is interesting to note that countries which obtained associate membership status in the EC obtained it on terms which can be deemed as more beneficial than those applicable to Poland. For example, the agreement with Turkey provided for customs duties to be lifted over a period of twenty-two years.¹²⁵ The agreement with Greece contemplated the lifting of customs duties over a period of twelve years. Greece also had an additional ten years to remove duties on goods which were determined to be crucial to the local industry.¹²⁶ Moreover, the agreement with Hungary provides for a nine-year period of reduction of customs and non-tariff barriers by Hungary, which is two years shorter than the period for Po-

123. The Agreement does not grant Poland the status of a "market economy". Article 1 and the recitals mention that an objective of the Agreement is to provide an appropriate framework for Poland's gradual integration into the Community, including the transition to a market economy. The Agreement left open the question whether anti-dumping procedures would be procedures against non-market economies. The EC authorities took Poland off the list of centrally planned economic countries in the first quarter of 1992.

124. For a discussion of the case, see Dan Horowitz, *EC Protectionism and European Integration — Conflicts Considered*, 1 *DOING BUSINESS IN EASTERN EUROPE* 3 (1993) (stating that the restrictions impede to a large extent the ability of Poland to accelerate its internal economic reforms and transformation processes at a time when they desperately need foreign currency to pay for essential needs, to service their increasing foreign debt problems and to attend properly to their growing internal social difficulties). As a result of the removal of national steel quotas, the Poland boosted steel exports to the EC by 20% in 1992, according to Commission figures. The Community has several dozen million tons of surplus steel capacity and production cutbacks are expected to lead to the loss of at least 50,000 jobs. See Susanne Hoell, *Poland Fears "Iron Curtain" for Steel Exports to EC*, *THE REUTER ASIA-PACIFIC BUSINESS REPORT*, March 23, 1993.

125. See arts. 10-11 of the Association Treaty between Turkey and the EC. Moreover, this Treaty provided for a period of twenty years for the removal of quantity restrictions on imports.

126. See arts. 14-15 of the Treaty on Association between the EC and Greece. The Treaty with Greece was signed in 1961 and Greece became a member in 1985, so, in fact, this period was extended to 24 years. Further, Spain and Portugal had seven years to remove customs duties on industrial goods from the EC after they obtained membership in the EC. See art. 31 of the Accession Treaty between Spain and the EEC, and the Association Treaty between Portugal and the EEC.

land.¹²⁷ Considering that the economy of Hungary is more developed than that of Poland, and Hungary's export potential is much higher than Poland's, it is doubtful whether the "shock therapy" mandated by the Agreement with Poland will be successful.

IV. CONCLUSION

The potential for Polish membership in the Community should serve as a catalyst for the proper application of political, legal, and economic reforms.¹²⁸ The implementation of the Agreement, especially the required harmonization of laws, will ensure the stability of the economic development of Poland. Such stability is necessary to attract foreign and domestic investors and accelerate the economic development of Poland.

It appears, however, that the Agreement is only the first step in a long process of further negotiations and that other agreements in areas such as agriculture and fisheries will have to be entered into before Poland can apply for membership in the EC. The Agreement fails to accomplish one of its main goals because exports from Poland will still be subject to substantial EC tariff and non-tariff barriers.¹²⁹ It is unclear whether trade in agricultural goods will be liberalized.

The key question concerning Polish-EC economic relations is to what extent the tariff concessions granted to Poland will boost Community demand for its products in the years to come and if these concessions will be sufficient to enable Polish products to enjoy a real competitive advantage vis-a-vis EC goods in the Community market.

127. Europe Agreement with Hungary, 1992, E.C.- Hun., O. J. (L116). For a discussion see Soltysinski, *Układ o Stowarzyszeniu Miedzy Polska a Wspolnotami Europejskimi Problematyka Prawna i Ekonomiczna* [Association Agreement Between Poland and the European Community: Legal and Economic Issues] 6 PANSTWO I PRAWO [STATE AND LAW] (1992).

128. For example, a draft outlining a proposal to harmonize the country's economy to the requirements of the Agreement has already been approved by the Polish cabinet. See *Cabinet Approves Program to Harmonize Economy with EC Association Agreement* (THE BRITISH BROADCASTING CORPORATION, Dec. 4, 1992).

129. This fact has been recognized by EC Trade Minister, Sir Leon Brittan, who stated that apart from providing technical assistance to Poland the EC countries should make their markets more widely open to Polish goods (pointing out, however, that this is not easy due to the recession in the West). See *Polish President and Premier Discuss EC Association, Market Access With Brittan* (THE BRITISH BROADCASTING CORPORATION, March 27, 1993).