Global Business & Development Law Journal

Volume 6 | Issue 1 Article 7

1-1-1993

Poland Joins the Queue to European Integration

Robert F. Taylor
Peperdine University School of Law, South Kensington

Zbigniew Marek Czarny
Centeral and Eastern Europe Group, Clifford Chance, London

Poland Joins the Queue to European Integration

Robert F. Taylor*
Zbigniew Marek Czarny**

TABLE OF CONTENTS

I. INTRODUCTION

In December of 1991, the emerging Eastern European democracies of Poland, Hungary, and Czechoslovakia[1] made substantial strides toward their expressed goals of abandoning all past economic and political ties and of reintegrating their economies with those of the West, by concluding the Association Treaties (European Agreements or agreements) with

---

* Legal Consultant, London, England; Adjunct Lecturer in Law, Pepperdine University School of Law, South Kensington, The American College in London, and the United States International University, Bushey, Hertz. B.A. with honors, Samford University, 1977; J.D., Cumberland School of Law, 1980; LL.M., University of the Pacific, McGeorge School of Law, 1982.

** Solicitor, Central and Eastern Europe Group, Clifford Chance, London. B.A. with honors, University of Kent; Doctorate in Law, University of Gdansk; M.A. in Law, University of Nicolai Copernici, Torun.

1. After the "Velvet Revolution" of November 1989, Czechoslovakia existed as a common state until the "Velvet Divorce" of the Czech and Slovak Republics, an event which the Parliamentary elections of June 5 and 6, 1992 and the resulting constitutional crisis precipitated. At the end of November, the Federal Assembly passed a law facilitating the federation's dissolution which provided the framework for the common Czech and Slovak state to end, as well as for the development of future good relations between the republics. The Czech and Slovak Federal Republic was dissolved on December 31, 1992, and the two republics of the same name stepped independently upon the world stage on January 1, 1993. For a succinct historical chronology of the four years preceding the dissolution, see *The Czech Republic*, FIN. TIMES, Jan. 11, 1993, at 1.

the European Community (EC).[2] The agreements, comprised of 122 articles, together with various schedules and annexes, were preceded by eleven months of intense and difficult negotiation. They will enter into force after ratification by the respective national parliaments and the European Parliament. Although the ratification procedures have not yet been completed, interim agreements relating to the trade provisions between the EC and the Eastern European nations entered into force on March first of last year.[3] Many believe that the European Agreements mark a large step toward the establishment of "the new architecture of Europe."[4] Indeed, when viewed globally, the agreements do indicate that integration into the EC is an achievable goal for the three Eastern European nations. In that sense, the treaties provide a clear hope for better times to come for the fledgling democracies.

Although the immediate purpose of the treaties is to facilitate the expansion of trade and economic cooperation between the three nations and the EC, they also provide a "vade mecum"[5] which may well lead to their full integration into the EC.[6] Towards that end, the three separate, yet similar treaties, establish a ten-year program whereby the internal legislation of the three countries in the areas of investment, trade, and business will be recast in the likeness of EC regulations which already exist.[7] In addition, the agreements

2. The Europe Agreement establishing an association between the European Communities and their member states of the one part and the Republic of Poland of the other part, includes exchanges of letters with declarations and final act. The Agreement has been published by the government of the United Kingdom in the series of European Communities, No. 5 (1992), reference CM 2059 [hereinafter European Agreements].

3. Council Regulation 518/92/EEC, 1992 O.J. (L 56) 3; Council Regulation 521/92 EEC, 1992 O.J. (L 56) 12; Council Regulation 522/92/ECSC, 1992 O.J. (L 56) 35.

4. The EC Commissioner, Jacques Delors, made this statement at the signing ceremony. The Czechoslovak Prime Minister, Marian Calfa, the Hungarian Prime Minister, Jozsef Antall, and the Polish Deputy Prime Minister, Leszek Balcerowicz, shared this sentiment. They signed the agreements on behalf of their countries. *Correspondent's Report for Brussels*, RFE/RL RESEARCH REP., Dec. 16, 1991, at 1. *See* Josef C. Brada, *The European Community and Czechoslovakia, Hungary and Poland*, REP. E. EUR., Dec. 6, 1991, at 27 (providing a comprehensive discussion of the negotiations and the issues involved in the agreements); Jennie Mills, *Business Law: The Shape of the Agreements to Come*, FIN. TIMES, Dec. 5, 1991, at 42.

5. *Vade mecum* is the Latin term for a travel guide or map, literally, a "go with me." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2528 (1961).

6. Jan B. de Weydenthal, *Czechoslovakia, Hungary and Poland Gain Associate Membership in the E.C.*, RFE/RL RESEARCH REP., Feb. 7, 1992, at 24.

7. European Agreements, *supra* note 2, at arts. 68-70. The EC, which now has 12 Member States, was founded by the Treaty Establishing the European Economic Community, Mar. 25, 1957, 1973 Gr.Brit.T.S. No. 1 (Cmd 5179 II) (official English version), 298 U.N.T.S. 11 (1958) (unofficial English translation) entered into force Jan. 1, 1958 [hereinafter Treaty of Rome]. All member states are also signatories to two other treaties which establish a European Coal and Steel Community (ECSC), European Coal and Steel Community Treaty and Convention, Apr. 18, 1951, 261 U.N.T.S. 140 (unofficial English translation), and a European Atomic Energy Community (EURATOM), Treaty Establishing the European Atomic Energy Community, 298 U.N.T.S. 167 (unofficial English translation).

The Single European Act (SEA), 1987 O.J. (L 169) 1, was the first major revision of the original Treaty of Rome to coincide with an important new political impetus to European integration. As of January 1, 1993, the EC is a single integrated market without internal frontiers, in which the free movement of goods, services, persons, and capital is ensured. In order to accomplish these ends, a legislative program has been adopted within the EC, with the aim of removing the remaining physical, technical, and fiscal barriers to free movement. Almost 300 proposals to remove physical, technical, and tax barriers were put forward in 1985, and the vast majority were concluded before the December 31, 1992 deadline. Application of the principle of mutual application, whereby Member States accepted each other's legislation as broadly equivalent, has helped to open national markets through the new approach to standardization. The free movement of capital has also been virtually achieved. The final stumbling blocks, removal of tax borders and approximation of the value added tax (VAT), emphasize the need for the free movement of goods between the parties and provide specific timetables for the abolition of trade barriers.[8] These timetables are premised on the concept of asymmetrical integration, or simply, asymmetry. According to this concept, EC member states will make customs concessions on Eastern European imports during the first five years of the agreement. The developing democracies of Eastern Europe, having benefitted from five years of reduced competition from EC firms, will then make reciprocal concessions on the import of EC goods and services during the succeeding five years.[9] The parties have also provided for reciprocal rights for businesses seeking to establish themselves on one another's territory.[10] Finally, there is an acknowledgement of the rights of free movement of labor between the parties.[11]

The agreements should not, however, be taken as a quick fix for the economic ills which plague both their houses–the financially crippled emerging democracies and the EC, as it seeks to accommodate East Germany within the Common Agricultural Policy while simultaneously completing the legislation necessary for the implementation of "Europe 1992."[12] Far from it. Skeptics have even gone so far as to suggest that the negotiators, in their haste to complete the treaties before the end of 1991, to thereby provide a hint of economic progress at the close of the financially crippling year, simply sidestepped the difficult trade issues. By so doing, it is argued, they rewarded EC member states with immediate economic benefits to the detriment of the Eastern democracies, which are most in need of immediate economic assistance.

The purpose of this Article is to examine the most important aspects of the Poland/EC treaty in light of the economic and political changes which have occurred in Poland over the past two years. In addition, the authors will address specific provisions of the agreement relative to such EC goals as free movement of goods and services and freedom of establishment.

II. Background To The Polish Agreement Of Association

Strong disincentives to trade have existed on both sides of the Iron Curtain since the end of World War II. During that time, Eastern European exporters had to contend with quantitative import restrictions, voluntary export restraints, and Western Europe's traditional tariff barriers. A large portion of the blame for the failure of East/West trade policies, however, must also be placed at the feet of the atrophied economic institutions of Eastern

---

have also been addressed by the Commission. Finally, there is the Maastricht Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 247 (1992), the most recent in this series of European treaties. The purpose of creating an economic and monetary union through Maastricht is to convert the bipolar economic world of the dollar and the yen into a tripolar one including a common European currency (ECU). This will require economic and monetary union with a single currency, an autonomous central bank, a common foreign policy, and elements of common citizenship. July 1998 is the date which has been chosen for the entering into operation of the European Central Bank, and January 1999 is the target date for the single currency.

It should be noted that the Maastricht Treaty has yet to be ratified by all of the Member States and that since September 1992, the European Exchange Rate Mechanism (ERM) has effectively disintegrated. Thus, the future of further European integration is in some doubt. Tony Venables, Current EC Legal Developments: Amendment of the Treaties 1-3 (1992).

8. European Agreements, *supra* note 2, at arts. 1, 9, 10, 20, 25, & 26.

9. *Id.* at arts. 6-7. *See generally*, Mills, *supra* note 4, at 42 (discussing reciprocal concessions).

10. European Agreements, *supra* note 2, at art. 37.

11. *Id.* at arts. 37-38.

12. *See* The Single European Act, *supra* note 7.

Europe, which have largely been irrelevant and useless to Western financial markets. Since the moment that democratically elected powers took control of the political machinery in Warsaw, Polish foreign policy has sought to effect broad institutional transformation to reestablish trade with Western Europe. These policies reflect a deep-seated Polish conviction that economic and social improvement can best be implemented through rapid integration into Western economic and political institutions.

Despite predictions that 1991 would be a year of strong economic growth in Poland, two interrelated events resulted in a nationwide economic failure. The first, the complete collapse of trade with the Soviet Union, was precipitated by a Soviet decision to adopt hard currency financing standards for all foreign trade transactions. Prior to 1991, the transferrable ruble, rather than hard currency, had been used to calculate the value of trade turnover of the countries of the Council for Mutual Economic Assistance (CMEA) in their intramural trade.

Never a true currency, the transferrable ruble was simply an artificial bookkeeping unit which provided a bilateral accounting mechanism for barter trade between CMEA member countries. The leaders of the rapidly disintegrating Soviet Union believed that such a change might result in their collection of payments in hard currency at world prices for Soviet energy and raw material exports. The implementation of that rather simplistic theory had dire economic consequences which even Soviet economists should have foreseen. Poland, which necessarily continued to import Soviet energy, was from that point forward unable to export Polish goods into the Soviet Union, as it had in the past. Despite a desperate need in that country for Polish consumer goods, Soviet authorities opted to use their limited hard currency supplies to refinance debt with Western banks. Having very little hard currency with which to trade, Poland had no alternative but to discontinue trade with the Soviet Union. As a result, Polish exports to the USSR dropped by sixty percent over the course of a year.[13] The Soviet decision to shift to hard currency also caused an immediate collapse of trade between the former member states of the CMEA. In all transactions after January 1, 1991, Poland and the other former CMEA member countries also adopted hard currency accounting methods for their trade with each other, just as they had done with Soviet Union. As such, the U.S. dollar became the basis for virtually all transactions, despite the fact that none of those nations had hard currency reserves. The double disappearance of the ruble and traditional CMEA trading links suddenly left Poland without the two economic institutions which had governed its trading policies for seventy years.

The second economically disastrous event of 1991 was related to the first. The moment that convertible currencies became required for foreign trade financing, Polish consumers saw the folly of purchasing lower quality Eastern European products when Western goods could be purchased for nearly the same price. That rationale was also employed by Polish firms which did have access to hard currency. By importing huge quantities of western goods, they immediately pushed their respective countries' trade balance to the breaking point.

The abrupt collapse of trade with the Soviet Union had detrimental effects throughout all East European economies. On the import side, the dollarization of trade caused instantaneous trade diversion and imbalances, East to West. As for exports, the emerging democracies also faced the tremendous task of restructuring industries which had previously been driven by Soviet economic needs. Thus, the term "recession" entered the Polish

---

13. Jan B. de Weydenthall, *Rapprochement with the West Continues*, REP. E. EUR., Dec. 20, 1991, at 24.

vocabulary for the first time since the reemergence as a democratic polity. Unable to market their products, a majority of Polish state-owned firms found themselves insolvent by mid-1991. Unemployment rose to 11 percent.[14] Polish state industries rose to the top of the political agenda as the government cut public spending and welfare benefits to the maximum extent possible. It was recognized however, that merely restoring trade with the former members of the USSR would not resolve Poland's economic problems. Like their western neighbors, Polish policy makers recognized that doing business with the struggling nations of the newly founded Commonwealth of Independent States (CIS) was logistically difficult and economically unsound. Thus, a consensus formed in Poland, Hungary, and Czechoslovakia that the only way for those new democracies to find political and economic stability had to be "The Way West."

III. THE WAY WEST

Although economists differ as to the optimum pace and sequence of economic reform in Eastern Europe, there is a general consensus that marketization is the best policy for achieving economic growth. In the domestic context, marketization requires the adoption of world market prices and a reorganization of internal economic activity according to more rational criteria than central planning. Internationally, the principle envisages greater openness to the global economic forces, together with a reliance on international trade in order to exploit the benefits of comparative advantage. According to current wisdom, gaining access to Western markets is essential if Poland and other Eastern European nations are to avoid major declines in trade and production. Western Europe, the nearest large market, is the obvious one for Eastern European industries.

The need to find markets in the West has important macroeconomic and structural implications for Poland as well. Poland is attempting to combat inflation by means of a combination of restrictive monetary and fiscal policies, which call for governments to reduce the budgetary deficits with the goal of operating at a surplus. Members of the EC have agreed that budget deficits would not exceed three percent of respective gross national products by the end of the decade.[15] The same standard will certainly be expected of any country seeking admission into the community. EC members have also agreed that by the end of the decade, inflation levels in all members states will be limited to no more than 1.5 percent above the average of the three countries within the EC having the lowest inflation rates.[16] While recent rates of inflation in the EC have been around 4.6 percent, the rate of inflation in Poland is estimated to be approximately 70 percent.[17]

Because Poland is not in a position to stimulate consumer demand through fluctuations in government expenditures or interest rates, the major stimulus to economic growth and the reduction of unemployment must come from foreign trade. In this respect, there is also an important time dimension to consider. Polish authorities believe that they must establish a market presence in Western Europe as soon as possible. The EC's recent expansion to

14. Louisa Vinton, *Poland: The Anguish of Transition*, RFE/RL RESEARCH REP., Jan. 3, 1992, at 91. *See* Patrice Dabrowski, *East European Trade (Part II): Creative Solutions by the Former Eastern Bloc*, REP. E. EUR., Oct. 11, 1991, at 28-29, 32-33. *See generally*, Ben Slay, *The Economy: Perspections and Reality*, REP. E. EUR., Oct. 4, 1991, at 16 (discussing the economic consequences of democracy in Eastern Europe).

15. de Weydenthal, *supra* note 6, at 26.

16. *Id.*

17. *Id.*

Portugal, Greece, Spain, and East Germany, countries with export potentials similar to that of Poland, has resulted in increased competition within the EC market. Intensification of EC integration through the "1992 process," together with the recent European Free Trade Association (EFTA)[18] accords, have increased the urgency of becoming part of the integration process from the outset, rather than catching up after business relationships have already been created within Western Europe. According to this theory, Eastern European exports to the EC must be increased as soon as possible. Exports are particularly needed in the traditional industrial sectors, including steel, where the collapse of trade with the Soviet Union has been felt the strongest.

Although Western countries publicly endorse a liberal model of international economic relations, particularly with respect to the developing Eastern European democracies, recent trade agreement difficulties, exemplified by the Uruguay round of the General Agreement on Tariffs and Trade (GATT),[19] aptly demonstrate that often a country's internal actions are not always consistent with its external rhetoric. Although western countries publicly agree that economic development in Eastern Europe is a vital prerequisite to global prosperity and international political stability, they have yet to agree upon a common policy of assistance. The continued presence of protectionist pressures within those nations reflect the power of domestic interest to influence defensive governmental measures. Indeed, Western policies toward Eastern and Central Europe are created within a system where nations are permitted to pursue nationalistic economic policies, instead of those which are consistent with their own declared liberal ideals.

IV. THE EC TRADE ENVIRONMENT

In the recent past, exports from Eastern Europe to the EC have been of limited importance for both parties. According to a recent GATT report, exports to the EC

---

18. The EC has entered into an important set of agreements with the European Free Trade Association (EFTA) countries which have not joined the EC, namely, Austria, Finland, Iceland, Norway, Sweden, and Switzerland. *See* 1972 O.J. (L 300) 2, 97, 189; 1972 O.J. (L 301) 2; 1973 O.J. (L 171) 2. The main reasons for these agreements were to consolidate and to extend the economic relations between it and the EFTA Member States after the enlargement of the EC in 1972. The main instrument to achieve this is the creation of a Free Trade Zone through the removal of tariff barriers in relation to certain industrial products originating either in the EC or in a contracting state. The EFTA has its origin in the Convention Establishing the European Free Trade Area, Jan. 4, 1960, 370 U.N.T.S. 3 (1960).

In October 1992, the EC reached an agreement with the EFTA whose purpose is to provide for broad liberalization of trade and expanded economic cooperation throughout Western Europe. *See* WILLIAM RAWLINSON & MALACHY P. CORNWELL-KELLY, EUROPEAN COMMUNITY LAW 66 (1990); GREAT BRITAIN DEPARTMENT OF TRADE AND INDUSTRY, THE SINGLE MARKET: THE EUROPEAN ECONOMIC AREA 1 (1992).

19. All three emerging democracies are members of the GATT, 55 U.N.T.S. 187. Terms of their accession included special arrangements to take into account the fact that East European countries have not had market driven economies. An important ingredient is extra safeguard clauses against the risk of dumping through state-subsidized exports. There are also special features tailor-made to each of these countries and colored by the East/West climate obtaining at the time of accession.

Now, however, the scene has completely changed. The East European countries want their special state trading status in the GATT agreements to be abolished. All three have been in negotiations aimed at introducing genuinely non-discriminatory tariffs at lower levels than in the past, and to bind them at those lower levels. In the past, tariffs were of limited importance, since other trade policy institutions, such as CMEA price and volume agreements, quantitative import and export restrictions, and the shortage of hard currency were much more significant barriers than were the tariffs. DAVID BEGG ET AL., MONITORING EUROPEAN INTEGRATION: THE IMPACT OF EASTERN EUROPE 22-28 (1990).

accounted for only about fifteen percent of Eastern Europe's total exports in 1988, and only about six percent of total EC imports in the same year.[20] Over time, the EC has constructed a complex hierarchial system of preferential tariff arrangements with its trading partners. Since the late seventies, the so-called "pyramid of privilege" of European trade has been divided into three layers. At the top are the countries guaranteed duty-free access to the Community for all of their manufactured exports. These are the six members of EFTA, together with the twelve Mediterranean countries and the sixty-six African, Caribbean and Pacific members of the Lome Convention.[21] The middle layer includes the other developing countries, except Taiwan, which are beneficiaries of the EC General System of Preferences (GSP).[22] At the bottom of the pyramid, there is a handful of countries subject to the common external tariff: Australia, Canada, Japan, New Zealand, South Africa, Taiwan, and the United States.

Below these layers lay, until recently, the outcasts: the nations of Eastern Europe. Their situation was not enviable. They enjoyed no preferential tariffs and were subject to special quantitative restrictions. In addition, they also bore the brunt of frequent antidumping actions. That situation has changed radically, however, in the past two years. Since then the EC has concluded trade and competition agreements to provide nondiscriminatory tariff regimes.[23] At the same time, quantitative restrictions formerly applicable to all Eastern European nations were completely abolished, and nonspecific quantitative restrictions, i.e., those applicable to all EC trading partners, have been suspended for one year, with the exception of agricultural arrangements, textile restrictions, and coal and steel arrangements.

V. THE ASSOCIATION AGREEMENT

A. The Status of the EC and Poland Under the Agreement

For the EC, the three association treaties represent a relatively novel type of international accord, largely due to the political implications of such agreements. The provisions contained in the treaties were strongly influenced by the clearly expressed

---

20. BEGG, ET AL., *supra* note 19, at 26.

21. *See* 1976 O.J. (L 25) 1. An association between the EC and dependent territories outside Europe was originally provided for by articles 131-36 of the Treaty of Rome. Many of these territories joined a formal agreement with the EC which was expanded with the signing of the Lome Convention in 1975. The Lome Convention continues the principle of free trade and developmental assistance, and it covers trade and financial cooperation, stabilization of export revenues, financial and technical cooperation, and industrial cooperation. The vast majority of exports from these countries and territories are admitted into the EC free of import duties or quantitative restrictions. *See* RAWLINSON & CORNWELL-KELLY, *supra* note 18, at 73.

22. *See* Council Regulation 3635/87/EEC, 1987 O.J. (L 350) 1; Council Regulation 3636/87/EEC, 1987 O.J. (L 367) 67; Council Regulation 3782/87/EEC, 1987 O.J. (L 3671) 1 (applying generalized tariff preferences).

Breakdowns of producer and beneficiary countries are according to the working nomenclatures of the EC. O.J., Dec. 31, 1986, Regulation 373. Statistical Office of the European Community, CECA-CEE-CEEA, External Trade System of Generalized Tariff Preferences (GSP), vols. 1 and 2 (1990).

23. *See* An Agreement between the European Economic Community and the Polish People's Republic on Trade and Economic Cooperation, 1989 O.J. (L 339) 1; An Agreement between the European Economic Community and the Polish People's Republic on Trade in Textile Products, 1987 O.J. (L 156) 40; Exchange of Letters between the European Economic Community and the Polish People's Republic on Trade in Sheepmeat and Goatmeat Sector, 1987 O.J. (L 137) 1, 13; 1990 O.J. (L 95) 12 (setting forth trade and competition agreements).

political purposes of the agreement, the most important of which was to promote and strengthen political and economic reforms in Poland, Hungary, and Czechoslovakia. Even more significant, at least from the perspective of the three nations, is the EC acknowledgement that the ultimate aim of the three Eastern European nations is admission into the European Community. Indeed, each of the three nations is hopeful that admission will come soon after the completion of the ten-year association period.

Under the terms of the Polish agreement, the Member States of the EC will accord Poland "association status."[24] That term, by its definition, represents a transitional phase which may lead to full membership within the community. The treaty therefore provides a framework for political dialogue, the gradual integration of Poland into the Community, or both. The agreement is valid for a ten year period, during which time Poland is required to take steps to restructure its economy and harmonize its legislation with that of the community.[25] The transition period is divided into two successive stages of equal duration, during which time various measures and policies set out in the treaty are to be implemented.[26]

The biggest political boost for Poland is found in the belief that association status will be the first step to full membership in the community. The preamble to the agreement states that "the final objective for Poland is to become a member of the community and that this association, in view of the parties, will help to achieve this objective."[27] It must be borne in mind, however, that historically speaking, the mere fact of association status has never been linked to membership in the community. Since its establishment in 1957, the EC has concluded agreements of association with a number of countries. Only in the case of Greece, however, did such an agreement lead to full Community membership.[28] On the other hand, a number of countries[29] became members of the community in the absence of a treaty of association. This approach was maintained in the EC agreement with seven member countries of the EFTA,[30] which created a European Economic Area. That agreement, which is unique, does not link the membership in the European Economic Area to possible accession to the EC. By the time of that agreement, however, Austria, one of the seven, had already made its application to join the community. Other EFTA countries will no doubt follow its lead.

From the outset, a regular political dialogue aimed at strengthening Poland's bonds with the community of democratic nations will be established between Poland and the EC. These political consultations will take place between the European Council and the Commission of the European communities and the President of Poland. At the ministerial level, the dialogue will be pursued within the Association Counsel, which will be established to supervise the implementation of the agreements.

24. The first sentence of the preamble to the European Agreements states that its purpose is of "establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, on the other part." Article 1 states that "[a]n association is hereby established . . . which will provide an appropriate framework for Poland's gradual integration into the Community." European Agreements, *supra* note 2, at art. 1.

25. Mills, *supra* note 4, at 42.

26. European Agreements, *supra* note 2, at pmbl.

27. *Id.*

28. Greece acceded to the Treaty of Rome in 1985.

29. The United Kingdom, Denmark, Ireland, Spain, and Portugal.

30. *See supra* note 18 and accompanying text.

B. Free Trade Area

The focal point of economic integration within the EC is the Common Market, in which the member states have combined their resources to create a unified economic area, undivided by either customs or trade barriers. This common market rests on the pillars of four fundamental freedoms: free movement of goods, free movement of persons, free transfer of capital, and freedom to provide services. These measures are accompanied by common policies in such areas as competition, taxation, environmental protection, regional development, approximation of laws, and consumer protection.

The first step in the creation of the common market was the elimination of all the customs duties levied on imports and exports between the member states prior to the establishment of the community. The elimination of customs duties within the EC was accompanied by the establishment of a common tariff, which set up a single customs barrier around the entire community for all imports from non-member countries, duty normally being levied when the goods entered the territory of the community.[31] The creation of a still larger European market, in which all goods can be freely traded, required not only the removal of customs barriers but also the lifting of quantitative restrictions (QRs).[32] QRs are designed to protect a country's industries through the establishment of temporary or indefinite bans on certain imports. In the alternative, they may establish a quota on the volume of imports.

With all of these factors in mind, the parties to the agreement laid down a comprehensive framework for Poland's gradual economic integration into the Community. The main trade objective of the agreement is to gradually integrate Poland into the free trade area of the EC. As such, the agreement provides specific timetables for the abolition of trade barriers between Poland and the EC members. These arrangements are based upon the rules of asymmetry, according to which the EC member states are to offer significant trade concessions during the first five years of the transitional period on the understanding that Poland will make similar concessions in the succeeding five years.[33]

The agreement makes a distinction between general industrial goods and those such as steel, coal, textiles, motor cars, or agricultural products, which have long been regarded by the EC as sensitive. In the case of general industrial products, the agreement provides for the introduction of the free movement of goods through the gradual removal and reduction of tariff and non-tariff barriers.[34] This step-by-step reduction of customs duties will lead to their total elimination within five years. For example, customs duties on Polish exports of mineral and chemical raw materials was abolished in 1992, and they will be abolished on exports of coal by 1995 and on exports of nonferrous metals by 1996. The customs duties on all Polish exports of nonsensitive products will be completely abolished by the end of 1997. It is estimated that approximately fifty-five percent of Polish exports of nonsensitive products will be completely abolished by the end of 1997.[35] It is estimated that approximately fifty-five percent of Polish exports to member states may be duty exempt by

31. Treaty of Rome, *supra* note 7, at art. 3(b).
32. The operation of the Common External Tariff is governed by articles 18-29 of the Treaty of Rome. Articles 30-34 of the Treaty of Rome address the lifting of those barriers.
33. *See supra* notes 8-9 and accompanying text.
34. Brada, *supra* note 4, at 28-29.
35. de Weydenthal, *supra* note 6, at 24.

the end of 1992.[36] For its part, Poland will remove customs duties on goods representing approximately one quarter of the EC exports in 1992. A second reduction of duties will take place by January 1, 1995. There will be four equal reductions in the subsequent years culminating in the elimination of all customs duties by the end of 1999.[37]

The issue of sensitive products, which proved to be one of the sticking points during the negotiations, reflected EC member states' concern over the inevitable flow of cheaper Polish goods into their markets. East European exports of most agricultural products on the EC markets had been subject to quotas, and there was considerable anxiety among some EC members over liberalizing these restrictions. The modernization of the Polish economy has the potential to bring a substantial increase in agricultural production. Although the domestic consumption of agricultural produce would also increase in Poland, it is clear that the country will soon be in a position to be a net exporter of agricultural products. As such, Poland sought to establish within the treaty an increase of agricultural exports to EC countries. In light of the EC Common Agricultural Policy, now groaning under the added burden of an expanded Germany, that goal was impossible for EC member states to accept. Therefore, the association agreement does not envisage the creation of a free trade area in agricultural products, but rather a gradual liberalization of trade.

Under the agreement, Poland will be able to export to the EC only six groups of products defined in an annex to the treaty within the limits of Community quotas.[38] The reduction of duties on Polish agricultural production will commence in 1995, and the duties will be cut down steadily, until their complete abolition in 1999. However, under existing arrangements, part of the EC aid to the CIS member states has been earmarked for the purchase and distribution of agricultural products from Poland, Czechoslovakia, and Hungary. That will partially ameliorate the continued hard line on this issue by EC members. The association treaty reflects a compromise reached by the parties by which the abolition of customs duties by the EC countries on imports of sensitive products from Poland will proceed at a slower pace than on general industrial goods.

C. Establishment and Supply of Services and Movement of Workers

"Establishment" is the term adopted in EC documents to describe the right of self-employed persons to set up and operate their companies.[39] In addition, it provides for the right of companies to form and manage subsidiaries, branches, and agencies. In spite of shortcomings in this aspect of the agreement, the provisions in the treaty do represent a considerable liberalization in current policies for all of the parties in the areas of establishment, the supply of services, and the movement of capital and persons. Under the agreement, the respective nationals will have the right to establish themselves on one another's territory.[40] That right will be exercised in accordance with the principle of

36. *Id.* Alone among the countries of East Europe and the former Soviet Union, Poland is showing signs of making a sustained recovery from the recession that has plagued the region since 1989. According to official statistics, declines in industrial productivity and construction activity have been halted, inflation is continuing to fall, and a dramatic turnaround in the trade balance has occurred. Ben Slay, *The Polish Economy: Between Recession and Recovery*, RFE/RL RESEARCH REP., Sep. 1992, at 49, 56 (providing a comprehensive statistical analysis).

37. European Agreements, *supra* note 2, arts. 1, 9, 10, 20, 25, & 26.

38. *Id.* annexes II(a), II(b), III, VIII, X, and XII.

39. Treaty of Rome, *supra* note 7, at arts. 52-58.

40. European Agreements, *supra* note 2, at arts. 37-38.

nondiscrimination whereby migrating nationals and companies must be treated no less favorably by the host country than it treats its own nationals and companies. According to the agreement, EC nationals will gradually be accorded the right of establishment in Poland, subject to certain industry-wide restrictions.[41] To illustrate, some sectors, such as the food processing and construction industries, will be liberalized immediately. Regulations regarding establishment for the purpose of exploiting the financial and banking services industry, however, will only be relaxed after five years. All industries will be completely liberalized by the conclusion of the transitional period. The EC, for its part, has provided in the agreement an open policy in favor of Polish nationals and companies wishing to conduct business on the territory of member states, with immediate effect.[42]

The treaty is disappointing, however, in the area of movement of workers. Although it provides for the according of rights for the free movement of labor, each EC member state may consider whether to grant labor permits to nationals from the three emerging countries in accordance with its own national legislation.[43] As such, it has not brought about any measure of liberalization of tight employment policies of member states which currently exist with regard to Eastern European workers.

D. Implications

Although it is impossible to forecast the precise impact which the association treaty will have on the government and society of Poland when it is fully implemented, it is likely that it will be enormous. Authorities will have to change thousands of laws, amend a multitude of regulations, establish many new bodies and organizations, and profoundly alter their policies.

Long-term close association with the European Community, culminating in full membership at the turn of the century, may provide the institutional framework necessary both to make the reform process credible and to guard it from protectionist pressures in Western Europe. In addition, successful reform of the economies in all three Eastern European states will cause significant changes in the amount and pattern of EC trade. Trade will bring economic gains to both sides, and as Poland, Hungary, and Czechoslovakia become more and more formidable competitors for Western producers, they will also become attractive markets for Western products.

However, the immediate direct effects of increased trade with Poland and other Eastern European countries on the EC markets are likely to be small. At present the EC's trade with the three countries represents approximately 2.5 percent of EC trade,[44] and, therefore, any increase of the trade should not lead to a quantitative change in the functioning of Western European markets. These effects contrast sharply with the likely effects in the three Eastern European countries. For example, Poland's economy, with a population of 38 million, would incur a major increase in the scale of competition in foreign trade.

---

41. *Id.* at art. 37.
42. *Id.* at arts. 44-45.
43. *Id.* at art. 37. Although the Central European signatories of the European Association Agreements are no doubt somewhat disappointed at the minimal concessions offered by the EC and the Member States on the free movement of workers, it should be noted that this is an issue which falls outside of EC regulation and which is therefore within the competency of Member States. It is an issue which is high on the EC agenda, however, and some loosening of restrictions may be anticipated. *See, e.g.*, Brada, *supra* note 4, at 31-32.
44. Begg, *supra* note 19, at 27.

Changes in trade patterns will cause economic hardship for some industries in Poland. The asymmetry arrangements will, for example, benefit those industries that have the potential to reach a level of European competitiveness. Other industries, however, have little chance of achieving the required level of competitiveness, and the asymmetry may actually do harm to a progressive economic development of the country. Principally, the difficulties will affect inefficient producers facing intensified competition at home and abroad. The policy challenge will be to cushion the transitional effects and to curb protectionist tendencies.

Some of the emerging trade patterns, notably the expansion of energy exports from East to West, should not cause problems for Western Europe, especially the expansion of energy exports. At the other end of the spectrum, however, the expansion of agricultural exports will impose severe strains on the Common Agricultural Policy. Between these extremes, it is more difficult to foresee the impact of the trade expansion. This lack of clarity does not make a case, however, for slowing down the pace of European Integration. The 1992 process, itself a series of gradual changes designed to be spread over a decade or more, have caused, and continue to require, changes in the economic allocation of resources that are surely much smaller than the continuing changes associated with innovation of international trade. Successful reform in Eastern Europe could well have a larger impact on the EC than 1992, but it too will be spread over a period of many years.

VI. CONCLUSION

In spite of the disparity of bargaining position and the resultant lopsided agreement, the signing of the association agreements was welcomed with satisfaction in Poland. By virtue of the accords, the nation now has as opportunity to rejoin Europe. Of perhaps more significance is the fact that the agreements provide a sense of direction to Poland's economic plans and long-term policies. It is also anticipated that the agreements will immediately increase trade between the Community and Poland, as well as facilitate direct investment by EC companies into Eastern Europe. Because the agreements will bring limited immediate tangible benefit to the nation, Poland will simply have to take the long view of the benefits of European integration which these accords are intended to secure and hope that its industries will recover enough to successfully compete with those of the Community, until the day when complete recognition comes.