

AGREEMENT FREE TRADE BETWEEN THE REPUBLIC OF POLAND, AND THE GOVERNMENT OF DENMARK AND THE HOME GOVERNMENT OF THE FAROE ISLANDS

The following text reproduces the Agreement between the Republic of Poland and the Government of Denmark and the Home Government of the Faroe Islands.¹

The Republic of Poland, of the one part, and the Kingdom of Denmark and the Faroe Islands, of the other part,

Hereinafter referred to as the Contracting Parties,

Recalling the status of the Faroe Islands as a self-governing part of Denmark;

Recalling respect of GATT/WTO provisions by the Faroe Islands within Denmark's obligations;

Considering the vital importance for the Faroe Islands of fisheries, which constitute their essential economic activity, fish and other marine products being their main export articles;

Considering the importance of fisheries for Poland;

Desiring to consolidate and to extend the economic relations existing between Poland and the Faroe Islands and to ensure, with due regard for fair conditions of competition, the harmonious development of their mutual trade in the context of European co-operation;

Resolved to this end to eliminate progressively the obstacles to substantially all their trade, in accordance with the provisions of the General Agreement on Tariffs and Trade (GATT) 1994 concerning the establishment of free-trade areas, as well as the Agreement establishing the World Trade Organization;

Declaring their readiness to examine, in the light of any relevant factor, and in particular of developments in European co-operation, the possibility of developing and deepening their relations in order to extend them to fields not covered by this Agreement;

Considering that, in order to provide for more flexibility, it is appropriate to empower a Joint Committee to decide on amendments to the provisions of this Agreement;

Considering, in pursuit of these objectives, that no provisions of this Agreement may be interpreted as exempting the Contracting Parties from their obligations under other international agreements.

Have agreed as follows:

Article 1

Objectives

1. The Contracting Parties shall gradually establish, in a transitional period lasting at the latest until the 31st December 2001, a free-trade area, comprising the Republic of Poland and the Faroe Islands, in accordance with the provisions of the present Agreement and in conformity with those of the GATT 1994.
2. The objectives of this Agreement are:
 - (a) to promote, through the expansion of reciprocal trade, the harmonious development of the economic relations between the Contracting Parties and thus to foster the advance of their economic activity, the improvement of living and employment conditions, and increased productivity and financial stability;
 - (b) to provide fair conditions of competition for trade between the Contracting Parties;
 - (c) to contribute in this way, by the removal of barriers to trade to the harmonious development and expansion of world trade.

CHAPTER 1

Article 2

Scope

This Agreement shall apply to products originating in Poland or the Faroe Islands:

- (a) which fall within Chapters 25 to 97 of the Harmonised Commodity Description and Coding System, other than those listed in Annex I to the Agreement on Agriculture within the framework of the WTO;
- (b) which are specified in Protocols 1, 2 and 3 to this Agreement with due regard to the arrangements provided for in those Protocols.

Industrial Products

Article 3

Customs duties on imports and exports and charges having equivalent effect

1. No new customs duties on imports and exports or charges having equivalent effect shall be introduced in trade between the Contracting Parties.

2. The Contracting Parties shall abolish all customs duties or charges having equivalent effect on exports in their mutual trade on the date of entry into force of this Agreement.

3. The Faroe Islands shall abolish all customs duties or charges having equivalent effect on imports from Poland on the entry into force of this Agreement.

4. Poland, with exception of products listed in Annex II, shall abolish all customs duties and charges having equivalent effect on imports of industrial products from the Faroe Islands on entry into force of this Agreement.

Article 4

Fiscal duties

The provisions concerning the abolition of customs duties on imports shall also apply to customs duties of a fiscal nature.

Article 5

Quantitative restrictions on imports and exports and measures having equivalent effect

1. No new quantitative restrictions on imports and exports or measures having equivalent effect shall be introduced in trade between the Contracting Parties.

2. All quantitative restrictions on imports and exports and measures having equivalent effect shall be abolished on the date of entry into force of this Agreement, except as provided for in Annex III.

CHAPTER II

Agricultural Products

Article 6

1. The provisions of this Chapter shall apply to agricultural products originating in Poland or in the Faroe Islands.

2. The term "agricultural products" means the products listed in Chapters 1 to 24 of the Harmonised Commodity Description and Coding System and the products listed in Annex I to the Agreement on Agriculture within the framework of WTO but excluding fish and other marine products.

Article 7

Exchange of concessions

1. The Contracting Parties shall grant each other concessions specified in the Protocols 1 and 2 to this Agreement in accordance with the provisions laid down in this Chapter and Protocols.
2. The provisions of this Chapter shall not restrict in any way pursuance of the respective agricultural policies of the Contracting Parties or taking of any measures under such policies, including implementation of the respective provisions of the Agreement on Agriculture within the framework of WTO.
3. The Contracting Parties shall apply their rules in veterinary, health and plant health matters in a non-discriminatory way and shall not introduce any new measures that have the effect of unduly obstructing trade.

Article 8

Special safeguards

Notwithstanding other provisions of this Agreement and in particular Article 21, given the particular sensitivity of the agricultural products, if imports of products originating in a Contracting Party, which are subject to concessions granted under this Agreement, cause serious disturbance to the markets of the other Contracting Party, the Contracting Party concerned shall immediately enter into consultations to find the appropriate solution. Pending such solution, the Contracting Party concerned may take measures it deems necessary.

CHAPTER III

Fish and other Marine Products

Article 9

1. The provisions of this Chapter shall apply to fish and other marine products originating in Poland or in the Faroe Islands.
2. Protocol 3 to this Agreement lays down the tariff treatment and arrangements applicable to fish and other marine products.

CHAPTER IV

General Provisions

Article 10

Rules of origin and administrative co-operation

1. Protocol 4 to this Agreement lays down the rules of origin and related methods of administrative co-operation.
2. The Parties shall take appropriate measures, including regular reviews by the Joint Committee and arrangements for administrative co-operation.

Article 11

Internal taxation

1. The Contracting Parties shall refrain from any measure or practice of an internal fiscal nature which, whether directly or indirectly, discriminates between the products of one Contracting Party and like products originating in the other Contracting Party.
2. Products exported to the territory of one of the Contracting Parties may not benefit from repayment of internal taxation in excess of the amounts of direct or indirect taxation imposed on them.

Article 12

Payments

Payments relating to trade in goods and the transfer of such payments to the territory of the Contracting Party in which the creditor is resident shall be free from any restrictions.

Article 13

General exceptions

This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on the 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; the protection of intellectual, industrial and commercial property or rules relating to gold and silver or to the conservation of exhaustible natural resources if such measures are made effective in

conjunction with restrictions on domestic production or consumption. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.

Article 14

Security exceptions

1. Nothing in this Agreement shall prevent a Contracting Party from taking any measure, which it considers necessary:

(a) to prevent the disclosure of information contrary to its essential security interests;

(b) for the protection of its essential security interests or for the implementation of international obligations or national policies:

(i) relating to the traffic in arms, ammunition and implements of war, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes, and to such traffic in other goods, materials and services as is carried on directly or indirectly for the purpose of supplying a military establishment; or

(ii) relating to the non-proliferation of biological and chemical weapons, nuclear weapons or other nuclear explosive devices; or

(iii) taken in time of war or other serious international tension.

Article 15

Public monopolies

1. The Contracting Parties shall progressively adjust any State monopoly of commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Contracting Parties. The Joint Committee will be informed about the measures adopted to implement this objective.

2. The provisions of this Article shall apply to any body through which the competent authorities of the Contracting Parties, in law or in fact, either directly or indirectly, supervise, determine or appreciably influence imports or exports between the Contracting Parties. These provisions shall likewise apply to monopolies delegated by a Contracting Party to other bodies.

Article 16

Rules of competition concerning undertakings

1. The following are incompatible with the proper functioning of this Agreement in so far as they may affect trade between the Contracting Parties:

(a) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(b) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties as a whole or in a substantial part thereof;

(c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

2. The provisions of paragraph 1 shall apply to the activities of all undertakings including public undertakings to which the Contracting Parties grant special or exclusive rights. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly, shall be subject to provisions of paragraph 1 in so far as the application of these provisions does not obstruct the performance, in law or in fact, of the particular public tasks assigned to them.

3. If a Contracting Party considers that a given practice is incompatible with paragraphs 1 and 2 and if such practice causes or threatens to cause serious prejudice to the interest of that Party or material injury to its domestic industry, it may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 26.

Article 17

Protection of intellectual property

1. Each Contracting Party shall recognise the copyright and neighbouring rights to works to which citizens and institutions of the other Contracting Party, as well as their legal successors, are entitled, independently of the place of their publication. Each Contracting Party shall ensure the protection of such rights on the same conditions as those created by its internal legislation with respect to its own citizens and institutions. Furthermore, the Contracting Parties undertake to respect mutually the copyright and neighbouring rights of their citizens and institutions in accordance with the international standards. In particular, the Contracting Parties undertake to respect mutually the standards of protection provided for in the Bern and Rome Conventions.

2. The Contracting Parties shall grant and ensure the protection of intellectual property rights on a non-discriminatory basis, including measures for granting and enforcing such rights. The Contracting Parties confirm their will to respect obligations

and requirements arising from the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as well as other agreements, which are signed by both Contracting Parties, in particular the Paris Convention for the protection of industrial property (Stockholm Act, 1976).

3. For the purposes of this Agreement "intellectual property protection" includes, in particular, protection of copyright, comprising computer programs and databases, and neighbouring rights, trade marks, geographical indications, industrial designs, patents, topographies of integrated circuits, as well as undisclosed information on know-how.

4. The Contracting Parties may conclude further agreements exceeding the requirements of this Agreement.

5. The Contracting Parties shall co-operate in matters of industrial property protection. They shall hold, upon request of any Contracting Party, expert consultations on these matters, in particular on activities relating to the existing or to future international conventions on harmonization, administration and enforcement of intellectual property and on activities in international organizations, such as the World Trade Organization and the World Intellectual Property Organization, as well as on relations of the Contracting Parties with any third country on matters concerning intellectual property.

Article 18

Public procurement

1. The Contracting Parties consider the liberalization of their respective public procurement markets as an objective of this Agreement.

2. The Contracting Parties shall progressively adjust their respective rules, conditions and practices concerning public procurement with a view to grant suppliers of the other Contracting Party, at the latest by the 31st December 2002, access to contract award procedures on their respective public procurement markets according to the provisions of the Agreement on Government Procurement in Annex IV to the Agreement establishing the World Trade Organization.

3. The Joint Committee shall examine developments related to the achievement of the objectives of this Article and may recommend practical modalities of implementing the provisions of paragraph 2 so as to ensure free access, transparency and full balance of rights and obligations.

4. During the examination referred to in paragraph 3, the Joint Committee may consider, especially in the light of international developments and regulations in this area, the possibility of extending the coverage and/or the degree of the market opening provided for in paragraph 2.

5. The Contracting Parties shall endeavour to accede to the relevant Agreements negotiated under the auspices of the General Agreement on Tariffs and Trade 1994 and the Agreement establishing the World Trade Organization.

Article 19

Structural adjustments

1. Exceptional measures of limited duration which derogate from the provisions of Article 3 may be taken by Poland in the form of increased customs duties.
2. Those measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.
3. They shall cease to apply at the latest at the expiration of the transitional period.
4. Poland shall inform the Faroe Islands of any exceptional measures it intends to take, and, at the request of the Faroe Islands, consultations shall be held in the Joint Committee on such measures and the sectors to which they apply.

Article 20

Dumping

If one of the Contracting Parties finds that dumping within the meaning of Article VI of the General Agreement on Tariffs and Trade 1994 is taking place in trade relations governed by this Agreement, it may take appropriate measures against that practice in accordance with Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 under the conditions and in accordance with the procedures laid down in Article 26.

Article 21

General safeguards

1. Where any product is being imported in such increased quantities and under such conditions as to cause or threaten to cause:
 - (a) serious injury to domestic producers of like or directly competitive products in the territory of the importing Contracting Party; or
 - (b) serious disturbances in any related sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region;

the Contracting Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 26.

Article 22

Re-export and serious shortage

1. Where compliance with the provisions of Article 3 and 5 leads to:
 - (a) re-export towards a third country against which the exporting Contracting Party maintains, for the product concerned, quantitative export restrictions, export duties or measures or charges having equivalent effect; or
 - (b) a serious shortage, or threat thereof, of a product essential to the exporting Contracting Party, and where the situations referred to above give rise, or are likely to give rise, to major difficulties for the exporting Contracting Party, that Contracting Party may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 26.

Article 23

Balance-of-payments difficulties

1. The Contracting Parties shall endeavour to avoid the imposition of restrictive measures including measures relating to imports for balance-of-payments purposes.
2. Where one of the Contracting Parties is in serious balance-of-payments difficulties, or under imminent threat thereof, the Contracting Party concerned may, in accordance with the relevant provisions of the General Agreement on Tariffs and Trade 1994, adopt restrictive measures, including measures related to imports, which shall be of limited duration and may not go beyond what is necessary to remedy the balance-of-payments situation. The measures shall be progressively relaxed as balance-of-payments conditions improve and they shall be eliminated when conditions no longer justify their maintenance. The Contracting Party concerned shall inform the other Contracting Party forthwith of their introduction and, whenever practicable, of a schedule for their removal.

Article 24

State aid

1. Any aid granted by a State being a Contracting Party or through state resources in any form whatever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it may affect

trade between the Contracting Parties, be incompatible with the proper functioning of this Agreement.

2. The provisions of paragraph 1 shall not apply to products referred to in Chapters II and III.

3. The Joint Committee shall, within three years from entry into force of this Agreement adopt the criteria on the basis of which the practices contrary to paragraph 1 shall be assessed, as well as the rules for their implementation.

4. The Contracting Parties shall ensure transparency in the area of state aid, inter alia, by reporting annually to each other on the total amount and the distribution of the aid given and by providing to the other Contracting Party, upon request, information on aid schemes and on particular individual cases of state aid.

5. If a Contracting Party considers that a particular practice:

(a) is incompatible with the terms of paragraph 1, and is not adequately dealt with under the implementing rules referred to in paragraph 3; or

(b) in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of that Contracting Party or material injury to its domestic industry,

it may take appropriate measures under the conditions of and in accordance with the provisions of Article 26. Such appropriate measures may only be taken in conformity with the procedures and under the conditions of the World Trade Organization and any other relevant instrument negotiated under its auspices which are applicable between the Contracting Parties.

Article 25

Fulfilment of Obligations

1. The Contracting Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.

2. If a Contracting Party considers that the other Contracting Party has failed to fulfil an obligation under this Agreement, the Contracting Party concerned may take appropriate measures in accordance with the provisions laid down in Article 26.

3. No provision of this Agreement may be interpreted as exempting the Contracting Parties from their obligations under other international agreements.

Article 26

Procedures for the application of safeguard measures

1. Before initiating the procedures for the application of safeguard measures set out in the following paragraphs of this Article, the Contracting Parties shall endeavour to solve any differences between them through direct consultations.
2. Without prejudice to paragraph 6, the Contracting Party which considers resorting to safeguard measures shall promptly notify the other Contracting Party thereof and supply all relevant information. Consultations between the Parties shall take place without delay in the Joint Committee with a view to finding a mutually acceptable solution.
3. For the application of paragraph 2 the following provisions apply:
 - (a) with regard to Articles 20 and 21, the Joint Committee shall examine the case or the situation and may take any decision needed to put an end to the difficulties notified by the Contracting Party concerned. In the case of the absence of such decision within thirty days of the matter being referred to the Joint Committee, the Contracting Party concerned may adopt the appropriate measures to deal with the difficulties resulting from the practice in question;
 - (b) with regard to Article 25, the Contracting Party concerned may take appropriate measures after the consultations have been concluded or a period of three months has elapsed from the date of the first notification to the other Contracting Party;
 - (c) with regard to Articles 16 and 23, the Contracting Party concerned shall give the Joint Committee all the assistance required in order to examine the case and, where appropriate, eliminate the practice objected to. If the Contracting Party in question fails to put an end to the practice objected to within the period fixed by the Joint Committee or if the Joint Committee fails to reach an agreement within thirty days of the matter being referred to it, the Contracting Party concerned may adopt the appropriate measures to deal with the difficulties resulting from the practice in question.
4. The safeguard measures taken shall be immediately notified to the other Contracting Party. They shall be restricted with regard to their extent and to their duration to what is strictly necessary in order to rectify the situation giving rise to their application and shall not be in excess of the injury caused by the practice or the difficulty in question. Priority shall be given to such measures which will least disturb the functioning of this Agreement.
5. The safeguard measures taken shall be the subject of periodic consultations within the Joint Committee with a view to their relaxation as soon as possible, or abolition when conditions no longer justify their maintenance.
6. Where exceptional circumstances requiring immediate action make prior examination impossible, the Contracting Party concerned may, in the cases of Articles 16, 20, 21 and 23, apply forthwith the provisional measures strictly necessary to

remedy the situation. The measures shall be notified without delay and consultations between the Contracting Parties shall take place as soon as possible.

Article 27

Customs unions, free-trade areas and frontier trade

This Agreement shall not prevent the maintenance or establishment of customs unions, free-trade areas or arrangements for frontier trade, to the extent that these do not negatively affect the trade regimes provided for by this Agreement, in particular the provisions concerning rules of origin.

CHAPTER V

Institutional and Final Provisions

Article 28

The Joint Committee

The Joint Committee is hereby established, which shall be responsible for the administration and proper implementation of this Agreement. It shall consist of representatives of the Contracting Parties.

Article 29

Procedures of the Joint Committee

1. For the proper implementation of this Agreement, the Contracting Parties shall, whenever necessary, exchange information and, at the request of either Contracting Party, hold consultations.
2. For this purpose, the following shall apply:
 - (a) The Joint Committee may take decisions in cases provided for in this Agreement. On other matters the Joint Committee may make recommendations.
 - (b) The exchange of information and the consultations referred to in paragraph 1, and especially the consultations and decisions referred to in Article 25, shall, when appropriate, take place within the Joint Committee.

- (c) The Joint Committee shall meet on a rotation basis in Poland and in the Faroe Islands whenever necessary at the request of either Contracting Party.
- (d) The Joint Committee shall act by common agreement.
- (e) The Joint Committee shall lay down its own rules of procedure which shall, inter alia, contain provisions for the designation of the Chairman and his term of office.
- (f) The Joint Committee may decide to set up such sub-committees and working parties as it considers necessary to assist it in accomplishing its tasks.
- (g) The Joint Committee may decide to amend the Annexes and Protocols.

Article 30

Evolutionary clause

1. Where a Contracting Party considers that it would be useful in the interest of the Contracting Parties to develop the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Contracting Party.
2. The Contracting Parties may instruct the Joint Committee to examine this request and, where appropriate, to open negotiations.
3. Agreements resulting from the negotiations referred to in paragraph 2 will be subject to ratification or approval by the Contracting Parties in accordance with their own procedures.

Article 31

Annexes and Protocols

Annexes and Protocols to this Agreement shall form an integral part thereof.

Article 32

Entry into force

This Agreement shall enter into force on the first day of the second month following the date of receipt of the latter diplomatic note confirming that internal legal requirements of the respective Contracting Party on the entry into force of this Agreement have been fulfilled.

Article 33

Validity and termination

1. This Agreement is concluded for an unlimited period.
2. Either Contracting Party may denounce this Agreement by a written notification to the other Contracting Party. The Agreement shall cease to be in force twelve months after the date of such notification.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE at Warsaw on 3rd November 1998, in duplicate in Polish, Faroese, Danish and English languages, each of these texts being equally authentic. In case of any discrepancy the English version shall prevail.

For the Republic of Poland For the Kingdom of Denmark

For the Faroe Islands

1The Annexes and Protocols thereto have been submitted to the Secretariat for consultation by interested Members (Office 3006).

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