

AGREEMENT FREE TRADE BETWEEN ISRAEL AND POLAND

PREAMBLE

The Government of the State of Israel and the Government of the Republic of Poland (hereinafter referred to as "the Parties"),

Reaffirming their commitment to the principles of market economy, which constitutes the basis for their economic relations, and their compliance with the rights and obligations arising out of the agreements of the World Trade Organization / General Agreement on Tariffs and Trade 1994 (hereinafter "WTO/GATT 1994");

Considering their common desire to participate actively in the process of international economic integration;

Resolved to this end to eliminate progressively the obstacles to substantially all their mutual trade, in accordance with the provisions of the GATT 1994;

Convinced that this Agreement will create a new climate for their economic relations and, in particular, for the development of trade and investments as well as economic and technological co-operation;

Considering the Association Agreements signed by each Party with the European Communities;

Have agreed as follows:

Article 1

Objectives

1. The Parties shall gradually establish a free-trade area on substantially all their bilateral trade in a transitional period ending on 1 January 2001, in accordance with the provisions of this Agreement and in conformity with those of the WTO/GATT 1994, with particular regard to Article XXIV of the GATT 1994.

2. The objectives of this Agreement are:

- (a) to promote, through the expansion of mutual trade, the harmonious development of economic relations between the Parties and thus to foster the advance of their economic activity and prosperity as well as the increase of productivity in their economies;
- (b) to provide fair conditions of competition in trade between the Parties;
- (c) to contribute, by the removal of barriers to trade, to the harmonious development and expansion of world trade;

(d) to promote co-operation in areas which are of mutual interest to the Parties.

CHAPTER I

Industrial Products

Article 2

Scope

The provisions of this Chapter shall apply to industrial products originating in the Parties, where the term "industrial products" means, for the purpose of this Agreement, the products falling within Chapters 25 to 97 of the Harmonized Commodity Description and Coding System, with the exception of the products listed in Annex I to this Agreement (hereinafter "Annex I").

Article 3

Customs Duties on Imports

1. No new customs duty on imports shall be introduced in the trade between the Parties, nor shall those already applied on imports be increased in the trade between the Parties.
2. Customs duties and charges having equivalent effect on imports shall be abolished in accordance with the provisions of Protocol 1 to this Agreement (hereinafter "Protocol 1").

Article 4

Basic Duties

1. For each product the basic duty to which the successive reductions set out in this Agreement are to be applied shall be the Most Favoured Nation rate of duty in force in each Party on 1 January 1997.
2. If, after entry into force of this Agreement, any tariff reduction is applied on an erga omnes basis, in particular reduction resulting from any tariff agreement concluded in the framework of the World Trade Organization, such reduced duties shall replace the basic duties referred to in paragraph 1 as from that date when such reductions are applied.
3. The reduced duties calculated in accordance with Protocol 1 shall be applied rounded off to the first decimal place, or, in case of specific duties, to the second decimal place.

4. The Parties shall notify each other their respective basic rates of duties in accordance with the provisions of paragraph 2.

Article 5

Charges Equivalent to Duties

1. No new charge having an effect equivalent to a customs duty on imports shall be introduced in the trade between the Parties.
2. All charges having an effect equivalent to customs duties on imports shall be abolished on the date of the entry into force of this Agreement.

Article 6

Fiscal Duties

1. The provisions of Article 3 shall also apply to customs duties of a fiscal nature.
2. The Parties may replace a customs duty of a fiscal nature or the fiscal element of a customs duty by an internal tax, in accordance with the provisions of Article 15.

Article 7

Customs Duties on Exports and Charges Having Equivalent Effect

No customs duties on exports or charges having equivalent effect shall be applied in the trade between the Parties.

Article 8

Quantitative Restrictions on Imports and Measures Having Equivalent Effect

No quantitative restrictions on imports or measures having equivalent effect shall be applied in the trade between the Parties, with the exception of those applied by a Party with respect to imports originating in the other Party listed in Annex II to this Agreement (hereinafter "Annex II").

Article 9

Quantitative Restrictions on Exports and Measures Having Equivalent Effect

No quantitative restrictions on exports or measures having equivalent effect shall be applied in the trade between the Parties with the exception of restrictions which may be applied by a Party with respect to exports to the other Party as listed in Annex III to this Agreement (hereinafter "Annex III").

CHAPTER II

Agricultural Products

Article 10

Scope

1. The provisions of this Chapter shall apply to agricultural products originating in the Parties.
2. For the purpose of this Agreement the term "agricultural products" means the products falling within Chapters 1 to 24 of the Harmonized Commodity Description and Coding System and all the products listed in Annex I.

Article 11

Exchange of Concessions

1. The Parties shall grant each other the concessions specified in the Annexes to Protocol 2 to this Agreement (hereinafter "Protocol 2") as laid down in accordance with the provisions of this Chapter and that Protocol.
2. The Parties shall examine periodically, within the framework of the Joint Committee (as mentioned in Article 33), the possibilities of granting each other further concessions in trade in agricultural products.
3. Agricultural products not listed in Protocol 2 shall be traded in accordance with the provisions of the WTO/GATT 1994 and with the respective commitments of each Party within the framework of the WTO Agreement on Agriculture.

Article 12

Specific Safeguards

Notwithstanding other provisions of this Agreement, and in particular Article 26, and given the particular sensitivity of agricultural products, if imports of products originating in a Party, which are subject to concessions granted under this Agreement, cause serious disturbances to the markets of the other Party, the Party concerned shall immediately enter into consultations to find an appropriate and agreed solution. Pending

such a solution, the Party concerned may take appropriate measures, immediately notifying the other Party of the measures taken.

Article 13

Sanitary and Phytosanitary Measures

The Parties shall apply their sanitary and phytosanitary measures in accordance with the provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The Parties shall not apply their regulations in veterinary, plant health and health matters in an arbitrary, unjustifiable or discriminatory way or as a disguised restriction on trade between them.

CHAPTER III

General Provisions

Article 14

Rules of Origin and Co-operation in Customs Administration

1. Protocol 3 to this Agreement (hereinafter "Protocol 3") 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, to ensure that the provisions of Protocol 3 and of the relevant articles of this Agreement are effectively and harmoniously applied, and to reduce, as far as possible, the formalities imposed on trade, as well as to achieve satisfactory solutions to any difficulties arising from the operation of those provisions.

Article 15

Internal Taxation

1. The Parties shall refrain from any measure or practice of an internal fiscal nature establishing whether directly or indirectly, discrimination between the products originating in the Parties.
2. Products exported to the territory of one of the Parties may not benefit from repayment of internal taxation in excess of the amount of indirect taxation imposed on these products.

Article 16

General Exceptions

In accordance with Article XX of GATT 1994 this Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; of the protection of health and life of humans, animals or plants, including measures necessary to protect the environment; of the protection of treasures of culture; of protection of intellectual property or of the rules relating to gold or silver or 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 Parties.

Article 17

Security Exceptions

In accordance with Article XXI of the GATT 1994, nothing in this Agreement shall prevent a Party from taking any appropriate 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.

Article 18

State Monopolies

1. The Parties shall adjust progressively any state monopoly of a commercial character so as to ensure that after the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the 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 Parties, in law or in fact, either directly or indirectly supervise, determine or appreciably influence imports or exports between the Parties. These provisions shall likewise apply to monopolies delegated by the State to others.

Article 19

Payments

1. Payments in freely convertible currencies, relating to commercial transactions between the Parties within the framework of this Agreement, and the transfer of such payments to the territory of the Party where the creditor resides, shall be free from any restrictions.
2. The Parties shall refrain from any exchange or administrative restrictions on the grant, repayment or acceptance of short and medium term credits covering commercial transactions within the framework of this Agreement in which their residents participate.
3. Notwithstanding the provisions of paragraph 2, any measures concerning current payments connected with the movement of goods shall be in conformity with the conditions laid down under Article VIII of the Articles of Agreement of the International Monetary Fund.

Article 20

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 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 Parties as a whole or in a substantial part thereof.
2. The provisions of paragraph 1 shall apply to the activities of all undertakings including public undertakings and undertakings to which the 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 the 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. With regard to products covered by Chapter II, the provisions in paragraph 1(a) shall not apply to such agreements, decisions and practices which form an integral part of a national market organisation.
4. If a Party considers that a given practice is incompatible with this Article, 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 30.

5. Subject to its laws, regulations and policies, each Party will accord fair and equitable treatment to the individuals, companies, government agencies and other entities of the other Party engaged in the pursuit of activities under this Agreement.

Article 21

State Aid

1. Any aid granted by a State being a Party to this Agreement or through State resources in any form 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 Parties, be incompatible with the proper functioning of this Agreement.

2. The provisions of paragraph 1 shall not apply to products referred to in Chapter II.

3. The Parties shall ensure transparency in the area of state aid, in accordance with the provisions of the Agreement on Subsidies and Countervailing Measures under the WTO / GATT 1994 and each Party, upon request of the other Party, will provide information on aid schemes and on particular individual cases of state aid.

4. If a party considers that a particular practice:

(a) is incompatible with the terms of paragraph 1, or

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

it may take appropriate measures under the conditions of and in accordance with the provisions laid down in Article 30. Such appropriate measures may only be taken in conformity with the procedures and under the conditions laid down by the Agreement on Subsidies and Countervailing Measures under the WTO/GATT 1994.

Article 22

Public Procurement

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

2. The Parties shall progressively develop their respective regulations for public procurement with a view to grant suppliers of the other Party no later than 31 December 2000, access to contract award procedures on their respective public procurement markets according to the provisions of the Agreement on Government

Procurement concluded in the framework of the WTO and the Parties' undertakings therein.

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 a mutual opening of their respective public procurement markets.

4. During the examination referred to in paragraph 3, the Joint Committee may consider, especially in the light of development in this area in international relations, the possibility of expanding the coverage of the market opening provided for in paragraph 2.

5. The Parties shall endeavour to accede to the relevant agreements negotiated under the auspices of the World Trade Organization.

Article 23

Technical Regulations

1. The rights and obligations of the Parties relating to standards or technical regulations and related measures shall be governed by the WTO Agreement on Technical Barriers to Trade.

2. Each Party, upon request of the other Party, shall provide information on particular individual cases of standards-related measures.

3. The Parties shall aim to reduce technical barriers to trade. To this end the Parties will enter where appropriate into negotiations for the conclusion of agreements for the mutual recognition in the field of conformity assessment, in the spirit of the recommendations of the WTO Agreement on Technical Barriers to Trade.

Article 24

Dumping

1. If a Party finds that dumping within the meaning of Article VI of the GATT 1994 is taking place in trade relations governed by this Agreement, it may take appropriate measures against that practice in accordance with the WTO Agreement on Implementation of Article VI of the GATT 1994.

Article 25

Protection of Intellectual Property

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights including measures for the grant and the enforcement of such rights. The parties confirm their will to respect the conventions on protection of intellectual property which are specified in Annex IV to this Agreement (hereinafter "Annex IV") and to accede to them before the end of the transitional period, mentioned in paragraph 1 of Article 1 of this Agreement.

2. For the purpose of this Agreement "intellectual property" includes, in particular, copyright and neighbouring rights, trade marks, geographical indications, industrial designs, patents, topographies of integrated circuits, undisclosed information including "know-how" and protection of new varieties of plants.

3. The Parties shall co-operate in matters of intellectual property. They shall hold, upon request of any Party, experts 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 this field in international organizations, such as the World Trade Organization, the World Intellectual Property Organization, as well as relations of the Parties with other countries on matters concerning intellectual property.

Article 26

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 Party; 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,

the Party concerned may take appropriate measures under the conditions and in accordance with the procedures laid down in Article 30 of this Agreement.

2. When, in view of the importing Party, the importation of a product from the other Party is not a substantial cause of serious injury or threat thereof, the product of the other Party shall be exempted from any safeguard measure that may be imposed with respect to imports of that product from other countries.

Article 27

Structural Adjustment

1. Exceptional measures of limited duration which derogate from the provisions of Article 3 may be taken by any of the Parties in the form of increased customs duties.
2. These measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems.
3. Customs duties on imports, applicable in the Party concerned to products originating in the other Party, introduced by these measures may not exceed 25 per cent ad valorem and shall maintain the element of preference in customs duties for products originating in the Parties. The total value of imports of the products which are subject to these measures may not exceed 15 per cent of total imports of industrial products from the other Party, as defined in Chapter I, during the last year for which statistics are available.
4. These measures may be applied for a period not exceeding five years. They shall cease to apply at the expiration of the transitional period.
5. No such measures may be introduced in respect of a product if more than three years elapsed since the elimination of all customs duties and quantitative restrictions or charges or measures having an equivalent effect concerning that product.
6. The Party concerned shall inform the other Party of any exceptional measures it intends to take under this Article and, at the request of the other Party, consultations shall be held within the Joint Committee on such measures and the sectors to which they apply prior to their introduction. When taking such measures the Party concerned shall provide the Joint Committee with a schedule for the elimination of the customs duties introduced under this Article. This schedule shall provide for a phasing out of these duties starting at the latest two years after their introduction, at equal annual rates. The Joint Committee may decide on a different schedule.

Article 28

Re-export and Serious Shortage

1. Where compliance with the provisions of Articles 7 and 9 leads to:
 - (a) re-export towards a third country against which the exporting Party maintains, for the product concerned, quantitative export restrictions, export duties or measures or charges having equivalent effect; or
 - (c) a serious shortage, or threat thereof, of a product essential to the exporting Party,

and where the situations referred to above give rise or are likely to give rise to major difficulties for the exporting Party, that Party may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 30. The measures

shall be non-discriminatory and be eliminated when conditions no longer justify their maintenance.

Article 29

Fulfilment of Obligations

1. The 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 Party considers that the other Party has failed to fulfil an obligation under this Agreement, the Party concerned may take appropriate measures under the conditions and in accordance with the procedure laid down in Article 30.

Article 30

Procedure for the Application of Safeguard Measures

1. Before initiating the procedure for the application of safeguard measures set out in the following paragraphs of this Article, the Parties shall endeavour to solve any differences between them through direct consultations.
2. In the event of a Party subjecting imports of products, liable to give rise to the situation referred to in Article 26, to an administrative procedure having as its purpose the rapid provision of information on the trend of trade flows, it shall inform the other Party.
3. Without prejudice to paragraph 7 of this Article, a Party which considers resorting to safeguard measures shall promptly notify the other 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 solution acceptable to the Parties.
4. With regard to Articles 26 and 28, 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 Party concerned. In the absence of such a decision within forty five days of the matter being referred to the Joint Committee, or if no other satisfactory solution is reached within forty five days from the day of notification to the other Party, the Party concerned may adopt the measures necessary in order to remedy the situation.
5. With regard to Article 29, the Party concerned may take appropriate measures after the consultations have been concluded or a period of three months has elapsed from the date of notification to the other Party.
6. With regard to Articles 20 and 21, the 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 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 forty five days of the matter being referred to it, the Party concerned may adopt the appropriate measures to deal with the difficulties resulting from the practice in question.

7. The safeguard measures taken shall be immediately notified to the other 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. The measures taken by a Party against an action or an omission of the other Party may only affect the trade with that Party.

8. 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.

9. Where exceptional circumstances requiring immediate action make prior examination impossible, the Party concerned may, in the cases of Articles 20, 21, 26 and 28, apply forthwith the provisional measures strictly necessary to remedy the situation. The measures shall be notified without delay and consultations between the Parties shall take place as soon as possible within the Joint Committee.

Article 31

Balance of Payments Difficulties

1. The Parties shall endeavour to avoid the imposition of restrictive measures including such measures relating to imports for balance of payments purposes.
2. Where one of the Parties is in serious balance of payments difficulties, or under imminent threat thereof, the Party concerned may, in accordance with the conditions established under the WTO/GATT 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 Party concerned shall inform the other Party forthwith of their introduction and, whenever practicable, of a time schedule for their removal.
3. In applying such temporary trade measures, the Party in question will accord treatment no less favourable to imports originating in the other Party than to imports originating in any other country, and will not impair the relative benefits accorded to the other Party under this Agreement.

Article 32

Evolutionary Clause

1. Where a Party considers that it would be useful in the interests of the economies of the Parties to develop and to deepen the relations established by this Agreement by extending them to fields not covered thereby, it shall submit a reasoned request to the other Party. The Joint Committee shall examine such a request and, where appropriate, may make recommendations, particularly with a view to opening negotiations.
2. Agreements resulting from the procedure referred to in paragraph 1 will be subject to the ratification or approval by the Parties in accordance with their internal legislation and procedures.

CHAPTER IV

Institutional and Final Provisions

Article 33

The Joint Committee

1. A Joint Committee is hereby established and shall be composed of the representatives of the Parties.
2. The Joint Committee shall be responsible for the administration of this Agreement and shall ensure its proper implementation. It shall examine any major issue arising within the framework of this Agreement and any other trade or economic issues of mutual interest. The Joint Committee shall keep under review the possibility of further removal of the obstacles to trade between the Parties.
3. For the purpose of the proper implementation of this Agreement the Parties shall exchange information and, at the request of any Party, shall hold consultations within the Joint Committee.
4. The Joint Committee may take decisions in the cases provided for in this Agreement. These decisions shall be implemented by the Parties in accordance with their internal legislation. The Joint Committee may also make recommendations on any other trade and economic matter of mutual interest to the Parties.

Article 34

Procedures of the Joint Committee

1. For the proper implementation of this Agreement the Joint Committee shall meet whenever necessary but at least once a year. Each Party may request that a meeting be held.
2. The Joint Committee shall act by common agreement.
3. If the representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of internal legal requirements, the decision shall enter into force, if no later date is contained therein, on the date of the receipt of a written notification as to the fulfilment of such requirements.
4. For the purpose of this Agreement the Joint Committee shall adopt its rules of procedure which shall, inter alia, contain provisions for convening meetings and for the designation of the Chairman and his term of office.
5. The Joint Committee may decide to set up subcommittees and working groups as it considers necessary to assist it in accomplishing its tasks.

Article 35

Dispute Settlement

1. Each Party may refer to the Joint Committee any dispute relating to the application or the interpretation of this Agreement.
2. The Joint Committee may settle the dispute by means of a decision.
3. Each Party shall be bound to take measures involved in carrying out the decision referred to in paragraph 2.
4. If a dispute referred to the Joint Committee has not been resolved in accordance with paragraph 2 of this Article, each Party may notify the other of the appointment of an arbitrator; the other Party must then appoint a second arbitrator within two months.
5. The Joint Committee shall then choose, within sixty days, among experts proposed by the two arbitrators, a third arbitrator who shall not be a national of either Party and who will serve as the chairman.
6. The arbitrators' decisions shall be taken by majority vote within ninety days or within such longer period as may be agreed by the Joint Committee.
7. Each Party must take the steps required to implement the decision of the arbitrators.

Article 36

Trade Relations Governed by this and Other Agreements

This Agreement shall not prevent the maintenance or establishment of customs unions, free-trade areas or arrangements for frontier trade which are in accordance with the provisions of Article XXIV of the GATT 1994 and with the Understanding on the Interpretation of Article XXIV of the GATT 1994.

Article 37

Annexes and Protocols

The Annexes and the Protocols to this Agreement are an integral part of it.

Article 38

Territorial Application

This Agreement shall apply to the customs territories of the Parties.

Article 39

Amendments

1. Amendments to this Agreement, including to its Annexes and Protocols, shall enter into force on the date of a receipt of the latter diplomatic note confirming that all internal legal procedures required by each Party for their entry into force have been completed.

Article 40

Entry into Force

This Agreement is subject to the ratification by the Parties and shall enter into force on the first day of the second month following the date of exchange of the notifications of ratification.

Article 41

Validity and Termination

This Agreement is concluded for an unlimited period.

Each Party may terminate this Agreement by a written notification to the other Party. The termination shall take effect on the first day of the seventh month following the date on which the notification was received by the other Party.

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

Done at & , this & 5757 which corresponds to the & day of & 1997, in two originals in the Hebrew, Polish and English languages, all texts being equally authentic. In case of differences of interpretation, the English text shall prevail.

for the Government of for the Government of
the State of Israel the Republic of Poland

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

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