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AGREEMENT ESTABLISHING THE CUSTOMS UNION
BETWEEN THE CZECH REPUBLIC AND THE SLOVAK REPUBLIC

Joint Communication by the Government of the Czech Republic
and of the Government of the Slovak Republic

The following joint communication has been received from the parties to the Agreement.

The Czech Republic and the Slovak Republic have the honour to transmit herewith, in accordance with Article XXIV:7(a) of the General Agreement, the text of the Agreement establishing the Customs Union between the Czech Republic and the Slovak Republic (hereinafter referred to as "the Agreement on the Customs Union"). In addition, within the framework of the Customs Union the Agreement on Mutual Relations and Cooperation in Agriculture (hereinafter referred to as "the Agreement on Agriculture") has also been concluded. Its wording will be circulated in a separate GATT document.

The Agreement on the Customs Union was signed on 29 October 1992 and entered into force on 1 January 1993. It constitutes a part of a far broader spectrum of agreements and arrangements signed between the Czech Republic and the Slovak Republic as two successor States to the former Czech and Slovak Federal Republic (CSFR).

The Customs Union is composed of the customs territories of the Czech Republic and of the Slovak Republic. The Agreement on the Customs Union applies to all products falling within Chapters 1 to 97 of the Harmonized Commodity Description and Coding System. Some specific aspects of cooperation in agriculture are further elaborated in the Agreement on Agriculture.

Since within the former CSFR no tariff or non-tariff barriers existed between the two republics, the Agreement on the Customs Union does not contain any detailed scheme for their elimination. The establishment of the Customs Union thus requires no transitional period for removal of obstacles in mutual trade between the Parties. With the view of avoiding their future appearance, the Agreement on the Customs Union prohibits the introduction of any tariff or non-tariff measures applicable in trade between the Parties, with the exception of those which may be introduced for safeguard purposes under the present Agreement on the Customs Union.

On the territory of the Customs Union, the Czech Republic and the Slovak Republic pursue conforming commercial and customs policies towards

third countries. Both Parties apply the Common Customs Tariff in which the basic duties are those applicable in the former CSFR on 31 December 1992. The Common Customs Tariff preserves all concessions granted to the GATT Contracting Parties by the former CSFR which are now included in Schedules XCII (the Czech Republic) and XCIII (the Slovak Republic).

The Agreement on the Customs Union contains also provisions dealing with, inter alia, competition, public procurement, State monopolies, State aid and protection of intellectual property rights. These provisions aim at providing an equal economic and legal framework for the economic operators of both Parties.

Moreover, the Agreement on the Customs Union includes basic provisions on trade in services which ensure free trade in that sector between the Parties. It provides for an institutional framework of the Customs Unions. The main bodies of the Customs Union are the Council of the Customs Union, its Permanent Secretariat and the Arbitration Commission of the Customs Union.

AGREEMENT ESTABLISHING THE CUSTOMS UNION BETWEEN THE CZECH REPUBLIC AND THE SLOVAK REPUBLIC

The Czech Republic and the Slovak Republic (hereinafter referred to as "the Contracting Parties").

Considering the importance of relations between them and the common values they share.

Recognizing that the free movement of goods and services requires the implementation of coordinated and mutually agreed measures.

Considering their common intention to participate actively in the process of economic integration in Europe.

Convinced that this Agreement will facilitate the creation of conditions for the admission of the Czech Republic and the Slovak Republic to the European Communities.

Expressing the interest of the Czech Republic and the Slovak Republic to become Contracting Parties to the General Agreement on Tariffs and Trade and their determination to continue in fulfilling obligations arising from the General Agreement on Tariffs and Trade for the Czech and Slovak Federal Republic as one of its founding Contracting Parties. have agreed as follows:

CHAPTER I: OBJECTIVES AND PRINCIPLES

Article 1

1. A Customs Union of the Czech Republic and the Slovak Republic is hereby established (hereinafter referred to as "the Customs Union"). The Customs Union is in conformity with the provisions of the General Agreement on Tariffs and Trade.

2. The customs territory of the Customs Union is a customs territory of the Czech Republic and of the Slovak Republic.

3. The Customs Union has the following objectives and principles:

- the aim of the Customs Union is to ensure the free movement of goods and services, integration of economies and of economic policy of the Contracting Parties and to

provide favourable conditions for the development of trade between the Customs Union and third countries;

- the Contracting Parties shall on the customs territory of the Customs Union pursue conforming commercial and customs policy towards third countries;
- commercial and customs policy shall be coordinated to an agreed extent by the Council of the Customs Union;
- the Customs Union shall apply common customs tariff towards third countries, including the method of determining the customs value;
- the free movement of goods and services between the two Contracting Parties shall be ensured through the elimination of customs duties and quantitative restrictions;
- the Contracting Parties shall apply the same rules of origin of goods as applied in trade with third countries;
- the Contracting Parties shall implement the customs legislation, covering conforming regulations for the assessment, payment, refund of and exemption from customs duties, leasing, transmitting of goods, the same prohibitions and restrictions on imports and exports, including non-tariff measures and suspension of customs duties in cases of justified economic interest;
- the financial needs of the Customs Union shall be covered by contributions of both Contracting Parties with regard to the fact that the customs duties collected by individual Contracting Parties shall go to their respective budgets;
- the Customs Union shall ensure a coordinated application of customs statistics and registration of goods;
- both Contracting Parties shall use the same customs documents;
- customs clearance shall be effected on a common state and customs frontier between the Czech Republic and the Slovak Republic;
- eventual disputes between the Contracting Parties arising from the implementation of this Agreement shall be settled by an arbitration body.

Article 2

Within the scope of application of this Agreement and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

Article 3

The following bodies of the Customs Union are hereby established:

- a Council of the Customs Union of the Czech Republic and the Slovak Republic

(hereinafter referred to as "the Council");

- a Permanent Secretariat of the Council of the Customs Union (hereinafter referred to as "the Secretariat");
- an Arbitration Commission of the Customs Union (hereinafter referred to as "the Arbitration Commission").

CHAPTER II: FREE MOVEMENT OF GOODS

Article 4

The Contracting Parties confirm that on the day of entry into force of this Agreement no customs duties, quantitative restrictions or other measures having equivalent effect are applied in their mutual trade. At the same time, no customs duties on exports and imports or other charges having equivalent effect shall be introduced in trade between the Contracting Parties.

Article 5

1. The combined nomenclature of goods shall be applied to the classification of goods in trade between the Contracting Parties.
2. This Agreement shall apply to products falling within Chapters 1-97 of the Harmonized Commodity Description and Coding System.

Article 6

The application of customs duties of a fiscal nature between the Contracting Parties is prohibited.

Common Customs Tariff

Article 7

The Contracting Parties shall establish a common customs tariff for trade in goods with third countries.

Article 8

1. For the purpose of the establishment of the common customs tariff, the basic customs duty for each product shall be the customs duty applicable in the Czech and Slovak Federal Republic on 31 December 1992.
2. If, after the entry into force of this Agreement any change of rate of duty is applied as a result of negotiations under the auspices of the General Agreement on Tariffs and Trade, such new duties shall replace the basic duties referred to in paragraph 1 of this Article.

2. The autonomous modifications or suspensions of duties in the common customs tariff shall be promulgated by the Council on the basis of the agreement between the Parties.

Article 9

The rules of origin of goods and methods of administrative cooperation shall be agreed.

Quantitative Restrictions and Other Instruments and Measures Regulating Trade

Article 10

Quantitative restrictions on imports and exports and all measures having equivalent effect are prohibited between the Contracting Parties.

Article 11

The provisions of Article 10 shall not preclude prohibitions or restrictions on the import, export or transit of goods justified on grounds of public morals, public interest or public security, the protection of human health or life, life and health of animals or plants and environment, protection of national treasures of artistic, historic or archeological value, protection of intellectual property, rules relating to gold and silver or rules relating to consumption of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption. Such prohibitions and restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties and they shall be notified to the other Party prior to their application.

Prohibition of Discrimination

Article 12

1. The Contracting Parties shall refrain from any measures or practices of an internal nature establishing, whether directly or indirectly, discrimination between the products originating in one Contracting Party and like products originating on the territory of the other Contracting Party.

2. Products exported from the territory of one Contracting Party to the territory of the other Contracting Party may not benefit from repayment of internal taxation in excess of the amount of indirect taxation imposed on them.

Article 13

If a Contracting Party finds that dumping within the meaning of Article VI of the General Agreement on Tariffs and Trade is taking place in trade with the other Contracting Party, it may take appropriate measures against such practices in accordance with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

1. The Contracting Party shall progressively adjust any monopolies of a commercial character so as, by the end of the fifth year following the entry into force of the Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Contracting Parties.

2. The Contracting Parties shall inform the Secretariat of measures taken under paragraph 1.

3. The provisions of this Article shall apply to any body through which the Contracting Party, in law or in fact, either directly or indirectly determines or appreciably influences imports or exports between the Contracting Parties. These provisions shall likewise apply to monopolies delegated by the state to other bodies.

4. The Contracting Parties shall refrain from introducing any new measures which are contrary to the principles laid down in paragraph 1 or which restrict the scope of the Articles dealing with the abolition of customs duties and quantitative restrictions between the Contracting Parties.

CHAPTER III: AGRICULTURE

Article 15

The Customs Union shall cover trade in agricultural products falling within Chapters 1-24 of the Combined Nomenclature of the Harmonized System.

Article 16

The provisions of Articles 19 and 26 shall not apply to agricultural products.

Article 17

1. The Contracting Parties shall coordinate the agricultural policies.

2. Coordination of the agricultural policies shall cover in particular export aids, taxes and other instruments of market regulation.

CHAPTER IV: COMPETITION, OTHER ECONOMIC PROVISIONS AND APPROXIMATION OF LAWS

Article 18

1. The Contracting Parties shall consider the following as incompatible with the proper functioning of the Agreement in so far as it may affect trade between them:

- (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 economic competition;

- (b) Abuse of the monopoly or the the dominant position by one or more undertakings on the territories of the Contracting Parties as a whole or in a substantial part thereof.

2. These provisions shall apply to the activities of all undertakings, including public undertakings and undertakings to which special or exclusive rights have been granted by the Contracting Parties.

Article 19

1. Any aid granted by a Contracting Party or through state resources in any form whatsoever which distorts or threatens to distort economic competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between the Contracting Parties, be incompatible with the proper functioning of this Agreement.

2. All practices contrary to paragraph 1 of this Article shall be assessed on the basis of criteria to be agreed.

3. On application by the Contracting Party, the Council may propose that aid which a Contracting Party is granting or intends to grant shall be considered to be compatible with the Agreement, in derogation from the provisions of paragraph 1, if such a proposal is justified by exceptional circumstances.

Article 20

1. The Contracting Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, including measures for the enforcement of such rights against infringement thereof and counterfeiting.

2. The Contracting Parties shall not grant treatment less favourable to nationals of each other in the field of intellectual property than they shall accord to their own nationals and to nationals of any other country. Any advantage, favour, privilege or immunity deriving from:

(a) bilateral agreements in force for a Contracting Party to this Agreement by 31 December 1992;

(b) existing and future multilateral agreements, including regional agreements on economic integration to which both Contracting Parties are not the parties;

may be exempted from this obligation provided that it does not constitute an arbitrary and unjustifiable discrimination of nationals of the other Contracting Party.

Article 21

1. The Contracting Parties shall grant to the nationals of the other Contracting Party access to contract award procedures on their public procurement markets and treatment no less favourable than the treatment granted to their own nationals and nationals of third countries.

2. The Contracting Parties shall endeavour to accede to the Agreement on Public Procurement negotiated under the auspices of the General Agreement on Tariffs and Trade on 12 April 1979 and amended by a Protocol of 2 February 1987.

3. On application by either of the Contracting Parties or on its own initiative, the Council shall examine cases of suspected infringement of the provision of this Article. If the Council finds that there has been such an infringement it shall propose measures to bring it to an end.

Article 22

If either of the Contracting Parties faces difficulties arising from increased imports as a result of the implementation of this Agreement and where such increased imports cause or threaten to cause injury to the market of the Contracting Party, this Contracting Party shall be free, after examination in the Council, to take necessary measures.

Legal Norms

Article 23

1. The Contracting Parties recognize that an important condition for the implementation of this Agreement is the following:

(a) the adoption and application of the same legal norms in the Czech Republic and the Slovak Republic, particularly in the following areas:

- customs tariff, customs procedure and customs statistics;
- import and export licensing procedures;
- protection of intellectual property;
- anti-dumping measures and other countervailing levies.

(b) coordination in adopting and applying legal norms in the following areas:

- trade and foreign exchange regulations;
- economic competition, state aid and public procurement.

2. To this end, the Contracting Parties undertake to adopt and apply jointly legal norms, particularly in the field of customs tariffs and customs procedures and import and export licensing procedures.

3. Where in areas referred to in paragraph 1 the legislation of the Czech and Slovak Federal Republic exists, the Czech Republic and the Slovak Republic shall incorporate this legislation into their legal orders by 1 January 1993. In other cases the respective bodies of the Czech Republic and the Slovak Republic shall adopt in the course of 1993 legal norms

necessary for the implementation of this Agreement and for the functioning of the Customs Union. They shall enter into force by 1 January 1994 at the latest.

4. Where necessary, the Council may propose to the Contracting Parties to adopt further legal norms necessary for the implementation of this Agreement and the functioning of the Customs Union.

CHAPTER V: COMMERCIAL POLICY

Article 24

1. The Contracting Parties shall pursue conforming commercial policy towards third countries. The Secretariat shall submit to the Council proposals for implementing of this policy.

2. The conforming commercial policy shall be based on uniform principles, particularly in the area of customs duties, non-tariff measures and measures of liberalization as well as in the area of export policy and measures to protect trade and domestic markets such as those to be taken in the case of dumping or subsidies.

3. Where agreements with third countries need to be negotiated, the Secretariat shall make respective recommendations to the Council, which, in agreement with the Contracting Parties, shall authorize the Secretariat to open the necessary negotiations. The Secretariat shall conduct these negotiations within the directives issued by the Council.

Article 25

The Contracting Parties shall, in respect of all matters important from the point of view of interests and needs of the Customs Union and the two Contracting Parties, act in the international economic organizations through the bodies of the Customs Union in accordance with the course of action agreed upon by the Contracting Parties. To this end, the Secretariat shall submit to the Council proposals concerning the subject and the way of implementation of such course of action and measures.

Article 26

The Contracting Parties undertake to consolidate their systems whereby they grant aid for exports to third countries, to the extent necessary to ensure undistorted competition between undertakings of the Contracting Parties.

CHAPTER VI: SERVICES

Article 27

Trade in services between the Contracting Parties shall be free on the date of entry into force of this Agreement and no restrictive measures shall be introduced in this trade thereafter.

With respect to trade in services the Contracting Parties shall grant to nationals of the other Contracting Party the treatment equal to that granted to its own nationals. The Contracting Parties may conclude separate agreements containing details on individual sectors of services.

CHAPTER VII: BODIES OF THE CUSTOMS UNION

Council of the Customs Union

Article 29

1. The Council shall ensure the coordination of foreign commercial and customs policies of the Contracting Parties.
2. The Council shall act on behalf of the Customs Union in foreign relations in all matters provided for in this Agreement. For the purpose, it may establish its permanent missions to international governmental organizations upon an agreement with the Contracting Parties.
3. The Council promulgates the common customs tariff and other trade policy measures.
4. The Council shall submit to the Contracting Parties an annual report on the implementation of the Agreement establishing the Customs Union.
5. The Contracting Parties shall agree on the statute of the Council and its rules of procedure.

Article 30

1. The Council shall consist of an equal number of members of the Governments of both Contracting Parties.
2. The Council shall take its decisions by an agreement.
3. The activities of the Council shall be directed by its President whose office will be held alternately, for a six month period, by a representative of the Czech Republic or the Slovak Republic.
4. The Council shall hold at least one session every three months. The President shall convene a session of the Council upon the request of either Contracting Party.

Permanent Secretariat

Article 31

1. The Secretariat shall have its seat in Bratislava.
2. The Secretariat shall be an executive body of the Council which:

- exercises the powers conferred on it by the Agreement;
- prepares draft recommendations for the Council;
- fulfils other tasks assigned to it by the Council.

Article 32

The Secretariat shall execute the following tasks, in particular it

- (a) keeps under review the implementation of the commercial and customs policies of the Customs Union;
- (b) keeps under review the harmonization of the systems whereby the Contracting Parties grant export aids in order to prevent distortion of economic competition between the nationals of the two Contracting Parties;
- (c) submits to the Council draft annual reports on the implementation of the Agreement establishing the Customs Unions;
- (d) makes recommendations to both Contracting Parties on measures affecting foreign trade;
- (e) coordinates the application of customs statistics based on the system of collecting data from the Contracting Parties and ensures their mutual exchange;
- (f) ensures technical and organizational aspects of activities of the Council and of the Arbitration Commission;
- (g) keeps under review the developments of customs legislation, particularly in the European Communities;
- (h) keeps under review the customs legislation of the Contracting Parties.

Article 33

The decisions of the Permanent Secretariat shall be subject to approval by the next session of the Council.

Article 34

The Permanent Secretariat shall be headed by the Director-General who will be appointed and recalled by the Council.

Article 35

The Council shall make recommendations which shall become binding upon their approval by the Contracting Parties.

The Arbitration Commission of the Customs Union

Article 36

1. Disputes arising from this Agreement shall be settled by the Arbitration Commission of the Customs Union.
2. The Arbitration Commission shall open its proceedings on a proposal from the Council or from one of the Contracting Parties.
3. The Arbitration Commission shall be established on an ad hoc basis for each particular dispute. It shall consist of an arbitrator appointed by the Government of the Czech Republic, an arbitrator appointed by the Government of the Slovak Republic and a third arbitrator agreed upon by the two appointed arbitrators. The third arbitrator who shall be the Chairman of the Arbitration Commission can be a national of a third country. The Contracting Party which has proposed to open the proceedings shall appoint its arbitrator in its proposal. In other cases this appointment shall be made within thirty days from the date of receipt of the proposal for opening the proceedings.
4. The rules governing the Arbitration Commission shall be agreed upon by the Contracting Parties.
5. The decisions of the Arbitration Commission shall be binding upon the Contracting Parties and both Contracting Parties shall undertake to comply with the decisions within the term specified therein.

CHAPTER VIII: GENERAL AND FINAL PROVISIONS

Article 37

1. The Contracting Parties shall take all necessary measures required to attain the objectives of this Agreement referred to in Article 1, paragraph 3.
2. The Contracting Parties shall abstain from any measures which could jeopardize the attainment of the objectives of this Agreement.
3. If one of the Contracting Parties considers that the other Contracting Party has failed to fulfil its obligations under this Agreement, the Contracting Party concerned may take appropriate measures. Before doing so it shall supply the Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to both Parties.
4. In the selection of measures, priority must be given to those which least disturb the functioning of the Agreement. These measures shall be notified immediately to the Council and shall be the subject of consultations within the Council if the other Contracting Party so requests.

Article 38

This Agreement shall enter into force on 1 January 1993. The Contracting Parties may denounce it by a written notification. As a result of such denunciation, the Agreement shall cease to be in force 12 months following the receipt of such a notification by the other Contracting Party.

Article 39

The expenditures connected with the activities of the Customs Union shall be covered by the Contracting Parties in a way as specified in their respective agreement on this issue.

This Agreement is drawn in duplicate in the Czech and the Slovak languages both of them being equally authentic.

Done at Prague on 29 October 1992

For the Government
of the Slovak Republic

V. Meciar m.p.
Prime Minister

For the Government
of the Czech Republic

V. Klaus m.p.
Prime Minister