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PECHE 59
PECOS 38

DECLASSIFICATION

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dated:	10 March 1997
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Subject:	Negotiations with Poland (proposed date: 28 February 1997, Warsaw)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

6529/97

RESTREINT

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OUTCOME OF PROCEEDINGS

of: Working Party on External Fisheries Policy

dated: 5 March 1997

N° prev. doc.: 6415/97 PECHE 52 PECOS 34

Subject: Negotiations with Poland
(proposed date: 28 February 1997, Warsaw)

BACKGROUND

1. The Commission representative explained that the meeting with Poland scheduled for 28 February 1997 had not, in fact, taken place.
1. In the course of informal talks with Poland on Monday 24 February 1997 in Warsaw, it had emerged that Poland considered that certain outstanding points needed to be addressed if negotiations were to take place to establish an Agreement with the Community of 15, viz:
 - the 50m US\$ compensation demanded by Poland in return for its voting support for the Community in the forum of the North West Atlantic Fisheries Organisation (and / or the possibility of certain trade concessions being made to Poland by the Community as recognition of this support);
 - the precise text to be used in Article 5 of the Agreement;
 - the text of Article 2 concerning the territorial scope of the Agreement.

50m US\$ compensation

1. Trade experts from the Commission had had informal talks with Poland on this aspect of the Agreement on 24 and 25 February 1997 in Warsaw. The Community took the view that the demand for 50m US\$ was entirely unacceptable; there could be no question of financial compensation for a vote.
1. Poland maintained its claim that following its support for the Union in NAFO, the fishing activities of three Polish companies had been seriously restricted; these companies had only recommenced fishing this year. The estimated loss was of the order of 50m US\$, and Poland was seeking that part of this loss be restored in the form of trade concessions, and part in the form of vessels for their fleets.
1. Poland indicated that it was prepared to initial an Agreement, although not necessarily ratify it, before the issue of financial compensation or trade concessions was resolved.

Article 5

1. Poland agreed to accept the text advanced by the Community on Article 5(4) of the Agreement.

Article 2 - territorial scope

1. The Community's position was that if Poland would not abandon its demands for fishing access to waters outside the Baltic Sea there could be no prospect of entering into negotiations. Poland explained that it could not accept formal limitation to the Baltic in the text of the Agreement for political reasons, but could accept such a limitation in practice, and was therefore seeking a formulation which would be acceptable to both parties.
1. The Commission came forward with a possible solution. The following formulation would be inserted into the Agreement under Article 2:

"Each Party shall grant access to fishing vessels of the other Party to fish within its area of fisheries jurisdiction, the mutually agreed areas to be defined in annual fisheries consultations."

1. As there was no specific guarantee here that Poland would not seek access to the North Sea, this text would be accompanied by two unilateral declarations annexed to the Agreement:

Declaration by Poland

"With reference to Article 2, Poland declares that it will not seek access to Community waters outside the Baltic Sea."

Declaration by the Community

"The European Community declares that implementation of this Agreement will be based on relative stability and relevant Community law."

1. Poland was prepared to accept this formulation and to engage in negotiations on Friday 28 February 1997 in Warsaw on this basis.
1. However, a consultation of Member States not present on the spot revealed that there would be a blocking minority against accepting the above formulation, so negotiations did not take place. Poland was somewhat unhappy with this outcome but the Head of Delegation agreed to remain in contact.

DELEGATIONS' OBSERVATIONS

1. The Danish, German, Finnish and Swedish delegations could have accepted the formulation proposed, given the importance of obtaining an Agreement with Poland. They expressed disappointment that negotiations had not been pursued on this basis.
1. The Spanish, French, Irish, Netherlands and United Kingdom delegations could not accept the formulation proposed, for the following reasons:
 - it was not clear that the text to be inserted in the Agreement respected the mandate for negotiation given to the Commission; ⁽¹⁾ the reference to annual consultations at least implied that the territorial scope of the Agreement was open to review on an annual basis and might be interpreted legally as obliging the Community to enter into such consultations;
 - the status of the unilateral declarations - whether they would have the same legal value as the text of the Agreement itself, whether they provided sufficient safeguards to satisfy the requirements of the mandate, and whether they were binding on the parties for the duration of the Agreement - was unclear;

⁽¹⁾ See doc. 4018/96 PECHE 6 PECOS 6 NIS 8.

- would the declarations be integral part of the Agreement and made accessible to the public;
 - if such a formulation were used for Poland it would serve as a precedent in negotiations for an Agreement with Russia, which were to be based on the same mandate.
1. They requested an opinion from the Council Legal Service on the first three points outlined above.
 1. These delegations also expressed some reservations about the procedure followed in Warsaw whereby a text was discussed on a possible Agreement with Poland in the margins of another meeting (the IBSFC) when all Member States concerned were not present.
 1. The French delegation insisted that Poland should fully renounce its claim for 50 m US\$, as this was wholly unjustified.

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