

WORLD TRADE ORGANIZATION

**BASIC INSTRUMENTS  
AND  
SELECTED DOCUMENTS**

**1995**

**Protocols, Decisions, Reports**

**GENEVA, JUNE 2002**



In the series of the WTO Basic Instruments and Selected Documents, the following publications are available in English, French and Spanish and can be obtained from Bernan Associates or from the WTO.

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## **PREFACE**

The 1995 volume of the WTO Basic Instruments and Selected Documents (BISD) contains Protocols, Decisions and Reports adopted in 1995. It also contains selected documents related to the Uruguay Round negotiations. Certain documents have been numbered or renumbered to simplify indexing. WTO panel and Appellate Body reports, as well as arbitration awards, can be found in the Dispute Settlement Reports (DSR) series co-published by the WTO and Cambridge University Press.



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# WTO MEMBERS AND OBSERVER GOVERNMENTS

(As at 31 December 1995)

## A. MEMBERS (113)

Angola	Djibouti	Korea	Romania
Antigua and Barbuda	Dominica	Kuwait	Saint Lucia
Argentina	Dominican Republic	Lesotho	Saint Vincent & the Grenadines
Australia	Egypt	Liechtenstein	Senegal
Austria	El Salvador	Luxembourg	Sierra Leone
Bahrain	European Community	Madagascar	Singapore
Bangladesh	Finland	Malawi	Slovak Republic
Barbados	France	Malaysia	Slovenia
Belgium	Gabon	Maldives	South Africa
Belize	Germany	Mali	Spain
Bolivia	Ghana	Malta	Sri Lanka
Botswana	Greece	Mauritania	Suriname
Brazil	Guatemala	Mauritius	Swaziland
Brunei	Guinea	Mexico	Sweden
Darussalam	Guinea Bissau	Morocco	Switzerland
Burkina Faso	Guyana	Mozambique	Tanzania
Burundi	Honduras	Myanmar	Thailand
Cameroon	Hong Kong	Namibia	Togo
Canada	Hungary	Netherlands	Trinidad and Tobago
Central African Republic	Iceland	New Zealand	Tunisia
Chile	India	Nicaragua	Turkey
Colombia	Indonesia	Nigeria	Uganda
Costa Rica	Ireland	Norway	United Kingdom
Côte d'Ivoire	Israel	Pakistan	United States
Cuba	Italy	Paraguay	Uruguay
Cyprus	Jamaica	Peru	Venezuela
Czech Republic	Japan	Philippines	Zambia
Denmark	Kenya	Poland	Zimbabwe
		Portugal	

## B. OBSERVER GOVERNMENTS (46)

Albania	Ecuador	Moldova	Saint Kitts & Nevis
Algeria	Estonia	Mongolia	Saudi Arabia
Angola	Fiji	Nepal	Seychelles
Armenia	Former Yugoslav Rep. of Macedonia	Niger	Solomon Islands
Belarus	The Gambia	Oman	Sudan
Benin	Grenada	Panama	Tonga
Bulgaria	Haiti	Papua New Guinea	Ukraine
Cambodia	Jordan	Qatar	United Arab Emirates
Chad	Kyrgyz Republic	Russian Federation	Uzbekistan
China	Latvia	Rwanda	Vanuatu
Chinese Taipei	Lithuania		Viet Nam
Congo			Zaire
Croatia			



**OFFICERS OF MAIN WTO BODIES  
(1995)**

*General Council*

Mr. K. Kesavapany (Singapore)

*Dispute Settlement Body*

Mr. D. Kenyon (Australia)

*Trade Policy Review Body*

Chairman: Mr. O. Londoño (Colombia)

Vice-Chairman: Mr. Lecheheb (Morocco)

*Council for Trade in Goods*

Mr. M. Endo (Japan)

*Council for Trade in Services*

Mr. C. Manhusen (Sweden)

*Council for Trade-Related Aspects of  
Intellectual Property Rights*

Mr. S. Harbinson (Hong Kong)

*Committee on Trade and Development*

Mr. S. Haron (Malaysia)



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## LEGAL INSTRUMENTS

### HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

#### GENEVA (1995) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994 (*G/L/22 and Corr.1*)

1. Members of the World Trade Organization
2. HAVING carried out negotiations with a view to introducing the Harmonized Commodity Description and Coding System (hereinafter referred to as "the Harmonized System"), pursuant to Article XXVIII of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "the GATT 1994"), Article XXVIII of the General Agreement on Tariffs and Trade 1947, and the special procedures relating to the transposition of the current GATT concessions into the Harmonized System, adopted by the GATT Council on 12 July 1983<sup>1</sup>.
3. HAVE, through their representatives, agreed as follows:
4. The schedule of tariff concessions annexed to this Protocol relating to a Member shall become a Schedule to the GATT 1994 relating to that Member on the day on which this Protocol enters into force for it pursuant to paragraph 3(c) and shall replace on that date the schedules of the Member containing pre-Uruguay Round concessions which were annexed to the GATT 1994 before that date.
5. For the purpose of the reference in paragraph 1(b) and (c) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of tariff concessions annexed to this Protocol shall be the date of acceptance of the Protocol by the Members concerned, but without prejudice to any obligations in effect on that date.
6. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of a schedule of tariff concessions annexed to this Protocol shall be the date of acceptance of the Protocol by the Members concerned.
7. Members may annex their schedules of tariff concessions to this Protocol until 31 December 1995.
8. This Protocol shall be open for acceptance by Members, by signature or otherwise, until 31 December 1995.

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<sup>1</sup> BISD 30S/17.

9. This Protocol shall enter into force on 16 August 1995 for those Members which have accepted it on that date, and for Members accepting it after that date, it shall enter into force on the dates of acceptance.

10. This Protocol shall be deposited with the Director-General of the WORLD TRADE ORGANIZATION who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3 to each Member.

11. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

12. DONE at Geneva this sixteenth day of August one thousand nine hundred and ninety-five in a single copy, in the English, French and Spanish languages, each text being authentic. The Schedules annexed hereto are authentic in the English, French or Spanish language as specified in each Schedule.

## PROTOCOLS OF ACCESSION

### PROTOCOL FOR THE ACCESSION OF THE REPUBLIC OF ECUADOR TO THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (WT/ACC/ECU/6)

1. The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and the Republic of Ecuador (hereinafter referred to as "Ecuador"),

2. *Taking note* of the Report of the Working Party on the Accession of Ecuador to the WTO in document WT/L/77 (hereinafter referred to as the "Working Party Report"),

3. *Having regard* to the results of the negotiations on the accession of Ecuador to the WTO,

4. *Agree* as follows:

#### *Part I - General*

5. Upon entry into force of this Protocol, Ecuador accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

6. The WTO Agreement to which Ecuador accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol.

This Protocol, which shall comprise the commitments referred to in paragraph 81 of the Working Party Report, shall be an integral part of the WTO Agreement.

7. Except as otherwise provided for in the paragraphs referred to in paragraph 81 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Ecuador as if it had accepted that Agreement on the date of its entry into force.

8. The staging of the dismantling of the Tariff Adjustment Mechanism shall be implemented according to the time-table in Annex II of this Protocol.

### *Part II - Schedules*

9. The Schedules annexed<sup>1</sup> to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as "GATS") relating to Ecuador. The staging of the concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

10. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

### *Part III - Final Provisions*

11. This Protocol shall be open for acceptance, by signature or otherwise, by Ecuador until 31 December 1995.

12. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

13. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 7 to each Member of the WTO and to Ecuador.

14. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

15. *Done* at Geneva this sixteenth day of August one thousand nine hundred and ninety-five, in a single copy in the English, French and Spanish languages

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<sup>1</sup> Not reproduced.

each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one or more of these languages.

PROTOCOL OF ACCESSION OF GRENADA TO THE AGREEMENT  
ESTABLISHING THE WORLD TRADE ORGANIZATION  
(WT/L/97)

1. The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and Grenada,
2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),
3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,
4. *Noting* that the negotiations on the schedules of Grenada have been completed,
5. *Agree* as follows:

*Part I - General*

6. Upon entry into force of this Protocol, Grenada accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
7. The WTO Agreement to which Grenada accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol shall be an integral part of the WTO Agreement.

Those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Grenada as if it had accepted that Agreement on the date of its entry into force.

Those notifications that are to be made under the Multilateral Trade Agreements annexed to the WTO Agreement within a specified period of time starting with the date of entry into force of the WTO Agreement shall be made by Grenada within that period of time starting with the date on

which it accepts this Protocol or by 31 December 1996, whichever is earlier.

*Part II - Schedules*

8. The Schedules annexed<sup>1</sup> to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the GATS relating to Grenada. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

9. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

*Part III - Final Provisions*

10. This Protocol shall be open for acceptance, by signature or otherwise, by Grenada until 90 days after its approval by the General Council.

11. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

12. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 6 to each member of the WTO and to Grenada.

13. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

14. Done at Geneva this fifteenth day of November one thousand nine hundred and ninety-five, in a single copy in the English, French and Spanish languages each text being authentic, except that the Schedules annexed to this Protocol are authentic only in the English language.

PROTOCOL OF ACCESSION OF PAPUA NEW GUINEA TO THE  
AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION  
(WT/L/99)

1. The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Ar-

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<sup>1</sup> Not incorporated.

ticle XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and Papua New Guinea,

2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),

3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,

4. *Noting* that the negotiations on the schedules of Papua New Guinea have been completed,

5. *Agree* as follows:

#### *Part I - General*

6. Upon entry into force of this Protocol, Papua New Guinea accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

7. The WTO Agreement to which Papua New Guinea accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol shall be an integral part of the WTO Agreement.

Those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Papua New Guinea as if it had accepted that Agreement on the date of its entry into force.

Those notifications that are to be made under the Multilateral Trade Agreements annexed to the WTO Agreement within a specified period of time starting with the date of entry into force of the WTO Agreement shall be made by Papua New Guinea within that period of time starting with the date on which it accepts this Protocol or by 31 December 1996, whichever is earlier.

#### *Part II - Schedules*

8. The Schedules annexed<sup>1</sup> to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and

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<sup>1</sup> Not incorporated.

Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the GATS relating to Papua New Guinea. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

9. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

### *Part III - Final Provisions*

10. This Protocol shall be open for acceptance, by signature or otherwise, by Papua New Guinea until 90 days after its approval by the General Council.

11. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

12. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 6 to each member of the WTO and to Papua New Guinea.

13. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

14. Done at Geneva this fifteenth day of November one thousand nine hundred and ninety-five, in a single copy in the English, French and Spanish languages each text being authentic, except that the Schedules annexed to this Protocol are authentic only in the English language.

## PROTOCOL OF ACCESSION OF THE STATE OF QATAR TO THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (WT/L/101)

1. The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and the State of Qatar,

2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),

3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,

4. *Noting* that the negotiations on the schedules of the State of Qatar have been completed,
5. *Agree* as follows:

*Part I - General*

6. Upon entry into force of this Protocol, the State of Qatar accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

7. The WTO Agreement to which the State of Qatar accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol shall be an integral part of the WTO Agreement.

Those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by the State of Qatar as if it had accepted that Agreement on the date of its entry into force.

Those notifications that are to be made under the Multilateral Trade Agreements annexed to the WTO Agreement within a specified period of time starting with the date of entry into force of the WTO Agreement shall be made by the State of Qatar within that period of time starting with the date on which it accepts this Protocol or by 31 December 1996, whichever is earlier.

*Part II - Schedules*

8. The Schedules annexed<sup>1</sup> to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the GATS relating to the State of Qatar. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

9. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

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<sup>1</sup> Not incorporated.

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*Part III - Final Provisions*

10. This Protocol shall be open for acceptance, by signature or otherwise, by the State of Qatar until 90 days after its approval by the General Council.

11. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

12. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 6 to each member of the WTO and to the State of Qatar.

13. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

14. Done at Geneva this fifteenth day of November one thousand nine hundred and ninety-five, in a single copy in the English, French and Spanish languages each text being authentic, except that the Schedules annexed to this Protocol are authentic only in the English language.

PROTOCOL OF ACCESSION OF SAINT KITTS AND NEVIS TO THE  
AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION  
(WTL/95)

1. The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and St. Kitts and Nevis,

2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),

3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,

4. *Noting* that the negotiations on the schedules of Saint Kitts and Nevis have been completed,

5. *Agree* as follows:

*Part I - General*

6. Upon entry into force of this Protocol, Saint Kitts and Nevis accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

7. The WTO Agreement to which Saint Kitts and Nevis accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol shall be an integral part of the WTO Agreement.

Those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Saint Kitts and Nevis as if it had accepted that Agreement on the date of its entry into force.

Those notifications that are to be made under the Multilateral Trade Agreements annexed to the WTO Agreement within a specified period of time starting with the date of entry into force of the WTO Agreement shall be made by Saint Kitts and Nevis within that period of time starting with the date on which it accepts this Protocol or by 31 December 1996, whichever is earlier.

### *Part II - Schedules*

8. The Schedules annexed<sup>1</sup> to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the GATS relating to Saint Kitts and Nevis. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

9. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

### *Part III - Final Provisions*

10. This Protocol shall be open for acceptance, by signature or otherwise, by Saint Kitts and Nevis until 90 days after its approval by the General Council.

11. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

12. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 6 to each member of the WTO and to Saint Kitts and Nevis.

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<sup>1</sup> Not incorporated.

13. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

14. Done at Geneva this fifteenth day of November one thousand nine hundred and ninety-five, in a single copy in the English, French and Spanish languages each text being authentic, except that the Schedules annexed to this Protocol are authentic only in the English language.

## GENERAL AGREEMENT ON TRADE IN SERVICES

### SECOND PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES (S/L/11)

1. Members of the World Trade Organization (hereinafter referred to as the "WTO") whose Schedules of Specific Commitments and Lists of Exemptions from Article II of the General Agreement on Trade in Services concerning financial services are annexed to this Protocol (hereinafter referred to as "Members concerned"),

2. *Having* carried out negotiations under the terms of the Ministerial Decision on Financial Services adopted at Marrakesh on 15 April 1994,

3. *Having* regard to the Second Annex on Financial Services, and to the Decision on the application of that Annex adopted by the Council for Trade in Services on 30 June 1995,

4. *Agree* as follows:

5. A Schedule of Specific Commitments and a List of Exemptions from Article II concerning financial services annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace the financial services sections of the Schedule of Specific Commitments and the List of Article II Exemptions of that Member.

6. This Protocol shall be open for acceptance, by signature or otherwise, by the Members concerned until 30 June 1996.

7. This Protocol shall enter into force on the 30th day following the date of its acceptance by all Members concerned. If by 1 July 1996 it has not been accepted by all Members concerned, those Members which have accepted it before that date may, within a period of 30 days thereafter, decide on its entry into force.

8. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish to each Member of the WTO a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.

9. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

10. Done at Geneva this -- day of [month] one thousand nine hundred and ninety-five, in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

THIRD PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN  
SERVICES  
(S/L/12)

1. Members of the World Trade Organization whose Schedules of Specific Commitments to the General Agreement on Trade in Services relating to movement of natural persons are annexed to this Protocol,
2. *Having* carried out negotiations under the terms of the Ministerial Decision on Negotiations on Movement of Natural Persons adopted at Marrakesh on 15 April 1994,
3. *Having* regard to the results of such negotiations,
4. *Having regard* to the Decision on the Movement of Natural Persons adopted by the Council for Trade in Services on 30 June 1995,
5. *Agree* as follows:
6. The commitments on Movement of Natural Persons annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace or supplement the relevant entries on movement of natural persons in the Schedule of Specific Commitments of that Member.
7. This Protocol shall be open for acceptance, by signature or otherwise, by Members concerned until 30th June 1996.
8. This Protocol shall enter into force on the 30th day after 1st January 1996 for those Members which have accepted it by that date, and for those accepting it after that date, which date shall not be beyond 30th June 1996, it shall enter into force on the 30th day following the date of each acceptance. If a Member whose schedule is annexed to this Protocol does not accept it by that date, the matter shall be referred to the Council for Trade in Services for consideration and appropriate action.
9. This Protocol shall be deposited with the Director-General of the World Trade Organization. The Director-General shall promptly furnish to each Member a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.
10. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.
11. Done at Geneva this - day of [month] one thousand nine hundred and ninety-five, in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

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## DECISIONS AND REPORTS

### ACCESSION

#### ACCESSION OF ECUADOR

*Report of the Working Party on the Accession of Ecuador  
(WT/L/77)*

1. Ecuador's request for accession to the General Agreement was circulated to contracting parties in September 1992. At its meeting on 29 September - 1 October 1992, the GATT Council of Representatives established a Working Party to examine the application of the Government of Ecuador to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession. Membership of the Working Party was open to all contracting parties indicating the wish to serve on it. In pursuance of the Ministerial Decision of 14 April 1994 on Acceptance of and Accession to the Agreement Establishing the World Trade Organization (WTO) and to the decision of 31 May 1994 of the Preparatory Committee for the WTO, the Working Party examined the application of Ecuador for membership in the WTO and agreed to pursue the market access negotiations for goods, including an agricultural country schedule, and for services. In pursuance of the decision adopted by the WTO General Council on 31 January 1995, the existing GATT 1947 Accession Working Party was transformed into a WTO Accession Working Party. The terms of reference and the membership of the Working Party are reproduced in document WT/L/55/Rev.1.

2. The Working Party met on 20 July 1993, 17-18 January, 21-22 April, 20 September, 28 and 30 November, 1 December 1994, 1, 2, 4 and 19 May, and 10 July 1995, under the chairmanship of H.E. Mr. C. Manhusen (Sweden).

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of Ecuador (L/7202) and the questions submitted by contracting parties on the foreign trade regime of Ecuador, together with the replies thereto, and other information provided by the Ecuadorean authorities (L/7268 and Addenda; L/7301 and Addenda; Spec(94)1, Addenda, Supplement and Corrigendum; L/7488 and Addenda; L/7523 and Addendum 1; L/ 7566 and WT/L/54). The Government of Ecuador made available to the Working Party the following documentation:

- Supreme Decree 2527-A of 5.11.65 on export duties
- Decree 1268 of 6.11.72 on export duties
- Supreme Decree 13 of 9.1.73 on the Export Tariff
- Supreme Decree 185 and Law 14 on the Children's Fund

- Supreme Decree 610 on copyright
- Supreme Decree 823 on the Export Tariff
- Ministerial Decision 8022 on the Sanitary Register, Min. of Public Health
- Decision 10824 on copyright
- Supreme Decree 735 on copyright (amendment)
- Decree 487 on the Export Tariff
- Law No. 78 of 22.9.81 on the Export Tariff
- Law No. 79 of 24.9.81 on the Export Tariff
- Law 20 on the INNFA (National Institute for Children and the Family)
- Decree 2544-A on temporary admission maquila (in-bond processing)
- Decree 2778 of 1.4.87 on the Export Tariff
- Law 92 on the Fondo de Desarrollo de la Infancia (Children's Development Fund)
- Law 14 of 24.1.89 setting up the FONNIN
- Law 56 on the Internal Taxation System
- Law 72, Customs Tariff Law
- Law 79 on private-sector exemptions
- Law 90 of 24.6.90 on the Maquila (in-bond) Régime
- Law on Government Procurement
- Law 107, Consumer Protection Law, Law on Free Zones, - Regulation on the Maquila (in-bond) Régime
- Decision 447 on valuation rules
- Regulation on Free Zones
- Executive Decree 2722-A on anti-dumping controls
- Law 152 on the National Price-Setting Council (pharmaceuticals)
- Decree 3367, Tariff Adjustment
- Decision 524, tariff concessions to the Andean Group
- Decision 596, tariff concessions to the Andean Group
- Executive Decree 415, Regulation on the Single Régime for Andean Multinational Enterprises
- Foreign-Exchange Market
- Organic Customs Law and Regulations
- Law on the Internal Taxation System and Regulations
- Law on Industrial Development and Regulation thereto
- Law on Small-Scale Industry and Regulation thereto
- Law on Industrial Zones
- Law on the Maquila (in-bond) Régime and Regulation thereto
- Law on Free Zones and Regulation thereto
- Law on the Promotion of the Automotive Industry
- Law on the Promotion of the Merchant Navy
- Reforms to the Import Tariff
- Executive Decree No. 396 amending the Import Tariff

- Import statistics for Ecuador for 1991 and 1992, as well as the first quarter of 1993
- Official Journal No. 349 of 31 December 1993 which contains the "Law on Modernization of the State, Privatization and the Provision of the Public Services by Private Enterprise"
- Supreme Decree 188 published in Official Journal No. 158 of 8 February 1971 which contains the Health Code and Sanitary Register
- Ministerial decision 438 published in Official Journal No. 279 of 20 September 1993 which contains the "Order Prohibiting the Importation, Marketing, Storage or Transport of Products in General without their being Registered in the Sanitary Register"
- Ministerial Decision 8022 published in Official Journal No. 984 of 22 July 1988 which contains the "Food Regulations"
- Ministerial Decision 10723 published in Official Journal No. 676 of 3 May 1991 concerning the "Pharmacological Standards for Registration in the Sanitary Register"
- Cartagena Agreement - Decision 293: Rules of Origin
- Cartagena Agreement - Decision 344: Industrial Property
- Cartagena Agreement - Decision 351: Intellectual Property
- List of "price band" products
- List of prohibited imports
- Tariff items subject to prior authorization (September 1994)
- Import and export trade flows
- Monetary Board Regulation 904-94 on exchange policy
- Monetary Board Regulation 863-93 on the importation of motor vehicles
- Decisions No. 283, 284 and 285 of the Commission of the Cartagena Agreement
- Law 152 creating the Committee for Price-Setting in the Pharmaceuticals Sector and Inter-Ministerial Agreements of 4 January 1993 fixing maximum prices for medicaments
- Preferential Trade Agreements negotiated in the LAIA. Trade - preferences received and granted by Ecuador in the LAIA
- LAIA Market-Opening List
- List of CET exceptions
- Catalogue of Ecuador's Technical Standards published by the Ecuadorean Standardization Institute
- Schedule of specific commitments on services
- Ministerial Decision 752 repealing the Decisions on minimum customs values
- Executive Decree 1572 eliminating import restrictions
- Notification under paragraph 76 of the Report
- Agreement No.217 of 21 June 1995

4. In his introductory statements, the representative of Ecuador said, *inter alia*, that Ecuador's trade policy over the past few years had favoured mutual

trade without discrimination of any kind in an effort to reintegrate the country into the international economic system in order to modernize its production structure, reconvert its industry and profit from its comparative advantages. Ecuador's progress had been achieved on its own initiative. In recent years Ecuador had drastically reduced its import tariffs, eliminated non-tariff measures and restrictions, abolished non-tariff levies, reformed its customs legislation, making it more transparent and bringing it into line with international regulations, and facilitated the procedures governing foreign trade. Ecuador had adopted new policy measures which make its foreign trade regime even more flexible. Within the framework of legislation which avoids all obstacles to the flow of goods, it had completely liberalized its exchange regime in order to provide importers with free access to the foreign exchange required for their purchases abroad. At the same time, Ecuador had gone a long way towards bringing its customs duty regime into line with GATT standards. As an indication of its considerable internal effort towards opening up its economy and promoting commercial transactions with the contracting parties, Ecuador had brought into force a new Customs Law embodying the standards established by GATT and providing for the modernization of customs services. Pursuant to the legislation on the Modernization of the State, a number of important steps had been taken towards the abolition of monopolies and the privatization of activities in which the State participated, a fact which should favour a competitive environment for economic operators in Ecuador. Similarly, the foreign investment legislation had been liberalized to provide better guarantees for foreign capital. Under a policy of economic modernization and openness to foreign capital, substantial legal and economic reforms had been carried out with a view to providing better facilities and to make foreign investment in Ecuador more attractive and profitable. The latest reforms in this field provided a wide range of investment possibilities for foreign investors, who were guaranteed the same conditions as national investors, while a number of restrictions and conditions which used to limit the inflow of foreign capital had been eliminated. In short, Ecuador was carrying out efforts aimed at restructuring the economy with a view to strengthening overall macroeconomic equilibrium. Ecuador would continue the liberalization of its foreign trade relations, as demonstrated, *inter alia*, by its intention of acceding promptly to the General Agreement. Ecuador would be grateful for recognition by the contracting parties of its efforts towards greater transparency in its economic policy and, by extension, in its external transactions. The representative of Ecuador stated that the Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise which had entered into force on 31 December 1993 laid down the general principles and rules for achieving administrative efficiency; regulating the provision of public services by private enterprise through the abolition of monopolies, free competition and the delegation of services or activities provided for in the Constitution; and for transferring the State's equity holdings in enterprises. In accordance with this Law, the exercise of the following activities that were reserved for the State under the Constitution may be delegated by concession to private enterprises: (a) production, transport, storage and marketing of hydrocarbons and other minerals; (b) generation, distribution and marketing of

electricity; (c) telecommunications services; (d) production and distribution of drinking water. The Law provides that the abolition of monopolies and the privatization of State activities shall be carried out by the following means: 1. national or international public tenders; 2. by offering some or all of the share capital on the securities market; and 3. by public equity subscription or public auction. The Law did not contain any amendment to the legislation governing transactions between State enterprises and foreign enterprises. The representative of Ecuador stated that as a developing country Ecuador reserved the right to invoke the special provisions concerning developing countries contained in the Multilateral Trade Agreements. Following the entry into force of the Agreement establishing the WTO, the Government of Ecuador reaffirmed its decision to become a Member of the Agreement establishing the WTO pursuant to Article XII of the Agreement.

### *General Comments*

5. In their opening remarks many members of the Working Party welcomed Ecuador's initial application for accession to the General Agreement, which had been submitted shortly prior to the conclusion of the Uruguay Round of Multilateral Trade Negotiations, and supported Ecuador's request to be associated with the negotiations. Noting Ecuador had undertaken a substantial process of economic and trade liberalization aimed at improving the standard of living of the population, increasing employment opportunities and achieving diversification of the productive sectors, these members also expressed support for an early conclusion of the proceedings of the Working Party. Some members recalled their strong regional ties with Ecuador and welcomed Ecuador's long lasting and earnest decision to be fully integrated into the multilateral trading system. Recalling the recent comprehensive economic reforms introduced by Ecuador, some members stressed that this would facilitate the assumption of GATT obligations. Some members of the Working Party notified the intention to enter into bilateral market access negotiations with Ecuador. Upon the conclusion of the Uruguay Round negotiations, members welcomed Ecuador's application for accession to the WTO. With reference to the possible membership of Ecuador in the World Trade Organization, some members stressed the need for comprehensive information concerning the WTO related issues and for the early commencement of negotiations concerning market access on goods including agriculture as well as services, TRIPS, TRIMs etc. The information submitted by Ecuador in this respect is described hereunder in the corresponding sections of this report.

### *Foreign Trade Regime*

6. The Working Party reviewed the foreign trade regime of Ecuador and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party are summarized below in paragraphs 7 to 80.

### *Economic Policies*

7. In response to questions concerning Ecuador's foreign debt situation, rates of inflation and the Macroeconomic Stabilization Plan and other government economic policies, the representative of Ecuador said that his Government had achieved a comprehensive agreement for the payment of its external debt, as a means of establishing suitable conditions for economical growth and social development. The application of protectionist measures and export subsidies, whatever their nature, was not Government policy. The Government of Ecuador had launched a process of modernization of the economy which tends to redefine the role of the State in the management of the economy and society, specifying its areas of influence in line with current conditions. Government strategy favoured competition as a key factor of progress, the free interaction of supply and demand, the existence of transparent and competitive markets and the optimum allocation of resources with a view to achieving a balanced economy. For the moment no benefits were granted under any specific development laws. The only prices controlled by the State were internal prices of certain oil and gas products for domestic consumption, pharmaceuticals and electricity. Certain agricultural products were subject to the price band system. There was no discrimination between domestic and imported products with the exception of some imported products subject to the special consumption tax. Fiscal policy and the balancing of public accounts were based on the rationalization of Government expenditures and not on the regulation of consumption or increases in internal taxes. The role of the public sector had been streamlined and a policy had been adopted to eliminate subsidies and obtain forced savings within the State structure in order to achieve the desired results. The measures adopted had made it possible to reduce the public deficit in 1993 to 2.5 per cent of the GDP, as against 7 per cent for 1992.

### *Foreign Exchange System*

8. Some members of the Working Party requested information on the functioning of the foreign exchange system, whether multiple rates applied, the plans for a unified rate, problems faced by importers to acquire foreign exchange, etc. The representative of Ecuador stated that the exchange system had been reformed in 1994. There was now a free exchange system for private sector transactions with a unified rate determined by the market. There were no restrictions on foreign exchange market operations and participation and none on investment transactions. As a result of recent reforms, the foreign exchange system had been simplified by eliminating the US dollar fluctuation band that had existed in the intervention market of the Central Bank for public sector transactions and the official exchange rate which the Central Bank had used for accounting purposes and for transactions with the IMF. Thus a free exchange system had been adopted in which the private sector could acquire the foreign exchange needed for its activities at the market rate. Foreign exchange transactions for foreign trade purposes

were no longer carried out through the Central Bank of Ecuador. There were no restrictions on the purchase or sale of foreign exchange. He added that the current foreign exchange system worked as follows: In accordance with Decree 1353 of 23 December 1993, published in the Official Journal No. 349 of 31 December 1993, the official exchange rate was the rate used by the Central Bank of Ecuador in its transactions for the sale of foreign exchange. There were no restrictions on the acquisition of foreign exchange or on its remittance abroad. All foreign exchange transactions undertaken by the public sector must be placed at the Central Bank of Ecuador. With prior authorization from the Monetary Board, public sector entities, bodies and enterprises may maintain foreign currency accounts with the Central Bank of Ecuador or other foreign banks provided they have foreign exchange earnings and obligations abroad that are inherent to their operations. The Central Bank of Ecuador may participate in the free exchange market by buying and selling foreign exchange to and from the authorized institutions. It establishes the rates, amounts, and other terms for these operations in accordance with the market situation and the requirements of the Monetary Programme, including auctions of negotiable securities and foreign exchange "desks". Authorized institutions that carry out foreign exchange transactions must provide weekly to the Central Bank of Ecuador the daily data on the exchange amounts and rates in their buying and selling operations. Authorized private finance companies and private banks may carry out forward foreign exchange transactions, swaps and call-and-put operations and with other derivative instruments. The Central Bank of Ecuador registers direct foreign investment and reinvestment in the capital stock of enterprises, and also registers external foreign-currency loans incurred by the private sector.

9. In this respect, a member acknowledged progress in liberalizing the foreign exchange regime of Ecuador because the acquisition, sale, retention, remittance and use of foreign exchange appeared to be substantially without restriction on private or commercial persons. However, in his opinion, a multiple foreign exchange system still existed. In particular, the foreign exchange system for certain public sector transactions remained partially controlled. In response the representative of Ecuador said that the free market exchange rate was determined by the supply and demand of foreign exchange by economic agents. The foreign exchange selling rate of the Central Bank to the public sector was set weekly at a rate equivalent to the average selling rate of the free market inter bank exchange rate of the previous week as recorded at the Central Bank's Exchange Desk. All public sector exchange transactions are carried out by the Central Bank. The Central Bank buys foreign exchange from public sector enterprises with a 2 per cent fixed spread between the sale and purchase exchange rates of foreign currency. The sale exchange rate is 2 per cent points below the purchase exchange rates. At the moment, for PETROECUADOR this spread is 150 sucres. As of 1 July 1995, PETROECUADOR will receive the same treatment as the rest of the public sector, as provided for in the Letter of Intent agreed with the IMF. One member of the Working Party commended Ecuador on the further unification of its exchange rate policies, but stated its concern that the 2 per cent differ-

ence between public and private purchase rates for foreign exchange might, under certain circumstances, have negative effects for private sector traders or might provide implicit subsidies.

10. The representative of Ecuador stated that the modality of the foreign exchange régime described in paragraph 9 would not have negative effects for private sectors traders and would provide no implicit subsidies. The representative of Ecuador added that his Government shall exercise its economic policies with particular attention to ensure compliance with WTO obligations including GATT Article XV, GATS Article XI and other international obligations. The Working Party took note of these commitments.

### *Trade Policy*

#### *Tariff Regime*

11. Members of the Working Party raised a number of questions concerning the import tariffs including the structure of the tariff system, recent liberalization measures, the exemptions system, the duty draw back system, preferential tariff regimes, the possible level of ceiling bindings. etc. In response the representative of Ecuador stated that at present tariff levels were quite low. In 1992, the highest tariff rates had been reduced from 290 per cent to 40 and tariff levels were cut from 30 to 10. Currently national tariff levels were the same as those of the Common External Tariff of the Andean Group, approved in March 1993 by Decision 335 of the Cartagena Agreement which was implemented in February 1995, i.e. 5 per cent, 10 per cent, 15 per cent and 20 per cent. However, certain tariff items corresponding to vehicles were subject to an *ad valorem* duty of 40 per cent. Ecuador maintained a suitable level of protection for its infant motor vehicle industry, in particular, because of the multiplier effects on production and employment. There were also exceptions in relation to some agricultural products covered by the price band system. Moreover, in February 1995 for less than 300 items Ecuador received permission to apply a temporary exemption of 5 percentage points below the CET rates. At present average *ad valorem* duty rates by national tariff section fluctuated between 17 per cent for arts and antiques and 3.3 per cent for mineral products. The simple average tariff was 9.3 per cent and the weighted average was 6.8 per cent. Having regard to modifications in the Common External Tariff of the Cartagena Agreement, tariff rates could change in the future within the limits of the agreed bindings. At the present approximately 7-8 per cent of imports were subject to preferential tariff regimes under the Cartagena Agreement.

12. Some members noted that the duty exemptions granted to certain categories of public and private sector institutions, had the potential to distort trade and introduced uncertainty about the applicable duties. In response the representative of Ecuador said that the exemptions were not granted on the basis of a preestablished list of products but rather on the basis of the specific individual purposes of each institution as defined in the Customs Law and Regulations. Goods en-

joying tariff exemption could only be marketed after a period of time and the payment of the duties from which they were exempted. The law had eliminated all total or partial exemptions from duties on private sector imports and there was no discrimination against any supplier. The entities and persons exempt from the payment of customs duties, within the limits and conditions laid down in the law, comprised the following: the State, the public sector in general (provincial councils, municipalities); private law entities having a social or public purpose, created and regulated by law; State-owned enterprises and those owned by regional or local governments enjoying administrative and economic autonomy, as public or private law entities for the provision of public services; private-law entities that had signed contracts with public sector agencies or bodies for public works for the provision of welfare, public assistance or educational services; legally-authorized universities, politechnical schools and institutions of higher education, public or private; diplomatic and consular missions, international or technical assistance organizations and their members within the limits and under conditions set forth in the appropriate legal instruments; national or foreign travellers entering the country, with respect to their baggage and household effects; immigrants, with regard to their baggage and used household effects and work equipment.

The Ministry of Finance was responsible for the prior authorization of duty-free imports of goods by the above mentioned public or private entities eligible for such exemption, and might restrict such authorization to urgent needs of such entities. No importations of this type might be carried out without prior qualification and authorization. Between 1989 and 1993, duty free imports by the public sector had represented between 1 per cent and 3.7 per cent of Ecuador's total imports.

13. Noting that duty-free imports were permitted for development projects or works of national priority, a member of the Working Party asked what was the meaning of the term "national priority". The representative of Ecuador said that this term referred to projects classified as having priority by the National Development Council (CONADE). They included the construction of social housing, hydro-electric power stations, highways, irrigation systems and canals, drinking water infrastructure, hospital equipment and schools. The customs tariff exemptions for State owned enterprises covered imports by private entities that had concluded contracts with public sector agencies and bodies for the construction of works on the provision of services for charitable or educational purposes.

14. The representative of Ecuador assured the Working Party that imports by the public sector under duty free exemptions did not compete with ordinary private sector trade and that there was no discrimination among supplying countries through the application of duty exemptions. The Working Party took note of these commitments.

*Market Access Negotiations*

15. In response to questions concerning market access negotiations and the level of tariff bindings, the representative of Ecuador confirmed that Ecuador was willing to enter into comprehensive market access commitments for the purpose of acceding to GATT and becoming a member of the World Trade Organization, at levels consistent with Ecuador's financial development and trade needs and taking into account its developing country status. Ecuador agreed to a "step approach" to bindings equal to the Common External Tariff of the Andean Group plus 10 percentage points, i.e. bound rates of 15, 20, 25 and 30 per cent. The negotiated exemptions to the across-the-board ceiling binding level are as specified in the schedule of Ecuador that will be annexed to the Protocol of Accession of Ecuador. The Working Party took note of the statement of Ecuador that the market access commitments as well as the agricultural country schedule and the services commitments would constitute Ecuador's contribution to the market access and services negotiations required for membership in the World Trade Organization.

*Import Taxes and Charges*

16. Some members of the Working Party asked questions concerning the nature, application, coverage and justification of various taxes and charges such as surcharges, control fees, transfer fee, transit fee, storage fee, consumption taxes, value added tax etc. These members noted that the control fee of 1 per cent and 0.5 per cent for goods entering the country under special customs regime and the transit fees which were levied on ad valorem basis were not consistent with the provisions of Article VIII of the GATT as interpreted by the GATT Panel Report on United States Customs User Fee. Some members also stated that the 1 per cent and 2 per cent levies in favour of INNFA represented taxation of imports for fiscal purposes in contravention of GATT Articles VIII and III as there were no similar levies on products of domestic origin. It was noted that if these levies were incorporated into the applied tariff duty levels of Ecuador, the rates set in the Common External Tariff of the Andean Group would be attained. In response the representative of Ecuador said that the control fee of 0.5 per cent for goods entering the country under special customs regime was meant to cover the cost of customs services rendered and did not constitute a direct or indirect protection for domestic products or a fiscal charge on imports. The application of the control fee did not discriminate as between products or their origin. He added that, with the suspension of duties on goods in transit, the transit fee was another customs services fee charged for the provision of general services on goods declared in customs transit. This fee covered only the cost of the services rendered. The level of the fee was based on the minimum living wage. For goods declared in customs transit, the fee was 20 per cent of the minimum living wage for each transit waybill and for vehicles proceeding from abroad in customs transit, 10 per cent of the minimum living wage. This fee was applied in accordance with the

provisions of Article V of the General Agreement. The minimum wage was used as basis for calculating administrative costs. Some members of the Working Party said that the use of the minimum living wage as the basis for computing this fee was inconsistent with GATT. In their view, the fee should be based on the approximate cost of the services rendered. Concerning the storage fees, the representative of Ecuador said that these fees were charged by the Customs for warehousing and their incidence depended on the length of time spent by the goods in warehouses. The representative of Ecuador noted that the 30 per cent tariff surcharge and the additional 5 per cent tax on the importation of luxury goods had been eliminated. Furthermore, the 1 and 2 per cent taxes of c.i.f. value for the Children's Development Fund and the National Fund for Nutrition and Protection of Ecuadorean Children which had been based on social security considerations had been repealed by the new Customs Law. In this respect, he assured the Working Party that Ecuador would comply fully with the provisions of Article VIII of the General Agreement. The Working Party took note of these assurances.

17. The representative of Ecuador indicated that his Government has adopted measures which revise the procedure of application of the customs control fees of 0.5 per cent and 1 per cent referred to in paragraph 16 to bring them into conformity with Article VIII. Ecuador has eliminated the 1 per cent fee and applies only an ad valorem fee of 0.5 per cent to imports under régime of temporary admission, not to imports for consumption. Ecuador has established a ceiling for the 0.5 per cent import fee of 15 Constant Units of Value (CUV), currently equal to approximately US\$60, in order to ensure that the fee charged approximates the cost of services rendered. This is the only tax or charge applied exclusively to imports other than the customs tariff at the current time. A Constant Unit of Value is denominated in sucres and indexed in line with increases in the Consumer Price Index. The Working Party took note of these commitments.

### *Special Consumption Tax*

18. Some members of the Working Party requested information on the nature of the special consumption tax, its product coverage, the tax rates and their method of application. In this context special reference was made to the higher incidence of the special consumption tax on imports of certain tobacco products relative to domestic goods, and to the need to equalize the tax to bring it into conformity with Article III of the GATT. In response the representative of Ecuador said that the special consumption tax was an excise tax levied on cigarettes (HS 2401), alcohol and alcoholic beverages (HS 2208), beer (HS 2203), carbonated beverages (HS 2201) and mineral and purified water (HS 2202). The level of taxation ranged from 5 per cent on mineral and purified water to 260 per cent on foreign brands of cigarettes made from light tobacco manufactured locally under licence or imported. The tax was levied on the above products whether of domestic or imported origin. The relevant charge was determined by applying the respective ad-valorem rates to the ex-works price or ex-customs price as appro-

priate. In the case of consumption of domestically produced goods, the tax was levied on transfer by the manufacturer, whether for consideration or free of charge. In the case of consumption of imported products, the tax was levied upon customs clearance of the product. He noted that in accordance with Article 53 of the Constitution, the National Congress was competent to enact laws governing any tax matter.

19. The representative of Ecuador acknowledged that the Special Consumption Tax is applied to a number of imported products at rates in excess of those applied to similar domestically produced goods, and that this practice is not in conformity with Article III. Ecuador would equalize the application of the tax no later than 31 July 1996. The Working Party took note of this commitment.

#### *Value Added Tax (VAT)*

20. In response to a question concerning the nature and coverage of the VAT, the representative of Ecuador pointed out that this tax was applied to imports and domestically produced goods comprehensively at a standard 10 per cent rate. However, imports by the public sector were not subject to the payment of the VAT. The taxable base in the case of imports was the c.i.f. value. The sale of domestically produced and imported agricultural products are exempt from the VAT as well as imported and domestically produced agricultural products in primary form, inputs, human medicaments, machinery and agricultural equipment were exempted from the VAT. Exported products were also exempt from the VAT. There was no special treatment in respect of exemption from the VAT on the basis of m.f.n. status or the origin of the raw material imported.

21. The representative of Ecuador stated that the incidence of the VAT falls equally on domestically produced goods and imported items in all cases and that his Government would apply the VAT in accordance with the provisions of the General Agreement, in particular Articles III and VIII. The Working Party took note of this commitment.

#### *Customs Regime*

##### *Customs Procedures and Practices*

22. Some members of the Working Party asked questions on Ecuador's customs procedures and practices including the requirements for temporary admission, exonerative and suspensive customs procedures, documentation for customs declaration, the structure and functions of the new National Customs Service, and Ecuador's intentions concerning acceptance of the MTN Customs Valuation Code, etc. he representative of Ecuador said the law on the National Customs Service had entered into force on 9 March 1994. The law aimed at simplifying procedures and improving the efficiency of the State in its function of providing customs services and regulate the legal relationship between the State and persons involved in the international movement of goods within the customs terri-

tory. The law had regrouped and organized all provisions relating to the Customs Service which were previously contained in various legal instruments. The law had introduced the following changes with respect to the previous system: (i) simplified and reduced the formalities and procedures; (ii) allowed the transfer of various activities to the private sector, such as surveillance, control, valuation, storage and other activities that relate to goods crossing the customs border. In addition, customs obligations may be paid in national banking institutions; (iii) established the principle of trust in the tax payer, through self-assessment and advance payment of customs charges; (iv) clarified violations of the customs regulations into the categories of offenses, infringements and faults; (v) introduced a "random customs valuation system" that was exercised as a means of control on the basis of an automatized programme; previously, as a general rule, customs valuation had required a physical presence; (vi) provided for a single type and kind of customs guarantees, whereas under the previous law there were general, specific and special customs guarantees of varying amounts and with different systems for establishing those amounts; (vii) downsized the Customs Service by eliminating unnecessary functions and responsibilities, while at the same time establishing the customs career as a means of encouraging professionalization and advancement on the basis of merit for customs officers; (viii) provided for the repeal of laws and legal provisions relating to customs matters which had lost practical relevance or hindered the State from acting efficiently. The administrative structure of the customs service was headed by the Minister of Finance and Public Credit, representing the President of the Republic. The structure also included a consultative and advisory body, the Customs Technical Committee, and the National Customs Service Directorate. The functions of the advisory Technical Committee were to give an opinion on draft executive decrees relating to customs tariffs and valuation rules. The National Customs Service Directorate consisted of the District Administrations and the Customs Surveillance Service and was responsible for investigating and preventing customs offenses. Certification or fees by Ecuadorean Consulates are not required for documents relating to trade or for customs declaration purposes.

23. With regard to the documentation needed for customs declaration purposes, the representative of Ecuador stated that they comprised the original or a negotiable copy of the bill of lading, air consignment note or consignment note; the commercial invoice; and the certificate of origin if required. Moreover, sanitary registration was needed for the importation, marketing, storage or transportation within the national territory of the following products: processed food products or additives, medicaments in general, drugs or medical devices, cosmetics, hygienic products or perfumes and pesticides for household, industrial or agricultural use. A favourable report from the National Hygiene Institute of the Ministry of Public Health was required to obtain such registration. In reply to questions as to the justification of such a measure, the representative of Ecuador stressed that the purpose of the Sanitary Register was to safeguard public health and did not constitute unnecessary obstacles to trade.

### *Temporary Admission*

24. A member of the Working Party requested information on the requirements for temporary admission of goods into the country. The representative of Ecuador said that it was incumbent upon the Ministry of Finance to authorize the temporary admission of imports. For this purpose the importer had to provide details of all the goods on the cargo manifest, submit a customs declaration and lodge a guarantee for the value of the duties and taxes that would be required for the importation with release for consumption ("nationalization") of the goods. Under the temporary admission regime, imported machinery and equipment could remain if necessary in the country, exempt from payment of taxes until the termination of validly signed contracts between public or private enterprises and the State, Provincial and Municipal governments or other public sector institutions. Article 82 of the Organic Customs Law and Article 350 of the Regulation thereto listed the goods that may be introduced under the temporary admission regime. The temporary admission may be extended, by decision of the Ministry of Finance, depending on the implementation needs of the projects covered by the regime. Nationalized goods or goods manufactured in Ecuador could be dispatched abroad for a period of six months and returned without payment of duties, under the provisions for temporary exportation.

### *Duty Draw-Back*

25. In response to further questions, the representative of Ecuador said that the duty draw-back mechanism had been introduced in May 1993. Under the duty draw-back system, duties and indirect taxes paid on raw materials and other imports that are physically incorporated in the exported product were fully or partially refunded. The mechanism benefitted only natural or legal persons who exported products comprising imported components. There were no statistics concerning the operation of this mechanism but it fully observed the m.f.n. principle.

### *Customs Valuation*

26. Some members of the Working Party noted that on 1 November 1993, the Government of Ecuador had issued Ministerial Agreement N°786 establishing minimum official prices for virtually all imports of textile products and clothing (HS categories 5007-6310) through the end of the year. The Agreement provided that each textile product and article of clothing was subject to an official minimum price per kilo. It also appeared that Ecuador might apply similar measures to imports in other sectors, such as steel, tires, beer and appliances.

27. In response to the request for information on the system of minimum prices for textiles and its justification under the General Agreement, the representative of Ecuador said that the current list of minimum prices for textiles had been listed in Ministerial Decision No. 073 of 31 January 1994. The system of

minimum customs values for textiles had had two objectives, namely to defend taxation interests and to counter unfair competition facing domestic products. Ecuador had been obliged to establish a system of minimum customs valuation prices for a wide range of fabrics in view of the increasing tendency to under-value the declared prices of textiles and in order to overcome the ensuing difficulty in the application of the customs valuation rules. There had been a major problem of tax evasion and disruption of the domestic market for textiles. The system of minimum values had been a temporary measure aimed principally at stabilizing the market. Nevertheless, Ministerial Decision 752 of 14 October 1994 had repealed this system.

28. In reply to a question concerning of Ecuador's position regarding the MTN Customs Valuation Code, the representative of Ecuador said that Ecuador's domestic legislation specified that for the purposes of customs valuation, the provisions of the Agreement on Implementation of Article VII of the GATT applied. When becoming a member of the WTO, Ecuador would notify its decision to make use of the reservation which accorded to developing countries the right to a delayed implementation of the computed value method. Ecuador had temporarily applied on a limited basis minimum or reference prices to certain products including but not limited to textiles, steel, tires, beer and appliances. On 14 October 1994, Ministerial Decision 752 had repealed the Ministerial Decision on Minimum Customs Values for industrial products as well as for agricultural products not subject to the price band mechanism. On 17 October 1994 Ecuador had introduced a system of preshipment inspection which would be implemented in accordance with the relevant WTO Agreement.

29. The representative of Ecuador said that his Government will continue not to apply minimum values for customs purposes from the date of accession of Ecuador to the WTO. Ecuador would abide by the provisions of the Agreements on Preshipment Inspection and Customs Valuation in this regard, from the date of accession of Ecuador to the WTO. The Working Party took note of these commitments.

### *Non-Tariff Measures*

30. Some members of the Working Party said that, notwithstanding considerable progress towards the liberalization of trade, Ecuador still appeared to have a highly complex and rather pervasive system of controls, bans restrictions, authorizations or registration which not only impeded the free flow of trade, but could also lead to significant trade distortions. In this respect particular reference was made to import restrictions concerning used textiles and clothing, tires and automobiles, to price controls for pharmaceuticals and to the restrictions affecting a significant number of agricultural products and raw materials. In their view, unless Ecuador could justify the existing restrictions in terms of the GATT 1994 and the WTO Agreement, all the restrictions would have to be eliminated by the date of the accession of Ecuador to the WTO.

31. The representative of Ecuador indicated that his Government would eliminate by the date of accession all non-tariff import and export restrictions not addressed in paragraphs 34, 38, 41 and 48 which cannot be justified specifically under WTO provisions, in particular the Agreements on Agriculture, and Article XI of the GATT 1994. If justified under relevant provisions, restrictions would be implemented in accordance with the relevant provisions, for instance the Agreement on Import Licensing Procedures. Such measures would not be applied or re-introduced after accession to the WTO unless specifically provided for in the WTO Agreement. The Working Party took note of this commitment.

#### *Import Prohibitions*

32. The representative of Ecuador said that in the view of his authorities the remaining restrictions on imports and exports were consistent with the provisions of the General Agreement. Law No. 72, published in the Official Journal No.441 of 21 May 1990, amending the Tariff Law, had inter alia eliminated prior import deposits, quotas and prior licensing as of 1 January 1991. The system of prohibitions in force was for the protection of human and animal life, the maintenance of ecological balance (preservation of species) and for reasons of national security. A list of 28 tariff subheadings subject to import prohibitions had been annexed to document L/7301/Add.1 as Annex 2. Monetary Board Resolution 893-94 of 2 August 1994 had reduced import prohibition to the following 13 items: 29035920; 29109010; 29109020; 29201010; 29201020; 40121010; 40121090; 40122000; 41032000; 41072100; 41072900; 96011000; 96019000. These items corresponded to certain chemical products, unrecapped used tires, reptile skins and ivory products. Ecuador considered that these import bans were justified under Articles XX and XXI of the General Agreement. The import restrictions on recapped tires and used automobiles items number 87012000, 8702100010, 8702100020, 8702100030, 8702109010, 8702900000, 87029010, 8702909010, 8702909020, 8702909030, 8703100000, 8703210090, 8703220090, 8703230090, 8703240090, 8703310090, 8703320090, 8703330000, 870390000, 87041000, 8704210020, 8704210090, 8704220000, 8704230000, 8704310020, 8704310090, 87043200, 8704900000, 87060010, 8706009019, 8706009091, 8706009099 and 8707009099 and used clothing item number 6309 would be lifted no later than 1 July 1996.

33. Some members of the Working Party disagreed with Ecuador's analysis and assertion that all the products subject to import prohibitions were justified under GATT Articles XX and XXI. In their view, Ecuador should establish valid criteria for importing used clothing, tires and automobiles consistent with the need to protect the health and consumer safety of its citizens, and resort only to tariff based protection bound in its market access schedules at appropriate levels. As provided for in Article III of the General Agreement, such criteria should apply equally to domestic and imported products offered for sale and should be administered in conformity with the WTO Agreement on Import Licensing Procedures.

34. The representative of Ecuador indicated that his Government would eliminate by the date of accession all non-tariff import and export restrictions (including all quantitative restrictions currently in place in the agricultural sector) that cannot be justified specifically under WTO provisions (e.g., bans, quotas, permits and licenses), in particular the Agreements on Agriculture and Import Licensing Procedures, and Article XI of the GATT 1994. In this regard, Ecuador would eliminate by 1 July 1996 its import bans on used articles listed in paragraph 32, replacing them as necessary with the application of objective criteria uniformly applied to domestic and imported goods for the protection of plant, animal and human health and safety administered in conformity with the provisions of the Agreement on Import Licensing Procedures, e.g., bans on used clothing, automobiles and tires. Such measures would not be applied or re-introduced after accession to the WTO unless specifically provided for in the WTO. The Working Party took note of this commitment.

#### *Prior Authorization*

35. The representative of Ecuador said that the list of products subject to "prior authorization" annexed as Annex 3 to document L/7301/Add.1 had been liberalized by the Executive Decree 1572 of 18 March 1994. He added that a further liberalization occurred on 21 March 1995 as contained in Monetary Board decision No. 921-95. The prior authorization system consisted in obtaining the approval of certain official bodies in order to protect health, public morals, the environment and essential security interests. In such cases the importer or interested party submitted an application containing the required information for consideration by the competent body. Examples of such cases would be applications for the importation of explosives, which required authorization by the National Defence Ministry, or applications for the importation of psychotropic substances and narcotic drugs which required authorization by the National Council for the Control of Narcotic Drugs and Psychotropic Substances (CONSEP). He added that the current import licensing regime was as follows: the State of Ecuador guarantees the right of any natural or legal person residing in Ecuador to carry out foreign trade operations. Before obtaining an import licence, it is necessary to complete a declaration on the appropriate form and submit it to the Central Bank of Ecuador, together with a note or letter requesting a licence. The import licence regime had been duly publicized and was well known to agents involved in foreign trade. Its objective was not to restrict the quantity or value of imports. Licences applied to imports from any origin and they were automatically approved before the dispatch of imported goods. Any importer who met the requirements necessary to obtain an import licence for goods subject to prior authorization by the competent public bodies may import such goods. The Central Bank of Ecuador requires the submission of the authorization given by the competent authority. If the competent public bodies consider that the use of such products does not present an undue risk for health, security and the environment, they would issue the authorization. The import of goods which were dangerous to

human or animal health, arms and ammunition, and products which had an adverse environmental impact, required a prior authorization. There was no intention whatsoever to restrict the quantity or value of such goods. Because the free import regime was free, the import licence was used primarily for statistical purposes. The Central Bank of Ecuador issued the import licence not more than three working days after it had been applied for. Goods which arrived in a port without an import licence may be cleared by customs subject to normal import requirements and subject to payment of a fine equivalent to 10 per cent of the c.i.f. value of the goods. Customs clearance of goods in warehouses or on the site of trade fairs did not require an import declaration endorsed by the Central Bank of Ecuador. Import licences must obligatorily be obtained before the goods are shipped and not afterwards. The Central Bank was the only body which issued import licences and there were no restrictions regarding the period of the year during which an import licence may be applied for. Importers may only register with the Central Bank and to do so they had to fill out forms showing their domicile, their citizenship and tax registration details, together with the signatures of the persons responsible for endorsing the import documents. In order to clear the goods, the importer must submit to the customs, in addition to the documentation from the Central Bank, a final verification form, called the "Customs Declaration", which is used to calculate and subsequently pay the tariff duties. The import licence form costs US\$0.20 and no deposit or prior payments were required in order to obtain an import licence. Import licences were usually valid for 180 days following the date of issue. This period could be extended for up to two years. The regulations did not provide for the transfer or assignment of licences among importers. Importers could obtain the foreign currency necessary for their activities on the free exchange market; the exchange regime was free and there were no restrictions on access to foreign exchange. Detailed information provided by Ecuador in response to the "Questionnaire on Import Licensing Procedures" appears in document L/7523/Add.1.

36. Some members of the Working Party noted that Ecuador's Prior Authorization system constituted a discretionary import licence régime and would be WTO-inconsistent unless it complied with the terms of the Agreement on the application of Sanitary and Phytosanitary Measures and the Agreement on Import Licensing Procedures. In addition, the criteria used to assess the healthfulness of products subject to the Prior Authorization system does not appear to be published and available to traders as required by Article III of the Agreement on Import Licensing Procedures. Some members indicated particular concern that the prior authorization system for some agricultural and non-agricultural products did not afford exporters adequate notification of Ecuador import standards, was not applied to protect human, animal or plant life or health, was not based on scientific principles, and was maintained without sufficient scientific evidence. Regarding these matters, the representative of Ecuador indicated that the Ecuadorean legal framework that sustains the Prior Authorization system was fully compatible with the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Import Licensing Procedures. The Ecuadorean

representative reminded the Working Party members of document L/7523/Add.1, dated 23 September 1994, which presented the information requested in accordance with the Annex to document L/5640/Rev.10 "Questionnaire on Import Licensing Procedures". This document introduces the legal framework which is in force in Ecuador for the import licensing procedures and shows a WTO-consistency. Ecuador committed to ensure that the prior authorization régime complied fully with the WTO requirements, and recognized its obligation to ensure that the application of the Prior Authorization system be consistent with, inter alia, Articles 2, 5 and 7 of the Agreement on the Application of Sanitary and Phytosanitary Measures and Article III of the Agreement on Import Licensing Procedures.

37. With regard to the importation of telecommunications equipment, the representative of Ecuador said that such importation required prior authorization from the Telecommunications Supervision Department (Superintendencia de Telecomunicaciones) and not from the Central Bank of Ecuador. The role of the Central Bank of Ecuador was confined to the registration of imports for statistical purposes. Private enterprises could obtain the necessary licence to import telecommunications equipment for their own use. A licence issued by the Telecommunications Superintendence was needed to import *inter alia* telephonic terminal equipment, data and telex, modems, integrated service digital network terminals, and approved mobile cellular telephone system terminals, which are connected to a terminal point in a public or private system, and intended to access one or more telecommunications service. The system was not intended to limit the quantity or value of imports, merely to guarantee the correct interworking of terminals operating with telecommunications networks. The system applies to the import of products regardless of their country of origin. All natural or legal persons may apply for authorization for the afore-mentioned equipment. The certificate of type-approval suffices for subsequent imports of similar equipment. The representative of Ecuador reiterated that prior authorization was not used to restrict the quantity or value of imports.

38. The representative of Ecuador said that any prior authorizations or license requirements incompatible with the provisions of the General Agreement 1994 or the Multilateral Trade Agreements, in particular the WTO Agreement on Import Licensing Procedures, would be eliminated at the time of accession. From the date of accession additional measures would only be applied as provided for in the Articles of the General Agreement 1994, for instance Articles III and XX, and the WTO Agreements. If justified under relevant provisions, restrictions would be implemented in accordance with the Agreement on Import Licensing Procedures. In addition, Ecuador would ensure that remaining restrictions and import permit requirements are applied in a way consistent with Article XIII of the GATT 1994 and shall apply all restrictions in accordance with the principle of non-discrimination. The representative of Ecuador further confirmed that his Government would, if requested, consult with the contracting parties concerning the effect of these measures on their trade. The Working Party took note of these commitments.

### *Agricultural Sector*

39. Some members of the Working Party said that in their view Ecuador's legislation provided for the application of quantitative and other non-tariff measures on imports for a number of reasons which did not appear to have a GATT justification, e.g. import quotas for fruit, sugar and other agricultural raw materials, and seasonal import permits. In their view, Ecuador should announce the elimination by the date of accession of those restrictions that could not be justified specifically under WTO provisions. Moreover, Ecuador had to address its remaining non-tariff restrictions on agricultural products in the light of its impending obligations under the WTO Agreement on Agriculture. Finally, Ecuador was asked to provide a comprehensive list of the non-tariff measures remaining in force, the nature of the restrictions, their legal basis, and their justification under WTO provisions.

40. In response the representative of Ecuador said that the agricultural restrictions and the ministries or other agencies whose approval was required for importation were listed in Annex 3 of document L/7301/Add.1. He added that Ecuador had abolished most non-tariff restrictions, including licences, quotas and prohibited imports of agricultural products in the same Executive Decree which had implemented the tariff adjustment mechanism known as "price band". Some members of the Working Party stressed that prior authorization procedures for the importation of agricultural products which were inconsistent with the provisions of the WTO Agreement should be eliminated. Other members of the Working Party cautioned against demands to Ecuador, at the time of accession to GATT 1947, which went beyond GATT 1947 obligations.

41. The representative of Ecuador said that all agricultural restrictions listed in paragraph 39 above would be brought into conformity with the rules of the General Agreement 1994 and the WTO Agreement on Agriculture. Seasonal restrictions on fruit imports and the Interministerial Agreement 061 of 31 January 1991 concerning quotas for wheat imports had been eliminated in November 1994. At the time of accession to the WTO, Ecuador would repeal Interministerial Agreement 067 of 20 February 1978 which was the remaining provision in force which allowed official bodies to set quotas or other restrictions for the import of agricultural products. Ecuador's commitments regarding domestic and export subsidies are reproduced in the agriculture country schedule. The agricultural schedule of Ecuador was submitted to the Working Party. The Working Party took note of these commitments.

### *Price Band System*

42. Questions were asked concerning the price-band system under which variable levies were imposed on imports of certain agricultural products. These questions referred to the nature of the system, the mechanism for the establishment and adjustment of the price bands, the products to which it was applied, the justification of the system under the GATT and the existence of plans for phasing

it out. Some members noted that the use of minimum import prices and variable charges appeared to be in conflict with Ecuador's obligations under Articles II, VI and VII of the General Agreement 1994, the WTO Customs Valuation Agreement and the WTO Agreement on Agriculture. In their view, Ecuador should either phase out this mechanism or bring it into conformity with the aforesaid obligations.

43. In response the representative of Ecuador said that the price-band system was an Andean tariff adjustment mechanism that acted as a means of stabilizing the impact of international prices in the Ecuadorean market. Its purpose was to counteract the distortions and variations in international prices caused by the guaranteed prices, buying-in of surpluses, storage subsidies, import quotas, stabilization mechanisms, and export bonuses and subsidies which, among others, were part of the agricultural policies of some exporting countries. It enabled clear and transparent signals to be given to the agricultural producing sector so that it could programme its production activities. This mechanism applied to imports of 130 eight-digit tariff items from countries not belonging to the Andean Group specified in the attachment.

44. The representative of Ecuador added that in the application of the price band mechanism, a distinction was drawn between two kinds of products: "Marker" product: a product of which the international price was used to calculate minimum and maximum values; and substitutes and derivatives of a marker product: products which replace the marker product in industrial use or consumption; and products obtained from processing or mixing marker products. The functioning of the price-band system was as follows: (a) if the international price of an agricultural product on importation was below the established floor price, it was subject to an additional charge over and above the ad valorem duty, termed a specific levy; (b) if the world price was somewhere between the floor and ceiling prices of the established band, then the import paid only the ad valorem duty; and (c) if the world price was above the ceiling price of the established band, then the import was subject to a reduction in the ad valorem duty. To calculate the floor and ceiling prices series of the last 60 f.o.b. prices of the relevant market was used. The series of the f.o.b. products was inflated by the United States consumer price index. The average of the inflated series was calculated. A standard deviation was deducted from this average. This new value was called the f.o.b. floor price. The f.o.b. ceiling price was obtained by adding the standard deviation to the average rather than deducting it. Finally, c.i.f. prices were obtained by adding freight and insurance values to the floor and ceiling prices. The relevant market was the reference market used for taking the international prices to determine the floor and ceiling prices. Various criteria were used to select the reference market: (i) historical origin of imports; (ii) immediate, reliable and continuous availability of international prices; (iii) representativeness of the market. The criteria for including a product in the price band were that (a) the product must be produced in the Andean subregion; (b) the product must be subsidized by exporting countries; (c) there must be large price variations; (d) and where the products are substitutes for products that are included in the price band

system. The additional levy or duty reduction was determined by comparing the reference international c.i.f. price with the c.i.f. floor and ceiling prices. The reference international c.i.f. price was the average of the daily prices observed in the relevant market for 15 consecutive days, by a satellite information system, by the Directorate of Internal and External Trade of the Department of Sectoral Policy and Investment of the Ministry of Agriculture and Livestock. The additional variable levy over and above the ad valorem duty was applicable only when the 15-day reference price was lower than the c.i.f. floor price. The duty reduction was applied only when the reference price was above the c.i.f. ceiling.

45. In reply to further questions on the reference prices used to determine the levels of additional levy or duty reduction, the representative of Ecuador said that the prices which Ecuador used to determine tariffs were those on the major commodity exchanges for agricultural products, for example, Chicago, Rotterdam, Thailand, Germany, Argentina and others recognized at the global level whose data was widely available through specialized electronic media. The procedure for collecting prices was clear and transparent and the prices were published fortnightly in the main written communication media. The reference markets utilized for the various products were as follows: rice: Commodity Exchange of Thailand; maize, soya, soya oil, wheat: Chicago Commodity Exchange; palm oil: Rotterdam Exchange; meat: Credit Commodity Corporation; poultry meat: Urner Barry Publication; barley: prices in Portland; sugar: Contract 5 on the London Exchange.

46. Some members referred to the harmonization of Ecuador's price band system with that of the Andean Group member countries. The representative of Ecuador said that the Andean price band system had been approved after three years of intensive negotiations by the Ministers of Agriculture and Livestock of the member countries of the Andean Group entered into force in February 1995. Ecuador had fewer products subject to these mechanisms than those proposed in the harmonized price band system. In conclusion, he said that the tariff adjustment mechanism, also known as the price band, was a transitory, clear and transparent mechanism to stabilize domestic production, allowing non-discretionary and real signals to be transmitted to economic operators so that they could make appropriate plans for their agriculture campaign. It was based on effective observation of the market and was updated as a result of observing the agricultural markets relevant for Ecuador's imports. The price band constituted a dynamic tariff response which had eliminated State intervention in fixing prices, and also had done away with the expectations of rent-seekers who benefitted from market distortions.

47. Noting that the price band system was against the letter and spirit of the Final Act of the Uruguay Round, some members of the Working Party asked whether Ecuador had plans to phase out the system since it had been asserted it would be temporary in nature. In their view, Ecuador should make a commitment in the Protocol of Accession for either the early elimination of the price band system or to alter the system to meet the WTO obligations. A member asked whether Ecuador would undertake to tariffy the price band system at the time of

accession as stipulated under the Uruguay Round Agriculture Agreement. Another member expressed the expectation that the system would not lead to tariff levels higher than negotiated bindings. The representative of Ecuador stressed that this tariff adjustment mechanism was a temporary measure both as regards the original concept applied by Ecuador and its practical application within the framework of the Andean Group. The objective of the system was to strengthen domestic agricultural production so as to minimize the risk caused by the uncertainty of international agricultural markets currently suffering from the direct and indirect subsidies discussed at length in the Uruguay Round and which had not allowed the global agricultural market to be transparent.

48. The representative of Ecuador said that his Government undertook to operate this tariff adjustment mechanism in conformity with the provisions of Article II of the General Agreement 1994 and without impairing the rates duty bound in Ecuador's schedule of concessions. He added that in order to comply with the provisions of the WTO Agreement on Agriculture, Ecuador would gradually eliminate the price band system within a seven year period in accordance with the time table annexed to Ecuador's Protocol of Accession. During the period for the phase-out of this mechanism, Ecuador would not enlarge the coverage of the system nor reintroduce products back into the system. The Working Party took note of these commitments.

#### *Sanitary and Phytosanitary Measures (SPS)*

49. Some members of the Working Party noted that the sale of medicines, cosmetics and food products in Ecuador required the enrolment on the Sanitary Register, a process that could take months for each product marketed. These requirements were unduly onerous for imports and should be streamlined so as to eliminate the possibility that they constituted an unnecessary impediment to trade. In addition, sanitary and phytosanitary controls were often applied to imported agricultural commodities without adequate notification, consultation or a clear scientific basis for their application. This had been a particular problem with poultry where certification requirement, for health, sanitation or quarantine reasons had acted as *de facto* bans on importation.

50. In response the representative of Ecuador stated that the importation of agricultural and food products was subject to a "Phytosanitary Import Licence" granted by the Ministry of Agriculture. The Law on Plant Health and its Regulations, issued on 14 January 1974, the Community Phytosanitary Standards for the Andean Subregion and the International Plant Protection Convention constituted the legal framework for the establishment of the criteria for the granting of this licence. Note was taken, when issuing the Phytosanitary Import Licence, of the plant diseases that could reappear in the imported product subject to quarantine or that were exotic to Ecuador and should therefore not be present in the product in question. The Community Regulations contained a list of products which were prone to certain diseases depending on their country of origin. On the question of "Sanitary Register", he stated that by Ministerial Decision No. 8022, published in

Official Journal No. 391 of 1 August 1977, the Ministry of Public Health had created the Sanitary Register, in order to guarantee the quality of products that were imported, manufactured or marketed in Ecuador. Accordingly, for a product to be freely marketed in Ecuador, natural or legal persons must register with the Ministry of Public Health as importers or manufacturers of such products, and submit their products for analysis to demonstrate that their consumption or use will not be harmful to public health. Thus, processed food products or additives, medicaments in general, drugs or medical devices, cosmetics, hygienic products or perfumes and pesticides for household, industrial or agricultural use could not be imported, marketed, stored or transported within the national territory without the appropriate sanitary registration. A favourable report from the National Hygiene Institute of the Ministry of Public Health was required to obtain it. It was stressed that the purpose of the Sanitary Register was to guarantee human, animal and plant health and had no protective effect. At present there were no restrictions on the entry of poultry of United States origin into Ecuador but if there was a new risk of contagion from diseases, the relevant health measures would have to be adopted regarding poultry or any other product which endangered animal, plant or human health. The sanitary and phytosanitary measures adopted by Ecuador were in conformity with international standards, guidelines and recommendations by the Codex Alimentarius Commission, the Office of International Epizootics and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention and especially the Food and Agriculture Organization of the United Nations (FAO). They did not in any way represent a hindrance to free trade. The representative of Ecuador stated, however, that he expects his Government to issue in the near future a decree streamlining the administrative procedures for placing new products on the Sanitary Register.

51. In reply to the enquiry as to the extent to which sanitary controls aimed at ensuring the quality of imported products were in conformity with the Uruguay Round Agreement on Sanitary and Phytosanitary Measures (SPS), the representative of Ecuador gave the assurance that its sanitary and phytosanitary measures and its technical requirements are in conformity with the provisions of the WTO Agreements, in particular the agreements on Sanitary and Phytosanitary Measures and on Technical Barriers to Trade. The Working Party took note of these assurances.

#### *Price Setting in the Pharmaceutical Sector*

52. Some members of the Working Party noted that price setting for pharmaceuticals for human use might imply subsidization by the State and asked for information concerning the authority responsible for the price setting, the mechanism involved, its coverage and justification, whether it applied equally to domestic and imported products and relevant statistical data. In response the representative of Ecuador said that, over the last few years, Ecuador had made an enormous effort to liberalize domestic prices in its economy under a programme

to boost efficiency and production. The price-setting policy Ecuador had established in the 1970s had been virtually dismantled. The exceptions to this trend were fuels and gas for household use, where prices were set by the Ministries of Finance and Energy and Mining; and medicaments. The price of medicaments had important social and political implications because in Ecuador the public health system did not yet provide adequate coverage for the lower income groups of the population; and because measures that could affect the more deprived sectors of the population were a potential source of social unrest and instability. The National Council for the Setting of Prices of Medicaments for Human Use was responsible for setting the prices for medicaments. The price setting for imported and domestically produced pharmaceuticals operated as follows. In order to establish the prices of imported products, the following procedures were carried out on a product-by-product basis: to the f.o.b. price were added international transport and import, entry and internal transport costs, which determined to the cost up to the warehouse. Operating, administrative, selling, promotion and financial costs were then added to the warehouse cost. In order to establish the pharmacy selling price, a profit margin of up to 20 per cent of the cost was taken into account, and to establish the maximum selling price to the public, a profit margin of 25 per cent was added to the maximum pharmacy selling price. In order to establish the prices of locally manufactured products, the following procedure was carried out on a product-by-product basis: the f.o.b. price of the main imported active principles was considered, and to the f.o.b. value of the imported raw materials and excipients were added international transport, importation or entry costs and transport costs to the manufacturer's warehouse. A percentage was also added for loss or waste in the production process for each product. In establishing the production cost, account was taken of direct and indirect labour costs and other indirect production costs of the most representative enterprises of the sector established in the country. Operating costs were added to the production costs, which gave the commercial cost. In order to establish the pharmacy selling price, a profit margin of up to 20 per cent of the commercial cost was taken into account, and to set the maximum selling price to the public, a profit margin of 25 per cent of the maximum pharmacy selling price was added for each product. All pharmaceutical products for human use contained in chapter 30 of the National Customs Tariff and of the Harmonized System were subject to these controls. The share in the Ecuadorean market of imported pharmaceutical products had been as follows: in 1989 49 per cent, in 1990 45.9 per cent, in 1991 46.3 per cent, in 1992 35.5 per cent. In 1992 the consumption of imported pharmaceuticals had been worth approximately US\$85 million.

53. The representative of Ecuador assured the Working Party that his Government did not intend to extend the price setting policy to other sectors of the economy beyond the pharmaceutical sector. The Working Party took note of this commitment.

### *Standards*

54. Some members of the Working Party asked whether Ecuador's standards and technical regulations were based on relevant international standards, whether they were published in such a way as to enable interested parties to become acquainted with them and whether they were applied equally to imported and domestic products. Other questions concerned the bodies responsible for their formulation and implementation, how importers and foreign exporters could make their views known in the standards setting process and Ecuador's intentions regarding the Agreement on Technical Barriers to Trade. In response, the representative of Ecuador stressed that internationally agreed rules served as a basis for Ecuador's standards and technical regulations which were defined according to the characteristics of the products when used, its design and features. Ecuador's standards did not constitute a barrier to trade and did not affect the transparency of trade. The procedures involved were publicly known and were generally applied. The Ecuadorean Institute of Standardization (INEN), a government body attached to the Ministry of Industry, Trade, Integration and Fisheries was responsible for preparing standards. He submitted the INEN Technical Standards Catalogue and noted that the only legislation in this respect was Executive Decree 939 of 2 July 1993, published in the Official Journal No 233 of 15 July 1993 entitled General Regulations on Pesticides and Related Products for Agricultural Use. This Regulation had simplified the formalities for the registration of pesticides and streamlined the marketing process for such products. Moreover, the Consumer Protection Law regulated marking, labelling and packaging.

55. The representative of Ecuador said that his Government guaranteed that there was no legal or technical impediment to the adoption of the Uruguay Round Agreement on Technical Barriers to Trade. The Working Party took note of this assurance.

### *Unfair Trade Practices*

56. Some members of the Working Party asked further information on the anti-dumping regime and practices of Ecuador. Questions were asked on the material injury tests, the methodology employed for determining serious injury, particularly in the context of the requirements set out in Article VI of the GATT and the Anti-Dumping Code, whether hearings were open to all interested parties, whether the final report was made available to the public and whether Ecuador's participation in the Cartagena Agreement could lead to the imposition by Ecuador of anti-dumping duties on products the importation of which was affecting the competitive position of other Andean Group members, Ecuador's intentions concerning acceptance of the Anti-Dumping Code upon accession to the GATT 1947, the timing of the application of provisional measures, the implementation of the WTO Anti-Dumping Agreement, etc. In response the representative of Ecuador, said that his Government had incorporated into its domestic legislation all of the decisions adopted by the Commission of the Cartagena Agreement

aimed at practices that could distort trade competition, in particular Decision N°283. Pursuant to this Decision the member countries could apply anti-dumping duties to products originating in third countries in order to correct distortions in trade competition in the sub-regional market. The regulations for the prevention and correction of the practices of dumping and subsidization introduced by Decree No. 2722-A, published in the Official Journal No. 780 of 30 September 1991, had incorporated the provisions of the Anti-Dumping Code and the Code on Subsidies and Countervailing Duties of the Tokyo Round of Multilateral Trade Negotiations, defined the scope of application and determined the time-limits, procedures and competent bodies for dealing with these questions. In Ecuador, the Ministry of Finance and Public Credit was empowered to adopt measures to prevent and eliminate the practices of dumping or subsidies after the Special Commission of the Tariff Committee had given its opinion. In accordance with the national regulations to prevent or eliminate the practices of dumping or subsidies, the producer concerned must submit for his industry or on its behalf an application in writing requesting the initiation of the corresponding investigation and the application of preventive or corrective measures. The application must contain sufficient evidence of the existence of dumping or subsidies and show that these practices cause injury to industry. Five days after receipt of the request, the Ministry of Industry, Trade, Integration and Fisheries contacts the parties concerned directly and requests them to provide the necessary information in order to commence the investigation into the producer or exporter of the product concerned. During the investigation, general information and non-confidential documents, as well as the summaries or analyses of evidence, may be consulted. The competent bodies, authorities and officials may not disclose the evidence and information received in connection with the investigation when these are of a confidential nature. In accordance with domestic legislation, the competent authority first of all convenes meetings between the parties involved so that they may present their points of view and a direct solution may be found. The time-limit for carrying out the investigation was four months from the date of receipt of the application, but this may be extended by a further two months at the discretion of the Special Commission. In such a case, the Special Commission may recommend the application of provisional or preventive measures until the Minister for Finance adopts the final measures decided upon. When the prejudice or the likelihood of causing prejudice is sufficiently serious to warrant the adoption of provisional or preventive corrective measures, a prior investigation is carried out on the basis of the information available within a period not exceeding twenty days from the date of receipt of the application and, in addition, the Special Commission is convened within the following five working days so that it can express its views on the adoption of corrective measures. The final decisions on whether or not such practices have led to dumping or subsidy and injury to domestic industry, together with decisions on the reduction or suspension of their application, are published in the Official Journal. In the case of dumping, domestic legislation provided for the application of duties on the imports concerned equivalent to the margin of dumping determined or a lower amount when this is

sufficient to counter the threat of prejudice or the prejudice caused. In the case of subsidies, countervailing duties were imposed on the imports concerned for an amount equivalent to the subsidy or a lower amount when this was sufficient to counter the threat of prejudice or the prejudice caused. Corrective measures to prevent or eliminate distortions due to dumping and subsidies were not applied simultaneously to the same product. Anti-dumping or countervailing duties could remain in force for a period of up to two years. The determination of serious prejudice or the threat of serious prejudice was based on of the following considerations: (a) the volume of imports subject to the practice, so as to determine if they had increased to a significant extent both in absolute terms and in relation to Ecuador's production, consumption and imports; (b) the price of imports subject to dumping or the granting of subsidies, to determine in particular if they were considerably lower than the prices of similar products as a result of unfair trade practices; (c) the effects on domestic industry determined on the basis of trends in production, domestic sales, market share, profits, productivity, return on investments, utilization of installed capacity, actual or potential negative effects on cash flow, inventories, employment, wages, growth and investment capacity. Ecuadorean legislation provided for administrative appeal procedures. All interested parties may utilize such procedures. To this date, Ecuador had not applied any countervailing or anti-dumping duties.

57. The representative of Ecuador confirmed that from the date of accession to the WTO, Ecuador will apply the provisions of the WTO Agreement on Implementation of Article VI in cases involving allegations of dumping by imports. The Working Party took note of this commitment.

### *Export Incentives*

58. Members of the Working Party asked Ecuador to provide information on measures aimed at facilitating and promoting exports especially in the area of taxation and subsidies. The representative of Ecuador described the measures to facilitate and promote exports. The Law for the Facilitation of Exports by water enacted by Decree No. 147 of 23 March 1992 aimed at eliminating bureaucratic red tape and delays in the shipment of merchandises to world markets. The duty draw-back system introduced through Executive Decree No. 762 on 19 May 1993 benefitted natural or legal persons whose activity was oriented towards the exportation of products comprising imported foreign components. Its application required the compliance with the conditions set forth in the Law and its regulations. Similarly all goods destined for export markets were exempted from the value added tax (VAT) without discrimination as to the destination. He added that since 1990 Ecuadorean policy had been to eliminate production and export subsidies. Article 27 of the WTO Agreement on Subsidies and Countervailing Measures recognizes that subsidies may play an important role in economic development programmes of developing country Members and accords special and differential treatment to developing country Members with regards to the phase-out of export subsidies, preferably in a progressive manner, having

regard to their development needs, export competitiveness, etc. The representative of Ecuador said that at present, the legislation which specifically promoted industrial and agricultural production did not confer benefits or advantages; there were no export or credit subsidies and no tax incentives or encouragement. There were no production subsidies in the form of artificial public service tariffs. However, on 26 November 1994, by Decree No. 2327, Ecuador took the decision to compensate for price increases in diesel fuel to certain basic commodities producers. Nevertheless, due to fiscal constraints there had not been any payments of this compensation. The Decree states that this measure will be phased out by 1 November 1995.

59. The representative of Ecuador stated that his Government intends to eliminate all existing export subsidies no later than November 1995, including the measures described in paragraph 58 above, and that after this date Ecuador will not have any such subsidies. The Working Party took note of this commitment.

### *Free Trade Zones*

60. Some members of the Working Party noted that Ecuadorean Law No.001 (Official Journal No. 625 of 19 February 1991) provided for free zones that process goods for export under special régimes for *inter alia* taxes, tariffs and capital and requested that Ecuador describe the special regimes associated with the establishment of "in-bond" regime for export processing and with investment in the free zones. They also asked whether Ecuador had plans to establish free trade zones, the rationale behind it, whether national labour laws would be applied in such zones, etc. The representative of Ecuador said that no such zones has yet been set up, despite the existence of legislation for their creation; however, the Government planned to create some as part of its development strategy in order to promote foreign investment, the transfer of technology and the creation of employment. They were also intended to promote exports and boost the country's foreign exchange earnings. With regard to the application of national labour laws to such zones, he said that labour contracts in such zone would be often temporary in nature and could not be subject to general legislation.

61. The representative of Ecuador said that his Government as of the date of accession to the WTO would be prepared to make a commitment that the imported component of sales from the zones into the rest of Ecuador would be assessed normal taxes, tariffs and other border measures. Ecuador's national legislation establishes the payment of normal taxes and tariffs on the imported component of sales from the zones into the rest of Ecuador. The Working Party took note of this commitment.

*Government Procurement*

62. Some members of the Working Party asked for information on Ecuador's government procurement practices; the rules and procedures applied, the degree of transparency of the system and the treatment of foreign and domestic suppliers. The representative of Ecuador said that government procurement was done through public bidding with no discrimination between domestic and foreign suppliers. There was also no discrimination regarding the ~~of~~ taxes or fees or on the presentation of guarantees as between national or foreign bidders. The procedures provided for in the Government Procurement Law of 2 August 1990 published in the Official Journal of the same date were as follows. For the performance of works, purchase of goods and provision of services there shall be open invitation to tender, if the amount exceeds the value of 10,000 times the general minimum wage. The bidder shall submit his tender within the time-limit established by the Procurement Committee (between 18 and 48 days from the invitation to tender); a public limited invitation to tender, if the amount does not exceed 10,000 but is over 4,000 times the general minimum wage; open price tendering, if the amount is over 1,500 but not more than 4,000 times the general minimum wage; and selective price tendering, if the amount is over 150 but not over 1,500 times the general minimum wage. Submission of bids is governed by Article 41 of the Law. Bids were submitted to the Secretary of the Procurement Committee, in a sealed envelope, in the Spanish language. Bidders may be present at the opening of the envelopes. Special pre-contractual procedures applied to procurement relating to the purchase of real estate, renting of immovable property, leasing with option to purchase, other contracts financed by international loans granted by multilateral institutions (the provisions of the respective agreements must be observed) and by foreign governments. In each case presidential authorization is required, together with prior reports by the following institutions: CONADE (on the priority of the project and its compatibility with Ecuador's development policies); the External Credit Committee (on the advantages of the terms of the financing offer); and the contracting ministry or entity (on the competitiveness of the prices). The Law provided for a Procurement Committee in each Ministry, dependent body or entity of the public sector. The Committee decides on the award of the contract. The Government Procurement Law did not discriminate between imported products nor in the charging of taxes or fees or presentation of guarantees as between national or foreign bidders. National suppliers were not given special treatment.

*State Owned Enterprises*

63. The Working Party reviewed the nature of operations and GATT justification of the activities of a number State owned enterprises. Some members of the Working Party requested a listing of the State owned enterprises, their share in the economy in general and in trade in particular, sectors of activity, monopolies exercised by them, compliance in their operations with the provisions of Ar-

ticle XVII, as well as future plans and priorities concerning privatization. Some members of the Working Party noted that the examination of this issue should not lead to requests for commitments beyond the obligations provided for in Article XVII for all contracting parties. In response the representative of Ecuador said that his Government had decided to modify the role of the State sector in economic development. The involvement of the State in the past 30 years had led to the State having holdings in some 165 enterprises in sectors such as transport and storage, energy, communications, agriculture, industry, mining, tourism, internal trade, financing and services. Owing to the decreasing efficiency of this model and the demand of current economic, financial and technological realities, the Government had adopted a policy of modernization the basic directions of which were the rationalization and simplification of the public sector administrative and economic structures through the efficient distribution of functions and responsibilities among its entities or organizations, the decentralization of public sector activities, the elimination of State monopolies and the privatization of public services. The National Council for the Modernization of the State (CONAM), attached to the Presidency of the Republic, had been entrusted with administrative rationalization and simplification. He stressed that commercial enterprises which were wholly or partially owned by the State covered by Article XVII of the General Agreement fully observed the principle of non-discrimination both for their procurement and for their sales involving imports or exports. Furthermore there were no monopolies in Ecuador except in the case of natural gas and some petroleum products. With regard to the sectors of the economy exclusively reserved for the State, he pointed out that according to the Law on the Modernization of the State, Privatization and Provision of Public Services by Private Enterprise which had entered into force on 31 December 1993, the following activities that were reserved for the State under Article 46 of the Constitution could be delegated by concession to private enterprises: (a) production, transport, storage and marketing of hydrocarbons and other minerals, (b) generation, distribution and marketing of electricity, (c) telecommunications services, (d) production and distribution of drinking water. The Law had provided the abolition of monopolies and the privatization of State activities. With regard to the share of the State in the economy, he said that in 1992 the share of the State sector in the GDP was 7.2 per cent a decrease from the average for the previous decade of 8.9 per cent. In 1992 the share of State owned enterprises in total imports had amounted to 2 per cent. Ecuador provided the following list of State enterprises or State participation in enterprises involved in domestic and international trade: Empresa Nacional de Ferrocarriles del Estado (Transport of passengers, cargo and mail); Transportes Aéreos Militares Ecuatorianos (Transport of passengers, cargo and mail); EMETEL (Regulation and operation of the telecommunications system and development of its infrastructure); Empresa de Desarrollo Forestal CEM (Forestation and reforestation for the production of forestry products); Empresa Pesquera Nacional (Fishing, processing and marketing of fish); Empresa Estatal de Petróleos del Ecuador (Exploration and extraction of hydrocarbons); Compañía Minera de Economía Mixta (Gold mining); Servicios Mineros de Economía Mixta (Installation of mineral processing and

smelting plants); Azucarera Tropical Americana (Extraction and processing of cane sugar); Planta Hortifrutícola Ambato (Production, processing and marketing of fruits and vegetables); Alcoholes del Ecuador (Production of 96% alcohol); Empresa de Abonos del Estado (Production of organic, mineral and chemical-organic fertilizers); Fertilizantes Ecuatorianos CEM (Import of raw materials, transformation and marketing of fertilizers); CEM Cementos Selva Alegre (Production of cement); Cementos Cotopaxi C.A. (Production of cement); Empresa de Cementos Chimborazo C.A. (Production of Portland cement); Industria Guapán S.A. (Production of grey cement); Ecuatoriana de Siderúrgica S.A. (Iron and steel); Empresa Nacional de Almacenamiento y Comercialización de Productos Agrícolas (Storage and marketing of agricultural goods); Empresa de Suministros del Estado (Marketing of office supplies, materials and equipment); Empresa Ecuatoriana de Aviación (Transport of passengers, cargo and mail); Astilleros Navales Ecuatorianos (Ship building). One member of the Working Party requested information about the status of the enterprises under control or with participation of the Ecuadorean Army Industry Directorate (DINE). In response the representative of Ecuador assured the Working Party that those enterprises were in full conformity with Article XVII of the GATT 1994 and with the Understanding on the Interpretation of Article XVII of the GATT 1994. The Working Party took note of these assurances.

#### *EMETEL*

64. Members of the Working Party referred to the Ecuadorean Telecommunications Company (EMETEL) and asked questions about its legal basis and framework, the reasons for its creation, its procurement and contract practices and procedures, the rationale for the import licensing requirements; the standards for the equipment employed in the telecommunications sector and their conformity with international standards, etc. Some of these members considered that the procedures and practices of EMETEL were not GATT consistent. In their view EMETEL should be notified under the provisions of Article XVII of the General Agreement. With regard to the standards for equipments in the telecommunications sector, assurances were requested that they would conform with international standards. It was also noted in this respect that, Ecuador should be prepared to adhere to the Agreement on Technical Barriers to Trade. In response the representative of Ecuador stated that telecommunications were a service of public necessity and utility and were also a matter of public security, and hence exclusively the responsibility of the State. Consequently, the State must direct, regulate and control all telecommunications activities, in accordance with the Constitution and the Special Law on Telecommunications, No. 184 of 8 August 1992 (Official Journal No. 996 of 10 August 1992). For the importation of certain items of telecommunications equipment, prior authorization was required from the Telecommunications Department, and the enterprise must have the necessary concession to install the equipment. Ecuador had established a legal framework that was in keeping with the importance, complexity, scale, technological level and specific-

ity of telecommunications services. The Special Law on Telecommunications had established the State Telecommunications Company (EMETEL), with its own legal personality, equity and resources, and administrative, economical, financial and operational autonomy. Company management was subject to this Law, to the regulations issued for the purpose, to the standardization, certification and control of the Telecommunications Department, and to other operational standards established by the various organs of the State Company. The EMETEL Executive Committee was responsible for setting and approving the administrative, financial and technical standards, rules and procedures, while the Executive Director was responsible for planning and development of the company's telecommunications systems. The technical standards applied by EMETEL for the procurement of goods and services were based on the standards laid down by the CCITT and the CCIR. Ecuador assured the contracting parties that its standards were consistent with international standards within the framework of the International Telecommunications Union. According to the Law, the contracts concluded by EMETEL were not subject to the government procurement laws and regulations. EMETEL carried on its activities in accordance with business management criteria. The procurement practices of EMETEL were guided exclusively by commercial considerations, without discrimination of any kind. For enterprises of other contracting parties this ensured transparency and free competition conditions with regards to tenders.

65. The representative of Ecuador gave the assurance that his Government would observe the provisions of the WTO including Article XVII of the General Agreement 1994 and Article VIII of GATS including notification and the description of State trading activities for all the enterprises listed in the preceding paragraphs 63 and 64 as of WTO accession. The Working Party took note this commitment.

### *Integration Agreements*

66. Some members of the Working Party noted Ecuador's participation in a number of regional integration and preferential trade agreements. In particular, questions referred to the GATT consistency of the Latin American Integration Association (LAIA) and the Cartagena Agreement, their justification under Article XXIV of the GATT, the operation of various mechanisms in force in the context of the integration processes, and the fulfilment of the notification requirements under the GATT. With regard to the Cartagena Agreement some members enquired about the status of implementation of the Common External Tariff (CET), progress made in the trade liberalization within the Andean Group, and aspects such as the scope and nature of the rules on "unfair trade competition" among the members, the common regime for the treatment of foreign capital and trade marks, patents, licences and royalties; rules of origin and local content requirements, etc. Some other members of the Working Party said that in their opinion the examination of the regional integration agreements of which Ecuador was a member had been undertaken in the appropriate GATT bodies and

therefore would be beyond the mandate of the Working Party. The representative of Ecuador responded that contracting parties members of the Latin American Integration Association (LAIA) and the Cartagena Agreement complied with the relevant obligations under the provisions of the General Agreement and the legal instruments negotiated under its auspices, including the Enabling Clause Decision. Information concerning developments under these Agreements was submitted to the contracting parties regularly. Reports had been submitted by the member states of LAIA and the Andean Group in 1992 (L/6985 and Add.1 and L/7088 and L/7089, respectively).

67. With regard to the Latin American Integration Association (LAIA) set up by the 1980 Treaty of Montevideo to replace the Latin American Free-Trade Association (LAFTA) of 1960, the representative of Ecuador said that the long-term goal of LAIA was the gradual and progressive creation of a Latin American common market. The instruments provided for achieving this goal were regional scope agreements, in which all member countries participated, and partial-scope agreements which concerned solely their signatories. These instruments provided for the negotiation of mutual tariff concessions. They also sought to promote economic complementarity and develop economic cooperation. The regional tariff preference was granted according to the level of development of each member country giving or receiving the preference. Under the market opening agreements signed by members of the LAIA in favour of the relatively less-developed countries, one of which was Ecuador, his country had received preferences from the other eight member countries, as set out in Regional Market-Opening Agreement No. 2. All member countries of the Association, had reduced national tariffs with respect to the rest of the world and thus had improved trade conditions for imports from non-preferential trading partners, often to the detriment of margins of preference negotiated among members of the Association and the potential of regional trade. In 1993 the total value of imports by LAIA member countries from outside the Association had totalled US\$61,548 million, an increase of 11 per cent compared with 1992.

68. With regard to the Cartagena Agreement, the representative of Ecuador recalled that this subregional economic integration agreement was originally signed by Bolivia, Chile, Ecuador and Peru. Later on Chile had withdrawn and Venezuela had joined in. The basic objectives of the Agreement were to promote and achieve balanced development among the member countries, to accelerate growth and generate employment, to reduce external vulnerability and improve the countries' international economic standing and to strengthen subregional solidarity. It was an advanced integration process in Latin America and constituted an open and competitive rather than a defensive model of integration. It sought greater participation in the world economy and one of its goals was to become a customs union. For this purpose in March 1993, the Commission of the Cartagena Agreement had adopted Decision 335 establishing the Common External Tariff (CET), which Ecuador would implement as of 1 February 1995. Within the Andean Group region goods moved freely without tariffs or restrictions of any kind. In response to questions regarding the exemptions from the CET allowed to

Ecuador, he said that Article 3 of Decision 335 of the Commission of the Cartagena Agreement had allowed Ecuador as a relatively less developed country to maintain a temporary rate of 5 per cent below the CET levels for a list of products, subject to review by 31 December 1996 at the latest. This matter was currently under negotiation. Moreover, since the entry into force of Decision 232 of the Commission of the Cartagena Agreement, the Andean Group member countries did not have the right to establish duty-free exemptions that infringed sub-regional tariff commitments, except in the cases provided for by the Decision 335 or by Decision 322 relating to the negotiations with the LAIA member countries. The preferences negotiated under the LAIA partial-scope agreements were negotiated taking account the member countries' tariff and the maintenance of margins of preference. He added that Ecuador applied the rules of origin established by the Cartagena Agreement which were based on the general principles of change of tariff heading, processing and greater incorporation, and indicative lists, set out in Decision 293 of the Commission of the Cartagena Agreement issued on 4 April 1993. Decision 293 of the Cartagena Agreement established rules for the determination of the origin of goods, for the purposes of the Andean Liberalization Programme.

69. Some members of the Working Party noted that Ecuador's participation in a number of regional integration and preferential trade agreements appeared to influence Ecuador's negotiations of the conditions for accession to the General Agreement and the WTO. They expressed concern that regional agreements were being cited as a factor limiting Ecuador's flexibility in the market access negotiations. Other members of the Working Party recalled that both the General Agreement and the WTO Agreement had recognized the desirability of trade liberalization in the framework of regional agreements. They added that the existence of regional agreements and in particular their preferential tariff rates could not be considered as constraining the sovereign approach of members to market access negotiations.

70. The representative of Ecuador stated that his Government would use its best efforts to ensure that the WTO provisions for notification, consultation, and other requirements concerning preferential trading systems, free trade areas, and customs unions of which Ecuador is a member are met e.g., Article XXIV of the GATT 1994, Article V of GATS and paragraph 3 of the Enabling Clause. The Working Party took note of this commitment.

#### *General Agreement on Trade in Services (GATS)*

71. Several members of the Working Party expressed interest in entering into negotiations with Ecuador with regard to services and requested information concerning the regulations applicable to the various services sectors.

72. The representative of Ecuador noted that the Law on Financial Institutions had set liberal criteria for the organization and operation of banks, financial companies, factoring companies, leasing companies and other financial intermediar-

ies. The Securities Market Law of 28 May 1993 regulated securities exchanges, securities houses and other intermediaries, investment funds, the issue of bonds, securities market registration, etc. National treatment was established by Article 22 of the Law on Financial Institutions which stipulates that "a foreign financial institution operating in Ecuador as an institution of the private financial system shall enjoy the same rights and be subject to the same obligations, laws, rules and regulations as are applied to national financial institutions". National treatment were also provided for in Article 44, which stipulates that foreign investment in the institutions subject to the control and supervision of the Office of the Superintendent of Banks shall not require prior authorization from any State body, and that foreign investors shall enjoy the same rights and be subject to the same obligations as national investors. The Law also regulates capital investment abroad by institutions of the national financial system, without discrimination between national and foreign institutions, and permits free capital investment outside the country. With regard to insurance, the Ecuadorean Government was currently considering new provisions and legislation in the insurance sector. With regard to professional services, the regulations controlling foreign labour activities, published in the Official Journal No. 509 of 19 January 1978 as Ministerial Decision 1806 of the Ministry of Labour, stipulate in Article 4 that any foreigner wishing to work in Ecuador must hold the appropriate visa, fill in the forms provided for each case by the Ministry of Labour and submit the necessary certificates in support of his application. This provision also applies to the organized immigration of professionals, technicians and other persons assisted by international bodies recognized by Ecuador. The above-mentioned regulations provide for a *Carnet Ocupacional* (work permit), the only official document authorizing foreigners to work in the country. Professionals or technicians must, where appropriate, submit a certificate from an educational institution or an association authorizing them to carry out their professional activity. In the specific case of auditing services for financial institutions, it was also necessary to register with the Office of the Superintendent of Banks and to obtain the corresponding authorization. With regard to maritime transport, Article 13 of the Law on the Simplification of Exports and Water Transport, published in the Official Journal No. 901 of 25 March 1992, stipulates that water transport to and from Ecuador shall be based on the principle of effective reciprocity and shall be subject to the provisions of the conventions on water transport to which Ecuador is party. Effective reciprocity is understood to mean access by foreign ships transporting imported or exported cargo generated by Ecuador under the same conditions as those granted by the foreign country in question to ships sailing under the Ecuadorean flag or to ships chartered or operated by Ecuadorean shipping companies. The *Consejo Nacional de la Marina Mercante y Puertos* (National Merchant Navy and Port Council) may impose temporary restrictions on foreign companies or vessels sailing under the flag of a third country when such country imposes similar restrictions on ships belonging to, or chartered or operated by, Ecuadorean shipping companies. In no case will free competition in export shipping be affected. The above-mentioned Law contains a cargo reservation with respect to hydrocarbons. With regard to land transport, Decision 257 of the Board of the Cartagena Agreement on the

International Transport of Goods by Road stipulates that under no circumstances shall restrictions be imposed on the facilities for free transit and transport of persons, vehicles or goods applicable among the Andean countries or with respect to third countries. This form of transport can only be operated by an authorized carrier. With regard to air transport, with the adoption on 16 May 1991 of the Open Skies Agreement (Decision 297 of the Commission of the Cartagena Agreement), the countries of the Andean Group had established a single air space permitting the free air traffic of passengers, cargo and mail in aircraft from and to each of the international airports located in the Andean subregion. This decision stipulates that the member countries of the Andean Group shall grant free exercise of the rights relating to the third, fourth and fifth freedoms of the air on regular passenger, cargo and mail flights made within the subregion. With regard to telecommunications, in accordance with the Constitution and the Special Law on Telecommunications, No. 184 of 8 August 1992 (Official Journal No. 996 of 10 August 1992), without prejudice to the constitutional reservation in favour of the State with respect to the economic exploitation of natural resources and of the services mentioned in Article 46, paragraph 1 of the Constitution, the State may delegate the provision of telecommunication services to private enterprises.

73. The representative of Ecuador said that in conformity with paragraph 5 of the Final Act of the Uruguay Round, his Government had submitted a schedule of specific commitments in the field of services circulated in document L/7566. Some members noted that, as agreed by the Preparatory Committee for the World Trade Organization, following the conclusion of the negotiations pursuant to the technical verification process, the schedule had been approved by the Preparatory Committee for the WTO. The offer on financial services had been presented in accordance with the Second Annex on Financial Services and the Decision on Financial Services. After becoming a WTO Member, Ecuador would participate in the negotiations on maritime transport services, basic telecommunications, financial services and movement of natural persons.

### *Investment Régime*

74. Some members of the Working Party asked information about the legal framework for investment in Ecuador, whether there was preferential taxation treatment for export related investments, the nature of tax benefits, the existence of local content regulations, export performance requirements, national treatment, restrictions on remittance of profits, barriers to foreign investment, etc. In response the representative of Ecuador said that without prior approval, direct foreign investment could be made in all sectors of the economy under the same conditions as investment by Ecuadorean natural or legal persons. The sole areas where foreign investment remained prohibited were defence activities, communication media and internal air transport, while minority shareholding was permitted in the fishing sector. Under Article 18 of the Constitution, foreign natural or legal persons may not directly or indirectly acquire or retain ownership or other real rights relating to immovable property, nor rent such property, obtain the use

of water, establish industries or farms or conclude contracts relating to non-renewable natural resources and in general to products of the sub-soil and all minerals or substances distinct in nature from the soil, in the frontier areas and the reserved areas established by the competent bodies, unless in any of the above cases authorization has been obtained in accordance with the law. The Ecuadorean legislation introduced in January 1993 Decree 415 had lifted the barriers to foreign investment. The current rules allowed the unrestricted repatriation of profits, had removed the restriction on foreign shareholdings in excess of a limit of 49 per cent in any enterprise, and had eliminated the requirement of prior approval of investment by the competent Ministry for most sectors. Investments were registered solely with the Central Bank of Ecuador, and technology contracts with the Ministry of Industry, Trade, Integration and Fishery (MICIP). There were no restrictions on investments related to local content requirements nor concerning export performance requirements. He added that foreign investment was allowed in the financial sector. With the approval of the Securities Market Law, the tax system applied to foreign investors was now the same as that applied to national investors. With regard to any possible restrictions on share holding by foreigners, he stated that as a general rule, current Ecuadorean legislation did not establish restrictions on foreign shareholding in industry. Investments in the fisheries sector were an exception to this rule. In accordance with Article 19 of the Law on Fishing and Fishery Development, this activity was reserved to national enterprises or joint ventures (in which foreign shareholding must not exceed 49 per cent). For a foreign enterprise to engage in non-traditional fishery activity, it had to obtain authorization from the National Council for Fishery Development. With regard to limitations on the remittance of profits by foreign investor, he stressed that Ecuadorean legislation did not provide for any limitation or restriction on foreign investors remittance of their profits abroad. Concerning the tax treatment for exports, he said that tax benefits for specific industries had been eliminated and export companies were liable to tax; however, like in most countries, exports were exempted from internal taxes. Moreover, foreign enterprises did have access to the export promotion and development mechanisms under the same conditions on Ecuadorean or joint enterprises. He noted that Decision 291 of the Commission of the Cartagena Agreement had adopted a common regime for the treatment of foreign capital.

75. In conclusion the representative of Ecuador said that his Government would comply with the commitment in respect of transparency and notification contained in Article X of the GATT 1994 and in Article 6 of the Agreement on Trade Related Investment Measures (TRIMS). Moreover, Ecuador had reviewed the Agreement on Trade-Related Investment Measures and was willing to comply with the commitments it lays down as soon as it becomes a WTO member. With respect to national treatment and quantitative restrictions, Ecuador would undertake not to maintain measures inconsistent with the provisions of Articles III and XI of GATT 1994. An Andean Group agreement between Colombia, Venezuela and Ecuador for the automotive sector, signed on 13 September 1993, has the goal to adopt a common policy in order to promote the efficiency of the auto-

mobile industry and to take advantage of the subregional market in equal conditions of competitiveness. This agreement included for Ecuador a national content requirement for assembly enterprises of 35 per cent that should be increased to 40 per cent by 31 December 1995. This measure covers both national and foreign assembly enterprises.

76. The representative of Ecuador acknowledged that the trade related investment measures described in this paragraph were inconsistent with the provisions of the Agreement on TRIMS. He confirmed that these measures would be eliminated prior to 1 January 2000. Regarding this programme, Ecuador committed to provide the information in Annex III<sup>1</sup> to the Council for Trade in Goods for the information of the TRIMS Committee. During the period in which these measures are applied, Ecuador shall not modify the terms so as to increase the degree of inconsistency with the provisions of the TRIMS Agreement, in particular Article 2. In order not to disadvantage established enterprises which are subject to these measures, Ecuador will consider applying the same measures to the investments during the transitional period (i) where the products of such investment are like products to those of the established enterprises, and (ii) where necessary to avoid distorting the conditions of competition between the new investment and the established enterprises. Ecuador will notify any TRIM so applied to a new investment to the Council for Trade in Goods. The terms of such a TRIM shall be equivalent in their competitive effect to those applicable to the established enterprises, and it shall be terminated at the same time. The Working Party took note of these commitments.

#### *Trade Related Aspects of Intellectual Property Rights (TRIPS)*

77. Some members of the Working Party asked questions on the status of intellectual property protection in Ecuador including to what extent pharmaceutical products, microorganisms and plant species were protected, whether Ecuadorean legislation gave adequate protection to software, whether piracy in this area was effectively prevented and prosecuted. Ecuador was asked to address the issue of how its laws and regulations concerning the protection of intellectual property were consistent with the provision of the WTO TRIPS Agreement and to describe legislation pending which would fully address this issue. In response the representative of Ecuador said that Ecuadorean law on intellectual property rights consisted primarily of the following texts. The Copyright Law, enacted by Supreme Decree No. 610 and published in the Official Journal, No. 0149 of 13 August 1976, and the regulations thereto, issued through Decision (Acuerdo) No. 10824 and promulgated in Official Journal No. 4945 of 13 December 1977. Supreme Decree No. 2821 published in Official Journal No. 0735 of 20 December 1978 had amended this Law, including in it protection against piracy in the reproduction, distribution or sale of illegal copies of phonograms. On 17 December

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<sup>1</sup> Not reproduced.

1993, Ecuador and the Andean Group member countries had adopted Decision 351 establishing a common regime on copyright and neighbouring rights. With regard to the rights that are recognized and protected, the Andean Group Decision recognizes authorship of the work, integrity and other rights of a moral nature that may be exercised by the author, his heirs or the State in their absence. It also recognizes the ownership rights consisting in the exclusive right of the author to authorize or prohibit the reproduction, marketing, translation, arrangement or transformation of his works. The duration of the rights recognized in Decision 351 shall be no less than the life of the author and 50 years after his death. When ownership of the rights is vested in a legal person, the period shall be no less than 50 years from the date of making of the work in the form of disclosure or publication of the work. The protection granted by this common regime covers literary, artistic and scientific works that may be reproduced or divulged by any means known or that becomes known. Such works include works expressed in writing (books, pamphlets, etc); lectures, addresses, speeches; dramatic, dramatico-musical and choreographic works and entertainments in dumb show; fine arts works, drawings, paintings, sculptures, engravings, etc; illustrations, maps, sketches; computer programmes (software); anthologies or compilations of various works and data bases which by reason of the selection or arrangement of their contents constitute personal creations. Decision 351 also grants protection of neighbouring rights, which are the rights of persons who take part not in the creation of the works but rather in their dissemination. The protection covers performers, producers of phonograms and broadcasting organizations. The new common regime for industrial property adopted by the Commission of the Cartagena Agreement by Decision 344 had come into force in January 1994. This new regime contains rules not only governing the grant of trade marks and patents but also protecting for the first time industrial secrets and appellations of origin. With regard to the term of patent protection, the new decision brings the Andean regime into line with the provisions of the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights, extending the term to 20 years counted from the filing date. The legislation in force in the common regime for industrial property established by Decision 344 provides protection for industrial designs and utility models. A patent on a utility model is granted for 10 years to any new form, configuration or arrangement of elements of any device, instrument or mechanism or other object or any part thereof enabling it to function better or differently. Utility model patents do not cover processes or matters that cannot be protected by an inventor's patent. Sculptures, architectural works, paintings, engravings, lithographic works or any other object of a purely aesthetic nature are not considered utility models. Decision 344 provides in Article 81 that "signs that are perceptible, sufficiently distinctive and capable of graphical representation may be registered as trademarks." Decision 344 states that registration of a trademark shall be for a term of 10 years from the date of registration and may be renewed automatically for successive periods of 10 years without having to prove use of the trademark. In line with the Agreement on Trade-Related Aspects of Intellectual Property Rights, the industrial property regime in force in Ecuador through the adoption of Decision 344 in-

cludes a chapter on industrial secrets, protecting a person in control of an industrial secret against disclosure, acquisition or use of the secret without his consent.

78. The representative of Ecuador confirmed that the date of application of the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights for Ecuador will be no later than 31 July 1996. The Working Party took note of this commitment.

### *Notifications*

79. The representative of Ecuador said that no later than the earlier of the date of entry into force of the Protocol of Accession or the date specified below for the relevant provision, Ecuador shall submit notifications (other than notifications required to be made on an ad hoc basis) pursuant to the following provisions of Multilateral Trade Agreements for which the date specified in those provisions is earlier to the date of entry into force of the Protocol of Accession: Agreement on Implementation of Article VI of GATT 1994: 1 August 1995; Agreement on Safeguards, Articles 11.1, 11.2, 12.6 and 12.7: 1 August 1995; Agreement on Subsidies and Countervailing Measures: 1 August 1995; Agreement on Technical Barriers to Trade: 1 September 1995; Agreement on Textiles and Clothing: 1 September 1995. No later than the earlier of 1 August 1995 or the date of entry into force of the Protocol of Accession, Ecuador shall submit all other notifications other than notifications required to be made on an ad hoc basis as required by the WTO Agreement. The Working Party took note of these commitments.

80. Ecuador is committed to notify the Secretariat annually of the implementation of the phased commitments with definitive dates for compliance referred to in paragraphs 9, 19, 34, 48, 59, 75, 77 and 78 of this Report and to identify any delays in implementation together with the reasons therefore.

### *Conclusions*

81. The Working Party took note of the explanations and statements of Ecuador concerning its foreign trade régime, as reflected in this report. The Working Party took note of the commitments given by Ecuador in relation to certain specific matters which are reproduced in paragraphs 10, 14, 17, 19, 21, 29, 31, 34, 38, 41, 48, 53, 57, 59, 61, 65, 70, 76, 78, 79 and 80 of this report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of Ecuador to the WTO.

82. Having carried out the examination of the foreign trade régime of Ecuador and in the light of the explanations, commitments and concessions made by the representative of Ecuador, the Working Party reached the conclusion that Ecu-

dor be invited to accede to the Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix<sup>2</sup> to this report, and takes note of Ecuador's Schedule of Specific Commitments on Services (document WT/L/77/Add.2) and its Schedule of Concessions and Commitments on Goods (document WT/L/77/Add.1) that are annexed to the Protocol. It is proposed that these texts be adopted by the General Council when it adopts the report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Ecuador which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Ecuador to the Agreement Establishing the WTO.

*Decision of the General Council on 16 August 1995  
(WT/ACC/ECU/5)*

1. The General Council,
2. *Having regard* to the results of the negotiations directed towards the establishment of the terms of accession of the Republic of Ecuador to the Agreement Establishing the World Trade Organization and having prepared a Protocol for the Accession of Ecuador,
3. *Decides*, in accordance with Article XII of the Agreement Establishing the World Trade Organization, that the Republic of Ecuador may accede to the Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

*Extension of Time Limit for Acceptance  
Decision of the General Council on 13 December 1995  
(WT/ACC/ECU/7)*

1. *Considering* that the Government of Ecuador has requested that the time-limit prescribed in paragraph 7 of the Protocol for the Accession of Ecuador to the Agreement Establishing the World Trade Organization be extended to 31 March 1996,
2. The General Council,
3. *Decides* to extend the time-limit for acceptance by the Government of Ecuador of the Protocol for the Accession of Ecuador to the Agreement Establishing the World Trade Organization until 31 March 1996.

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<sup>2</sup> Not reproduced.

**GENERAL COUNCIL****AGREEMENT ON THE TRANSFER OF ASSETS, LIABILITIES RECORDS,  
STAFF AND FUNCTIONS FROM THE INTERIM COMMISSION OF THE  
INTERNATIONAL TRADE ORGANIZATION AND THE GATT TO THE  
WORLD TRADE ORGANIZATION**

*Decision Approved by the General Council on 31 January 1995  
(WT/L/36)*

1. The CONTRACTING PARTIES to the General Agreement on Tariffs and Trade (hereinafter referred to as the "GATT 1947"), the Executive Committee of the Interim Commission of the International Trade Organization (hereinafter referred to as the "ICITO") and the Preparatory Committee for the World Trade Organization (hereinafter referred to as the "Preparatory Committee"),
2. *Noting that:*
  - Articles VI:1 and XVI:2 of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement") provide that there shall be a Secretariat of the WTO and that, to the extent practicable, the Secretariat of the GATT 1947 shall become the Secretariat of the WTO;
  - the duties of the Secretariat of the GATT 1947 are presently being performed by the staff of the ICITO;
  - the Director-General of the WTO, according to Article VI:3 of the WTO Agreement, will be able to appoint the members of the staff of the WTO Secretariat only after the Ministerial Conference or General Council of the WTO has adopted regulations governing the duties and conditions of service of the staff;
3. *Recalling* that paragraph 8 (a) of the Ministerial Decision on the Establishment of the Preparatory Committee adopted on 14 April 1994 authorizes the Preparatory Committee to take, as appropriate, decisions in advance of the establishment of the WTO, *inter alia*, on financial regulations, the budget estimates for the first year of operation of the WTO, the transfer of the property of the ICITO and the GATT 1947 to the WTO, and the terms and conditions of the transfer of ICITO staff to the Secretariat of the WTO;
4. *Agree* as follows:
5. As from the date of entry into force of the WTO Agreement, all assets and liabilities of the GATT 1947 and the ICITO shall be assets and liabilities of the WTO. The assets and liabilities of the GATT 1947 and the ICITO shall include the assets held and the liabilities incurred in the name of ICITO/GATT.
6. The Director-General of the WTO, acting in accordance with the provisions of Articles VI:3 and XVI:2 of the WTO Agreement, shall appoint the

members of the staff of the Secretariat of the WTO on or before 30 June 1995, provided that the General Council of the WTO has adopted prior to that date regulations governing the duties and conditions of service of the members of the staff of the WTO Secretariat, including regulations on contract of employment policy, salaries and pensions.

7. The staff of the ICITO shall perform the duties of the Secretariat of the WTO until the appointment of the staff of the Secretariat of the WTO. The staff of the ICITO shall continue to perform the duties of the GATT 1947 Secretariat and those of the Secretariat of the bodies established under the Tokyo Round Agreements until the appointment of the staff of the Secretariat of the WTO; thereafter these duties shall be performed by the Secretariat of the WTO.

8. The ICITO is herewith dissolved as of the date on which the members of the Secretariat of the WTO are appointed. On that date the records of the ICITO shall be transferred to the WTO.

9. The Director-General of the WTO shall perform the depositary functions of the Director-General of the GATT 1947 after the date on which the legal instruments through which the contracting parties apply the GATT 1947 are terminated. On that date the records of the GATT 1947 shall be transferred to the WTO.

10. There shall be a common budget for the GATT 1947 and the WTO from the date of entry into force of the WTO Agreement until the date as of which the legal instruments through which the contracting parties apply the GATT 1947 are terminated. During that period the basis for assessment of the contracting parties to the GATT 1947, of the Members of the WTO and of contracting parties that are also Members of the WTO shall be the same, and a single payment to the WTO shall be due by all contracting parties to the GATT 1947 and Members of the WTO.

11. The Director-General of the GATT 1947 and, after the date of the entry into force of the WTO Agreement, the Director-General of the WTO are herewith authorized to take, in consultation with the Committees on Budget, Finance and Administration of the GATT 1947 and the WTO, the necessary actions to adjust the contractual arrangements of the ICITO and of the GATT 1947, including the arrangements on financial and personnel matters, to the changes provided for under paragraphs 1 to 6 above.

12. This Agreement shall initially apply until the date of the first meeting of the General Council of the WTO. It shall remain in force beyond that date provided that it is approved by the General Council of the WTO.

13. The text of this Agreement, done in a single copy, in the English, French and Spanish languages, each text being authentic, shall be deposited with the Director-General of the GATT 1947.

14. DONE at Geneva this eighth day of December one thousand nine hundred and ninety-four.

For the ICITO	For the GATT 1947	For the Preparatory Committee
Executive Secretary	Chairman of the CONTRACTING PARTIES	Chairman

#### HEADQUARTERS AGREEMENT

*Decision of the General Council on 31 May 1995  
(WT/L/69)*

1. The General Council *approves* the Headquarters Agreement between the World Trade Organization and the Swiss Confederation contained in WT/GC/1 and Add.1 and the Infrastructure Contract between the Swiss Authorities and the World Trade Organization contained in WT/GC/2, and authorizes the Chairman of the General Council, H.E. Mr. K. Kesavapany, and the Director-General, Mr. R. Ruggiero, to accept these legal instruments on behalf of the WTO.

#### AGREEMENT BETWEEN THE WORLD TRADE ORGANIZATION AND THE SWISS CONFEDERATION

to determine the legal status of the Organization in Switzerland

*Decision of the General Council on 31 May 1995  
(WT/GC/1)<sup>1</sup>*

1. The World Trade Organization,  
of the one part,  
and  
The Swiss Federal Council, on behalf of the Swiss Confederation,  
of the other part,
2. Having regard to the Exchange of letters of 18 August 1977 between the Federal Political Department and the Director-General of GATT concerning the application to GATT of the Agreement of 19 April 1946 on the Privileges and Immunities of the United Nations,

<sup>1</sup> Draft letters, appendixes and annexes not incorporated.

3. Referring to the Marrakesh Agreement Establishing the World Trade Organization and, in particular, to Article VIII
4. Desiring to settle their mutual relationship in a Headquarters Agreement,
5. Have agreed as follows:

## Article 1

### *Definitions*

6. For the purposes of this Agreement, the following expressions shall have the meanings set out below:

The expression "Organization" means the World Trade Organization;

The expression "permanent mission" means the permanent mission to the Organization of a Member of the Organization;

The expression "member of a permanent mission" means a member of a permanent mission to the Organization;

The expression "delegate" means a delegate of a Member of the Organization who is participating in a conference or any other meeting held by the Organization; he is not a member of a permanent mission, does not have his residence in Switzerland and is, in principle, sent from the capital;

The expression "expert on mission" means any person other than an official of the Organization appointed to carry out a specific task for the Organization, or on its behalf, and at its expense;

The expression "private domestic staff" means persons employed in domestic service by a member of a permanent mission and not employed by the Member of the Organization or persons employed in the service of an official of the Organization;

The expression "Swiss authorities" means the competent federal, cantonal or communal authorities;

The expression "Swiss law" means federal, cantonal or communal law;

The expression "unlimited undertaking" means that the beneficiary of this privilege has the right to import and use a second vehicle free of duty for as long as he remains the owner thereof. When the beneficiary has owned a first vehicle acquired duty-free (i.e. subject to a limited undertaking) for more than three years, he may transfer the benefit of the limited undertaking to the second vehicle.

## *I. STATUS, FUNCTIONING, PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION*

## Article 2

### *Legal Personality and Legal Capacity*

7. The Swiss Federal Council acknowledges the international legal personality and the legal capacity within Switzerland of the Organization. In particular, it

shall have the capacity to conclude contracts, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

### Article 3

#### *Freedom of Action*

8. The Swiss Federal Council shall guarantee to the Organization the autonomy and freedom of action to which it is entitled as an intergovernmental organization.

9. In particular, it shall grant to the Organization, as well as to its Members in their relations with the Organization, absolute freedom to hold meetings, including freedom of discussion, decision and publication, on Swiss territory.

### Article 4

#### *Establishment of Permanent Missions*

10. Each Member of the Organization may establish a permanent mission to the latter.

### Article 5

#### *General Provisions on Privileges and Immunities*

11. The Organization shall enjoy privileges and immunities in accordance with this Agreement.

12. The delegates of Members, the officials of the Organization, the members of the Appellate Body and experts on mission shall enjoy privileges and immunities in accordance with this Agreement.

13. The officials of the Organization shall be treated with the respect which is their due and all appropriate actions shall be taken to prevent any attack on their person, their freedom and their dignity. Without prejudice to their privileges and immunities, the officials of the Organization have a duty to respect Swiss laws and regulations.

### Article 6

#### *Inviolability of the Premises*

14. The buildings or parts of buildings and adjoining land which, whoever may be the owner thereof, are used for the purposes of the Organization shall be inviolable. No agent of the Swiss public authorities may enter therein without the express consent of the Director-General of the Organization or, in the event of his being prevented from attending to his duties, his replacement or the person designated by him.

15. The buildings or parts of buildings and adjoining land which, whoever may be the owner thereof, are used by the Organization shall be immune from any form of search, requisition, confiscation and expropriation.

16. The Organization shall exercise supervision of and police power over its premises.

## Article 7

### *Inviolability of the Archives*

17. The archives of the Organization and, in general, all documents and any data media belonging to the Organization or in its possession shall be inviolable at all times and in all places.

## Article 8

### *Immunity from Jurisdiction and Execution*

18. The Organization shall enjoy immunity from jurisdiction and execution, save to the extent that such immunity is formally waived in individual cases by the Director-General of the Organization or, in the event of his being prevented from attending to his duties, his replacement or the person designated by him.

19. The buildings or parts of buildings, adjoining land as well as the movable property which are used by the Organization, whoever may be the owner thereof, wherever located and by whomsoever held, shall be immune from any form of seizure and any other form of interference, whether by executive, administrative, judicial or legislative action, except as provided for in paragraph 1.

## Article 9

### *Tax Treatment*

20. The Organization, its assets, income and other property, shall be exempt from direct federal, cantonal and communal taxes. With regard to buildings, however, such exemption shall apply only to those owned by the Organization and occupied by its services and to income deriving therefrom. The Organization shall not be subject to taxation on the rent that it pays for premises rented by it and occupied by its services.

21. The Organization shall be exempt from indirect federal, cantonal and communal taxes. It shall, in particular, be exempt from the value-added tax (VAT) with respect to all purchases of goods for its official use and all services provided for its official use. This exemption shall be granted by means of deduction at source for amounts of not less than 100 francs per invoice, without upper limit. This amount may be revised, in consultation with the Organization, initially five years after the entry into force of this Agreement, for administrative reasons, depending on the movement of the cost of living in Switzerland. VAT shall be deducted without lower limit from the bills of the PTT and *services industriels* (utilities).

22. The Organization shall be exempt from all federal, cantonal and communal dues, except dues charged as the price of actual services rendered.

23. Where appropriate, the exemptions mentioned above may take the form of reimbursement, at the request of the Organization and according to a procedure to be determined by the Organization and the competent authorities.

## Article 10

### *Customs Treatment*

24. The treatment by customs authorities of articles intended for the official use of the Organization shall be governed by the relevant provisions of Swiss law applicable to intergovernmental organizations. The Swiss Federal Council undertakes to grant the Organization customs privileges which are at least as favourable as those provided for, at the time of entry into force of this Agreement, by the Ordinance of 13 November 1985 concerning the preferential customs treatment of international organizations, of States in their relations with such organizations and of the special missions of foreign States.

## Article 11

### *Publications*

25. The importation of publications intended for the Organization and the exportation of publications of the Organization shall not be subject to any restriction.

## Article 12

### *Free Disposal of Funds*

26. The Organization may receive, hold, convert and transfer all funds, gold, currency, cash and other transferable securities and dispose freely thereof, both within Switzerland and in its relations with foreign countries.

## Article 13

### *Communications*

27. The Organization shall benefit in respect of its official communications from treatment at least as favourable as that which is granted to other intergovernmental organizations in Switzerland, in so far as such treatment is compatible with the Convention of the International Telecommunication Union of 22 December 1992.

28. The Organization shall have the right to use codes for its official communications. It shall have the right to send and receive correspondence, including data media, by duly identified couriers or bags enjoying the same privileges and immunities as diplomatic couriers or bags.

29. Official correspondence and other official communications of the Organization, when duly identified, may not be subject to censorship.

30. The Organization shall not be required to obtain approval for user wire facilities (wire-based communications) which it installs and operates exclusively within its buildings or parts of buildings or adjoining land. The user facilities must be installed and operated in such a way as not to endanger persons or property and not to interfere with telecommunications or broadcasting.

31. The use of telecommunications equipment (wire-based and wireless communications) shall be coordinated at a technical level with the Federal Office of Communications and the Swiss postal and telecommunications administration.

#### Article 14

##### *Vehicle Registration*

32. Subject to a check on their roadworthiness, vehicles of the Organization which are admitted in international traffic may be registered in Switzerland without restriction. A Swiss vehicle licence and registration plates shall be required.

#### Article 15

##### *Pension Fund*

33. Any pension fund or provident institution which is officially administered for the benefit of the officials of the Organization shall enjoy the same legal capacity in Switzerland as the Organization. It shall benefit, to the extent covered by its activity on behalf of the officials, from the same privileges and immunities as the Organization itself as far as movable property is concerned.

#### Article 16

##### *Social Security*

34. The Organization, in its capacity as an employer, shall not be subject to Swiss legislation regarding old-age and surviving-dependants insurance, disability insurance, unemployment insurance, the compensation of loss of income scheme, compulsory occupational pension schemes for old age, surviving relatives and disability, and sickness insurance.

35. Those officials of the Organization who do not have Swiss nationality shall not be subject to Swiss legislation regarding old-age and surviving-dependants insurance, disability insurance, unemployment insurance, the compensation of loss of income scheme, compulsory occupational pension schemes for old age, surviving relatives and disability. The situation of officials of Swiss nationality shall be governed by an exchange of letters.

36. The officials of the Organization shall not be subject to the Swiss scheme for compulsory insurance against accident to the extent that the Organization offers them equivalent protection in respect of accident, whether employment-related or not, and employment-related illnesses.

37. The officials of the Organization shall not be subject to the Swiss legislation regarding compulsory sickness insurance.

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II. *PRINCIPLES GOVERNING PRIVILEGES AND IMMUNITIES  
GRANTED TO PERMANENT MISSIONS AND THEIR MEMBERS*

A. *Permanent Missions*

Article 17

*General Provisions on Privileges and Immunities*

38. Permanent missions shall enjoy privileges and immunities in accordance with customary law, the Vienna Convention on Diplomatic Relations of 18 April 1961, which applies by analogy, and relevant provisions of this Agreement.

Article 18

*Tax Treatment*

39. Members of the Organization shall enjoy, with respect to their permanent missions, tax privileges in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961, which applies by analogy.

40. With respect to its permanent mission, a Member of the Organization shall be exempt from value-added tax (VAT) relating to all purchases of goods for its official use and all services provided for its official use. This exemption shall be granted by means of deduction at source for amounts of not less than 100 francs per invoice, without upper limit. This amount shall be aligned with the amount fixed for the Organization in the manner provided for in Article 9 of this Agreement. VAT shall be deducted without lower limit from the bills of the PTT and *services industriels* (utilities).

41. A Member of the Organization shall be exempt from transfer duties in the Cantons of Geneva and Vaud when it requires official accommodation, in its own name, for serving members of its permanent mission.

Article 19

*Customs Treatment*

42. The treatment by customs authorities of articles intended for the official use of the permanent mission shall be governed by article 36 of the Vienna Convention on Diplomatic Relations of 18 April 1961, which applies by analogy, and the relevant provisions of Swiss law applicable to permanent missions. The Swiss Federal Council undertakes to grant permanent missions customs privileges which are at least as favourable as those provided for, at the time of entry into force of this Agreement, by the Ordinance of 13 November 1985 concerning preferential customs treatment of international organizations, of States in their relations with such organizations and of the special missions of foreign States.

## Article 20

### *Exemption from the Requirement to Obtain Approval for User Wire Facilities*

43. A Member of the Organization shall not be required, for the needs of its permanent mission, to obtain approval for user wire facilities (wire-based communications) which it installs exclusively within the permanent mission. The user facilities must be installed and operated in such a way as not to endanger persons or property and not to interfere with telecommunications or broadcasting.

## Article 21

### *Vehicle Registration*

44. Subject to a check on their roadworthiness, vehicles of permanent missions which are admitted in international traffic may be registered in Switzerland without restriction. A Swiss vehicle licence and registration plates shall be required.

## Article 22

### *Dispute Settlement*

45. With regard to the provisions relating to permanent missions, any differences of opinion shall be settled by the usual diplomatic channels.

## *B. Members of Permanent Missions*

## Article 23

### *General Provisions on Privileges and Immunities*

46. The members of permanent missions shall enjoy privileges and immunities in accordance with customary law, the Vienna Convention on Diplomatic Relations of 18 April 1961, which applies by analogy, and relevant provisions of this Agreement.

47. The members of permanent missions shall be treated with the respect which is their due and all appropriate actions shall be taken to prevent any attack on their person, their freedom and their dignity. Without prejudice to their privileges and immunities, the members of permanent missions have a duty to respect Swiss laws and regulations.

## Article 24

### *Tax Treatment*

48. The members of permanent missions shall enjoy the tax privileges specified in the Vienna Convention on Diplomatic Relations of 18 April 1961, which applies by analogy.

49. The members of permanent missions who have diplomatic status shall be exempt from value-added tax (VAT) with respect to purchases for their strictly personal use and services supplied for their strictly personal use. This exemption

shall be granted by means of deduction at source for amounts of not less than 100 francs per invoice, without upper limit. This amount shall be aligned with the amount fixed for the Organization in the manner provided for in Article 9 of this Agreement. VAT shall be deducted without lower limit from the bills of the PTT and *services industriels* (utilities).

## Article 25

### *Customs Treatment*

50. The members of permanent missions shall enjoy customs privileges in accordance with Article 36 of the Vienna Convention on Diplomatic Relations of 18 April 1961, which applies by analogy, and the relevant provisions of Swiss law applicable to members of permanent missions. The Swiss Federal Council undertakes to grant members of permanent missions preferential customs treatment which is at least as favourable as that provided for, at the moment of entry into force of this Agreement, by the Ordinance of 13 November 1985 concerning the preferential customs treatment of international organizations, of States in their relations with such organizations and of the special missions of foreign States. In addition, members of permanent missions who have diplomatic status have the right to import and use a second duty-free car subject to an unlimited undertaking (that it may be resold only upon payment of duty) for as long as they remain the owner thereof.

## Article 26

### *Entry, Residence and Departure*

51. The Swiss authorities shall take all the necessary measures to facilitate the entry into, departure from and residence in Swiss territory of the following persons, whatever their nationality:

the members of permanent missions and their family members within the meaning of paragraphs 3 and 4 below;  
private domestic staff;  
personal guests.

52. Applications for visas from the persons mentioned above shall be dealt with as speedily as possible, which in the case of private domestic staff shall not exceed one month after submission of all the necessary documents. The visas shall be issued free of charge except in the case of visas granted to private domestic staff and personal guests.

53. The following persons shall be admitted to Switzerland on the ground of family reunification, provided they live under the same roof as the principal holder of the *carte de légitimation*:

the spouse of the principal holder of the *carte de légitimation*;  
unmarried children up to the age of 25 years.

54. The following persons shall be admitted in exceptional circumstances and shall be granted a *carte de légitimation* of the Federal Department of Foreign Affairs:

unmarried children over the age of 25 who are wholly dependent on the principal holder of the carte de légitimation and live under the same roof as the latter;

wholly dependent ascendants of the principal holder of the carte de légitimation who live under the same roof as the latter.

#### Article 27

##### *Access to the Labour Market*

55. The spouses of members of permanent missions shall enjoy access to the labour market provided they reside in Switzerland under the same roof as the principal holder of the carte de légitimation. This access is granted under special conditions, within the limits of Swiss law, for the duration of the appointment of the principal holder of the carte de légitimation.

56. Children admitted on the ground of family reunification before the age 21 years shall enjoy access to the labour market under the same conditions as spouses, provided they reside in Switzerland under the same roof as the principal holder of the carte de légitimation.

57. The Swiss Federal Council shall establish regulations governing this access to the labour market.

#### Article 28

##### *Vehicle Registration*

58. Subject to a check on their roadworthiness, vehicles of members of permanent missions which are admitted in international traffic may be registered in Switzerland without restriction. A Swiss vehicle licence and registration plates shall be required.

59. For the purposes of paragraph 1 of this article, "members of permanent missions" shall mean members of the diplomatic staff, members of the administrative and technical staff and members of the service personnel, to the extent that such persons are not Swiss nationals or did not have their permanent residence in Switzerland prior to taking up their duties.

### *III. PRIVILEGES AND IMMUNITIES GRANTED TO PERSONS WHO ARE TO ATTEND THE ORGANIZATION IN AN OFFICIAL CAPACITY*

#### Article 29

##### *Privileges and Immunities Granted to the Delegates of Members of the Organization*

60. The delegates of Members of the Organization who are to attend the Organization in an official capacity in order to participate in conferences or meetings shall, while discharging their duties in Switzerland and during their journeys to and from the place of meetings, enjoy the following privileges and immunities:

immunity from personal arrest or detention and immunity from seizure of their personal baggage, save in flagrant cases of criminal offence;  
immunity from jurisdiction, even after their mission has been accomplished, for acts carried out in the discharge of their duties, including words spoken and writings;  
inviolability of all official papers, data media and documents;  
the customs privileges and facilities granted pursuant to the relevant provisions of Swiss law. The Swiss Federal Council undertakes to grant the delegates of Members of the Organization customs privileges which are at least as favourable as those provided for this category of persons, at the time of entry into force of this Agreement, by the Ordinance of 13 December 1985 concerning the preferential customs treatment of international organizations, of States in their relations with such organizations and of the special missions of foreign States.  
exemption for themselves and their spouses from any immigration restrictions, from any formalities concerning the registration of aliens and from any obligations relating to national service;  
the same facilities as regards monetary or exchange regulations as those granted to the representatives of foreign governments on a temporary official mission;  
the right to use codes in official communications and to receive or send documents or correspondence by means of diplomatic couriers or bags.

61. Where the incidence of any form of taxation depends upon residence in Switzerland of the person liable to taxation, periods during which the delegates of Members of the Organization in its principal and subsidiary bodies and at meetings convened by the Organization are present in Switzerland for the discharge of their duties shall not be considered as periods of residence.

62. Privileges and immunities are granted to the delegates of Members of the Organization not for their personal benefit, but to ensure their complete independence in the discharge of their duties with respect to the Organization. Therefore, the competent authorities of a Member of the Organization shall waive immunity in any case where such immunity would hinder the normal course of justice and where it can be waived without prejudice to the purpose for which the immunity has been granted.

### Article 30

#### *Privileges and Immunities Granted to the Director-General of the Organization*

63. The Director-General or, in the event of his being prevented from attending to his duties, his replacement, shall enjoy such privileges and immunities as are granted to diplomatic agents in accordance with international law and usage.

64. The Director-General or, in the event of his being prevented from attending to his duties, his replacement, shall enjoy such facilities as are granted to Heads of Missions.

65. The Director-General shall be exempt from all federal, cantonal and communal taxes on salaries, emoluments and allowances paid to him by the Organization; this exemption shall apply to a person of Swiss nationality, provided the Organization operates an internal taxation scheme. Capital payments due in whatever circumstances by the Organization shall be exempt in Switzerland at the time of payment; however, income derived from such capital payments shall not be entitled to such exemption.

66. The Director-General shall be exempt from value-added tax on articles purchased for his strictly personal use and on all services supplied for his strictly personal use. This exemption shall be granted by means of deduction at source for amounts of not less than 100 francs per invoice, without upper limit. This amount may be revised, in consultation with the Organization, initially five years after the entry into force of this Agreement, for administrative reasons, depending on the movement of the cost of living in Switzerland. VAT shall be deducted without lower limit from the bills of the PTT and *services industriels* (utilities).

67. Customs privileges and facilities shall be granted pursuant to the relevant provisions of Swiss law. The Swiss Federal Council undertakes to grant the Director-General customs privileges which are at least as favourable as those provided for, at the time of entry into force of this Agreement, by the Ordinance of 13 November 1985 concerning the preferential customs treatment of international organizations, of States in their relations with such organizations and of the special missions of foreign States. Furthermore, the Director-General shall have the right to import and use a second car duty free subject to an unlimited undertaking (that it may be resold only upon payment of duty) for as long as he remains the owner thereof.

### Article 31

#### *Privileges and Immunities Granted to the Deputy Directors-General, Members of the Senior Directorate and Officials of Grades P5 and Above*

68. The Deputy Directors-General, members of the senior directorate and international officials of grades P5 and above shall enjoy such privileges and immunities as are granted to diplomatic agents in accordance with international law and usage.

69. Persons mentioned above shall be exempt from all federal, cantonal and communal taxes on salaries, emoluments and allowances paid to them by the Organization; this exemption shall apply to persons of Swiss nationality, provided the Organization operates an internal taxation scheme. Capital payments due in whatever circumstances by the Organization shall be exempt in Switzerland at the time of payment; however, income derived from such capital payments shall not be entitled to such exemption.

70. The above-mentioned persons shall be exempt from value-added tax on articles purchased for their strictly personal use and on all services supplied for their strictly personal use. This exemption shall be granted by means of deduction at source for amounts of not less than 100 francs per invoice, without upper limit.

This amount may be revised, in consultation with the Organization, initially five years after the entry into force of this Agreement, for administrative reasons, depending on the movement of the cost of living in Switzerland. VAT shall be deducted without lower limit from the bills of the PTT and *services industriels* (utilities).

71. Customs privileges and facilities shall be granted pursuant to the relevant provisions of Swiss law. The Swiss Federal Council undertakes to grant these persons customs privileges which are at least as favourable as those provided for, at the time of entry into force of this Agreement, by the Ordinance of 13 November 1985 concerning the preferential customs treatment of international organizations, of States in their relations with such organizations and of the special missions of foreign States. Furthermore, the above-mentioned persons shall have the right to import and use a second car duty free subject to an unlimited undertaking (that it may be resold only upon payment of duty) for as long as they remain the owner thereof.

### Article 32

#### *Privileges and Immunities Granted to Other Officials*

72. The other officials of the Organization, whatever their nationality, shall enjoy:

- immunity from personal arrest or detention for acts accomplished in the exercise of their functions;
- immunity from jurisdiction for acts accomplished in the discharge of their duties, including words spoken and writings, even after such persons have ceased to be officials of the Organization;
- inviolability of all their official papers, data media and documents;
- immunity from seizure or inspection of their official baggage;
- exemption from all federal, cantonal and communal taxes on salaries, emoluments and allowances paid to them by the Organization; this exemption shall apply to persons of Swiss nationality, provided the Organization operates an internal taxation scheme. Capital payments due in whatever circumstances by the Organization shall be exempt in Switzerland at the time of payment; however, income derived from such capital payments shall not be entitled to such exemption.

### Article 33

#### *Privileges and Immunities Granted to Other Non-Swiss Officials*

73. The officials of the Organization who are not Swiss nationals shall:

- together with their spouses and dependent members of their family, not be subject to immigration restrictions and formalities concerning the registration of aliens;
- enjoy, with respect to exchange facilities and facilities regarding the transfer of their assets and property in Switzerland and abroad, the same privileges as those accorded to officials of other international organizations;

together with the dependent members of their families and their household staff, enjoy from the same repatriation facilities as officials of other international organizations;  
be exempt from all obligations relating to national service in Switzerland;  
enjoy the privileges granted pursuant to the relevant provisions of Swiss law which are applicable to intergovernmental organizations. The Swiss Federal Council undertakes to grant this category customs privileges which are at least as favourable as those provided for, at the time of entry into force of this Agreement, by the Ordinance of 13 November 1985 concerning the preferential customs treatment of international organizations, of States in their relations with such organizations and of the special missions of foreign States.

#### Article 34

##### *Privileges and Immunities Granted to Members of the Appellate Body*

74. Members of the Appellate Body shall enjoy such privileges and immunities as are granted to diplomatic agents in accordance with the law of nations and international custom.
75. Article 31 of this Agreement shall apply by analogy.

#### Article 35

##### *Experts on Mission*

76. Experts called upon by the Organization shall enjoy, during the duration of the mission, including travel time, the following privileges and immunities to the extent necessary for the discharge of their duties:

immunity from jurisdiction for acts carried out by them in the course of their missions, including words spoken and writings;  
inviolability of all their official papers, data media and documents;  
exemption from any immigration restrictions, from any formalities concerning the registration of aliens and from any obligations relating to national service;  
the same facilities as regards monetary or exchange regulations as those granted to the representatives of foreign governments on a temporary official mission;  
the same immunities and facilities concerning their personal baggage as those granted to diplomatic agents.

#### Article 36

##### *Military Service of Swiss Officials*

77. The officials of the Organization who are of Swiss nationality remain subject to military obligations in Switzerland in accordance with the provisions of Swiss law in force.
78. A limited number of dispensations from military service (foreign leave of absence) may be granted to Swiss officials of the Organization who exercise

managerial functions within the Organization; the beneficiaries of such leave shall be granted dispensation from periods of service, inspection and compulsory shooting practice outside of periods of service.

79. In the case of officials of Swiss nationality of the Organization who do not belong to the category referred to in paragraph 2 above, the Organization may submit requests for dispensation or change of date of military service for instruction purposes, setting out the reasons therefor and countersigned by the person concerned;

80. Requests for foreign leave of absence and for change of date of military service shall be submitted by the Organization to the Federal Department of Foreign Affairs for submission to the Federal Military Department.

### Article 37

#### *Vehicle Registration*

81. Subject to a check on their road worthiness, vehicles of officials of the Organization which are admitted in international traffic may be registered in Switzerland without restriction. A Swiss vehicle licence and registration plates shall be required.

82. For the purposes of paragraph 1 of this article, "officials of the Organization" shall mean persons who are not Swiss nationals or who did not have their permanent residence in Switzerland prior to taking up their duties.

### Article 38

#### *Purpose of Immunity*

83. The privileges and immunities provided for in this Agreement are not established for the personal benefit of those persons in whose favour they are granted. Their purpose is solely to ensure, in all circumstances, the freedom of action of the Organization and the complete independence of the persons concerned in the discharge of their duties in connection with the Organization.

84. The Director-General or, in the event of his being prevented from attending to his duties, his replacement, shall not only have the right but be under the duty to waive the immunity of an official or an expert in each case when he considers that the immunity would hinder the normal course of justice, and that it can be waived without prejudice to the purpose for which the immunity has been granted. In respect of the Director-General or his replacement, the General Council shall have the power to waive immunity.

### Article 39

#### *Entry, Residence and Departure*

85. The Swiss authorities shall take all the necessary measures to facilitate the entry into, departure from and residence in Swiss territory of all persons, whatever their nationality, who are to attend the Organization in an official capacity, namely:

the delegates of the Members and their spouses;  
the Director-General, Deputy Directors-General, Members of the senior directorate, officials of grades P5 and above and other officials, as well as their family members within the meaning of paragraphs 3 and 4 below;  
members of the Appellate Body;  
experts on missions for the Organization;  
any other person, whatever his nationality, who is to attend the Organization in an official capacity.

86. The Swiss authorities shall take all the necessary measures to facilitate the entry into, departure from and residence in Swiss territory of the following persons, whatever their nationality:

private domestic staff of officials of the Organization;  
personal guests of officials of the Organization.

87. Applications for visas from the persons mentioned above shall be dealt with as speedily as possible, which in the case of private domestic staff shall not exceed one month after submission of all the necessary documents. The visas shall be issued free of charge, except in the case of visas granted to private domestic staff and personal guests.

88. The following persons shall be admitted to Switzerland on the ground of family reunification, provided they live under the same roof as the principal holder of the *carte de légitimation*:

the spouse of the principal holder of the *carte de légitimation*;  
unmarried children up to the age of 25 years.

89. The following persons shall be admitted to Switzerland in exceptional circumstances and shall be granted a *carte de légitimation* of the Federal Department of Foreign Affairs:

unmarried children over the age of 25 who are wholly dependent on and live under the same roof as the principal holder of the *carte de légitimation*;  
dependants within the meaning of the staff rules of the Organization and who live under the same roof as the principal holder of the *carte de légitimation*.

## Article 40

### *Access to the Labour Market*

90. The spouses of officials of the Organization shall enjoy access to the labour market, provided they reside in Switzerland under the same roof as the principal holder of the *carte de légitimation*. This access is granted under special conditions, within the limits of Swiss law, for the duration of the appointment of the principal holder of the *carte de légitimation*.

91. Children admitted on the ground of family reunification before the age of 21 years shall enjoy access to the labour market under the same conditions as spouses, provided they reside in Switzerland under the same roof as the principal holder of the *carte de légitimation*.

92. The Swiss Federal Council shall establish regulations governing this access to the labour market.

#### Article 41

##### *Laissez-passer*

93. The Organization may issue laissez-passer to its officials. The Swiss authorities shall recognize and accept such laissez-passer as valid travel documents, taking into account paragraph 2 of this Article.

94. Applications for visas from holders of such laissez-passer, when accompanied by a certificate attesting that they are travelling on the business of the Organization, shall be dealt with as speedily as possible. The visas shall be issued free of charge.

95. Similar facilities to those mentioned in paragraph 2 of this Article shall be granted to experts and other persons who, though not the holders of a laissez-passer of the Organization, have a certificate attesting that they are travelling on the business of the Organization.

#### Article 42

##### *Identity Cards*

96. The Federal Department of Foreign Affairs shall deliver to the Organization an identity card (*carte de légitimation*), with a photograph of the holder, for each official of the Organization and each dependent member of his family living with him. This card shall be authenticated by the Federal Department of Foreign Affairs and by the Organization and shall serve to identify the holder for the purposes of any federal, cantonal or communal authority.

97. The Organization shall regularly communicate to the Federal Department of Foreign Affairs the names of the officials of the Organization and of the members of their families, indicating, in respect of each, date of birth, nationality, domicile, and category or class of employment.

#### Article 43

##### *Prevention of Abuse*

98. The Organization and the permanent missions in matters concerning them, on the one hand, and the Swiss authorities on the other hand, shall cooperate at all times to facilitate the satisfactory administration of justice, to ensure the observance of police regulations and to prevent any abuse of the privileges, immunities and facilities provided for in this Agreement.

#### Article 44

##### *Private Disputes*

99. The Organization shall take the appropriate measures so as to have available a system for the settlement:

of disputes resulting from contracts to which the Organization is a party and other disputes relating to points of private law;  
disputes involving an official of the Organization who, due to his official status, enjoys immunity, where immunity has not been waived in accordance with Article 38.

100. At the request of either of the parties, the Swiss authorities shall provide their assistance for the amicable settlement of such disputes.

#### IV. *NON-RESPONSIBILITY AND SECURITY OF SWITZERLAND*

##### Article 45

###### *Non-responsibility of Switzerland*

101. Switzerland shall not, on account of the Organization's activities on its territory, assume any international responsibility for acts or omissions of the Organization or for those of the Organization's officials.

##### Article 46

###### *Security of Switzerland*

102. Nothing in this Agreement shall affect the powers of the Swiss Federal Council to take all measures necessary to safeguard the security of Switzerland.

103. Should the Swiss Federal Council consider it necessary to exercise these powers with regard to the Organization it shall, as promptly as circumstances permit, establish contact with the Organization in order to decide jointly upon such measures as may be necessary to protect the interests of the Organization.

104. The Organization shall cooperate with the Swiss authorities to prevent any prejudice to the security of Switzerland on account of any activity of the Organization.

#### V. *FINAL PROVISIONS*

##### Article 47

###### *Implementation of the Agreement by Switzerland*

105. The Federal Department of Foreign Affairs shall be the Swiss authority responsible for the implementation of this Agreement.

106. The Swiss Federal Council shall ensure the observance of the provisions of this Agreement by all authorities responsible for implementing it.

##### Article 48

###### *Settlement of Disputes*

107. Any difference of opinion between the parties to this Agreement concerning the implementation or interpretation of this Agreement which direct con-

sultations between the parties have failed to settle may be referred, by either party, to an arbitration tribunal composed of three members.

108. The Swiss Federal Council and the Organization shall each appoint one member of the arbitration tribunal.

109. The members so designated shall select the third member, who shall be their President. In the absence of agreement within a reasonable period of time, the President, shall be appointed by the President of the International Court of Justice, at the request of either party.

110. The tribunal shall establish its own procedure.

111. The arbitral award shall be binding upon the parties to the dispute. It shall be final and not subject to appeal.

#### Article 49

##### *Amendments*

112. This Agreement may be amended at the request of either party.

113. In the event of such a request, the parties shall confer together with a view to reaching mutual agreement on changes that could be made in the provisions of this Agreement.

#### Article 50

##### *Withdrawal*

114. Either party may withdraw from this Agreement on a date agreed by the parties or upon giving the other party twenty-four months' written notice of withdrawal.

#### Article 51

##### *Entry Into Force*

115. This Agreement shall enter into force on the date of its signature. It shall be applied with effect from 1 January 1995, the date of entry into force of the Marrakesh Agreement Establishing the World Trade Organization.

Done at Berne, on....., in two copies, in the French language.

For the World Trade Organization: For the Swiss Federal Council:

*The Director-General:*

*The Head of the Federal  
Department of Foreign Affairs:*

AGREEMENT BETWEEN THE WORLD INTELLECTUAL PROPERTY  
ORGANIZATION AND THE WORLD TRADE ORGANIZATION

*Approved by the General Council on 13-15 December 1995  
(IP/C/6 and Add.1)*

Preamble

1. The World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO),
2. Desiring to establish a mutually supportive relationship between them, and with a view to establishing appropriate arrangements for cooperation between them,
3. Agree as follows:

Article 1

*Abbreviated Expressions*

4. For the purposes of this Agreement:  
"WIPO" means the World Intellectual Property Organization;  
"WTO" means the World Trade Organization;  
"International Bureau" means the International Bureau of WIPO;  
"WTO Member" means a party to the Agreement Establishing the World Trade Organization;  
"the TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization;  
"Paris Convention" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;  
"Paris Convention (1967)" means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967;  
"emblem" means, in the case of a WTO Member, any armorial bearing, flag and other State emblem of that WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and, in the case of an international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

Article 2

*Laws and Regulations*

5. [Accessibility of Laws and Regulations in the WIPO Collection by WTO Members and Their Nationals] The International Bureau shall, on request, furnish to WTO Members and to nationals of WTO Members copies of laws and regulations, and copies of translations thereof, that exist in its collection, on the

same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively.

6. [Accessibility of the Computerized Database] WTO Members and nationals of WTO Members shall have access, on the same terms as apply to the Member States of WIPO and to nationals of the Member States of WIPO, respectively, to any computerized database of the International Bureau containing laws and regulations. The WTO Secretariat shall have access, free of any charge by WIPO, to any such database.

7. [Accessibility of Laws and Regulations in the WIPO Collection by the WTO Secretariat and the Council for TRIPS]

Where, on the date of its initial notification of a law or regulation under Article 63.2 of the TRIPS Agreement, a WTO Member has already communicated that law or regulation, or a translation thereof, to the International Bureau and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in the collection of the International Bureau, the International Bureau shall, on request of the WTO Secretariat, give, free of charge, a copy of the said law, regulation or translation to the WTO Secretariat.

Furthermore, if, for the purposes of carrying out its obligations under Article 68 of the TRIPS Agreement, such as monitoring the operation of the TRIPS Agreement or providing assistance in the context of dispute settlement procedures, the Council for TRIPS of the WTO requires a copy of a law or regulation, or a copy of a translation thereof, which had not previously been given to the WTO Secretariat under subparagraph (a), and which exists in the collection of the International Bureau, the International Bureau shall, upon request of either the Council for TRIPS or the WTO Secretariat, give to the WTO Secretariat, free of charge, the requested copy.

The International Bureau shall, on request, furnish to the WTO Secretariat on the same terms as apply to Member States of WIPO any additional copies of the laws, regulations and translations given under subparagraph (a) or (b), as well as copies of any other laws and regulations, and copies of translations thereof, which exist in the collection of the International Bureau.

The International Bureau shall not put any restriction on the use that the WTO Secretariat may make of the copies of laws, regulations and translations transmitted under subparagraph (a), (b) or (c).

8. [Laws and Regulations Received by the WTO Secretariat from WTO Members]

The WTO Secretariat shall transmit to the International Bureau, free of charge, a copy of the laws and regulations received by the WTO Secretariat from WTO Members under Article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and the International Bureau shall place such copies in its collection.

The WTO Secretariat shall not put any restriction on the further use that the International Bureau may make of the copies of the laws and regulations transmitted under subparagraph (a).

9. [Translation of Laws and Regulations] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same assistance for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement as it makes available to Members of WIPO which are developing countries.

### Article 3

#### *Implementation of Article 6<sup>ter</sup> of the Paris Convention for the Purposes of the TRIPS Agreement*

10. [General]

The procedures relating to communication of emblems and transmittal of objections under the TRIPS Agreement shall be administered by the International Bureau in accordance with the procedures applicable under Article 6<sup>ter</sup> of the Paris Convention (1967).

The International Bureau shall not recommunicate to a State party to the Paris Convention which is a WTO Member an emblem which had already been communicated to it by the International Bureau under Article 6<sup>ter</sup> of the Paris Convention prior to January 1, 1996, or, where that State became a WTO Member after January 1, 1996, prior to the date on which it became a WTO Member, and the International Bureau shall not transmit any objection received from the said WTO Member concerning the said emblem if the objection is received by the International Bureau more than 12 months after receipt of the communication of the said emblem under Article 6<sup>ter</sup> of the Paris Convention by the said State.

11. [Objections] Notwithstanding paragraph (1)(a), any objection received by the International Bureau from a WTO Member which concerns an emblem that had been communicated to the International Bureau by another WTO Member where at least one of the said WTO Members is not party to the Paris Convention, and any objection which concerns an emblem of an international intergovernmental organization and which is received by the International Bureau from a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect emblems of international intergovernmental organizations, shall be transmitted by the International Bureau to the WTO Member or international intergovernmental organization concerned regardless of the date on which the objection had been received by the International Bureau. The provisions of the preceding sentence shall not affect the time limit of 12 months for the lodging of an objection.

12. [Information to Be Provided to the WTO Secretariat] The International Bureau shall provide to the WTO Secretariat information relating to any emblem communicated by a WTO Member to the International Bureau or communicated by the International Bureau to a WTO Member.

Article 4

*Legal-Technical Assistance and Technical Cooperation*

13. [*Availability of Legal-Technical Assistance and Technical Cooperation*] The International Bureau shall make available to developing country WTO Members which are not Member States of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to Member States of WIPO which are developing countries. The WTO Secretariat shall make available to Member States of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.

14. [*Cooperation Between the International Bureau and the WTO Secretariat*] The International Bureau and the WTO Secretariat shall enhance cooperation in their legal-technical assistance and technical cooperation activities relating to the TRIPS Agreement for developing countries, so as to maximize the usefulness of those activities and ensure their mutually supportive nature.

15. [*Exchange of Information*] For the purposes of paragraphs (1) and (2), the International Bureau and the WTO Secretariat shall keep in regular contact and exchange non-confidential information.

Article 5

*Final Clauses*

16. [*Entry into Force of this Agreement*] This Agreement shall enter into force on January 1, 1996.

17. [*Amendment of this Agreement*] This Agreement may be amended by common agreement of the parties to this Agreement.

18. [*Termination of this Agreement*] If one of the parties to this Agreement gives the other party written notice to terminate this Agreement, this Agreement shall terminate one year after receipt of the notice by the other party, unless a longer period is specified in the notice or unless both parties agree on a longer or a shorter period.

Done in Geneva on December 22, 1995.

For the World  
Intellectual Property Organization

For the World  
Trade Organization

.....  
Director General

.....  
Director-General

ARRANGEMENTS FOR EFFECTIVE COOPERATION WITH OTHER  
INTERGOVERNMENTAL ORGANIZATIONS

*Relations Between the WTO and the United Nations  
Communication from the Director-General  
(WT/GC/W/10)*

1. After the adoption on 31 January 1995 of the Report of the Preparatory Committee which saw no grounds for formal institutional links between the WTO and the United Nations although the need for the establishment of cooperative ties between the two organizations was underscored, the General Council considered on 3 April 1995 arrangements for effective cooperation with other intergovernmental organizations and in particular the relations between the WTO and the United Nations.
2. It considered that such an arrangement should encompass, on the one hand, appropriate reciprocal participation of the WTO and the United Nations in each other's meetings, to be decided by the respective Members and, on the other, specific practical measures of cooperation which could assist in the smooth and efficient functioning of both organizations in areas where interaction could be of benefit.
3. In that respect the General Council asked the Secretariat to work out with the United Nations a global arrangement which would be based upon the same relationship that had existed in the past between the GATT and the United Nations.
4. The General Council, when deciding on the same date to maintain the joint partnership with UNCTAD acting on behalf of the United Nations to run the International Trade Centre, also agreed that the concerns expressed by the WTO Budget Committee with regard to ITC's budgetary procedures should be part of the global arrangement.
5. I am pleased to inform Members that such a global arrangement has been agreed between the two Secretariats through an exchange of letters signed by the Secretary-General of the United Nations, Mr. Boutros Boutros-Ghali and myself.
6. The letters are annexed for the information of Members.

**ANNEX**

- I. *Letter dated 29 September 1995 from the Director-General of the World Trade Organization to the United Nations Secretary-General*
  1. "I refer to the recent consultations we have held within the framework of General Assembly Resolution 49/97 on the strengthening of international organizations in the area of multilateral trade of 19 December 1994, and the decision of 3 April 1995 of the General Council of the World Trade Organization mandating

me to conclude a global arrangement with the United Nations based on the previous United Nations/GATT relationship.

2. Our consultations brought out the importance we both attach to achieving effective cooperation between the United Nations and the World Trade Organization, consistent with the respective status and mandates of the two organizations and the contractual nature of the World Trade Organization.

3. The conclusion which we have reached, as a result of these consultations and taking into account the experience in the relations between the United Nations and the GATT, is that a flexible framework for cooperation, liable to further review and adaptation in the light of developments and emerging requirements, is the most desirable course of action.

4. We agreed, in that light, that the arrangements and practices described in the attached United Nations General Assembly document of 9 March 1976 (A/AC.179/5)<sup>1</sup> in respect of the United Nations/GATT relationship provide a suitable basis to continue to guide relations between the United Nations and the World Trade Organization. Relations between the United Nations and the World Trade Organization will thus include the provision and exchange of relevant information, reciprocal representation in accordance with the decisions of the competent bodies of the respective organizations, participation of the World Trade Organization in the Administrative Committee on Coordination and its subsidiary bodies, cooperation between secretariats, including in the statistical area, and administrative matters.

5. We further concluded that specific arrangements for cooperation between the World Trade Organization and the United Nations Conference on Trade and Development, in accordance with the relevant decisions of the General Council of the World Trade Organization, will be pursued by the two secretariats within the overall framework set out above, and in the light of recent, relevant decisions of the Trade and Development Board, as well as the General Assembly Resolution 49/97.

6. Finally, we agreed, in our consultations, to recommend to the responsible intergovernmental organs that present arrangements governing the status of the International Trade Centre as a joint body be confirmed and renewed with the World Trade Organization, subject to revised budgetary arrangements as called for by the General Council of the World Trade Organization.

7. I look forward to close and effective cooperation between the United Nations and the World Trade Organization.

(Signed) Renato RUGGIERO  
Director-General"

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<sup>1</sup> Reproduced in Section III below.

*II. Letter dated 29 September 1995 from the United Nations Secretary-General to the Director-General of the World Trade Organization*

1. "I acknowledge receipt of your letter of today's date, referring to the recent consultations we have held within the framework of General Assembly Resolution 49/97 on the strengthening of international organizations in the area of multilateral trade of 19 December 1994, and the decision of 3 April 1995 of the General Council of the World Trade Organization mandating you to conclude a global arrangement with the United Nations based on the previous United Nations/GATT relationship.
2. Our consultations brought out the importance we both attach to achieving effective cooperation between the United Nations and the World Trade Organization, consistent with the respective status and mandates of the two organizations and the contractual nature of the World Trade Organization.
3. The conclusion which we have reached, as a result of these consultations and taking into account the experience in the relations between the United Nations and the GATT, is that a flexible framework for cooperation, liable to further review and adaptation in the light of developments and emerging requirements, is the most desirable course of action.
4. We agreed, in that light, that the arrangements and practices described in the attached United Nations General Assembly document of 9 March 1976 (A/AC.179/5)<sup>2</sup> in respect of the United Nations/GATT relationship provide a suitable basis to continue to guide relations between the United Nations and the World Trade Organization. Relations between the United Nations and the World Trade Organization will thus include the provision and exchange of relevant information, reciprocal representation in accordance with the decisions of the competent bodies of the respective organizations, participation of the World Trade Organization in the Administrative Committee on Coordination and its subsidiary bodies, cooperation between secretariats, including in the statistical area, and administrative matters.
5. We further concluded that specific arrangements for cooperation between the World Trade Organization and the United Nations Conference on Trade and Development, in accordance with the relevant decisions of the General Council of the World Trade Organization, will be pursued by the two secretariats within the overall framework set out above, and in the light of recent, relevant decisions of the Trade and Development Board, as well as the General Assembly Resolution 49/97.
6. Finally, we agreed, in our consultations, to recommend to the responsible intergovernmental organs that present arrangements governing the status of the International Trade Centre as a joint body be confirmed and renewed with the

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<sup>2</sup> Reproduced in Section III below.

World Trade Organization, subject to revised budgetary arrangements as called for by the General Council of the World Trade Organization.

7. I look forward to close and effective cooperation between the United Nations and the World Trade Organization.

(Signed) Boutros BOUTROS-GHALI  
Secretary-General"

III. *UN General Assembly Document of 9 March 1976 (A/AC.179/5)*

*AD HOC COMMITTEE ON THE RESTRUCTURING  
OF THE ECONOMIC AND SOCIAL SECTORS  
OF THE UNITED NATIONS SYSTEM*

*RELATIONS OF THE GENERAL AGREEMENT ON TARIFFS  
AND TRADE WITH THE UNITED NATIONS*

*Note by the Secretariat*

1. The Secretariat circulates herewith a paper submitted by the General Agreement on Tariffs and Trade in response to the request made by the Committee to the Director-General of that organization at the 9th meeting on 12 February 1976.

*RELATIONS OF GATT WITH THE UNITED NATIONS*

2. The Economic and Social Council, by a resolution dated 18 February 1946, decided to call an International Conference on Trade and Employment; the Conference met at Havana from November 1947 to March 1948, and adopted a Final Act to which was annexed the Havana Charter. The Conference also established an Interim Commission for the International Trade Organization (ICITO). Although the Havana Charter failed to come into force, ICITO was never abolished and remains in existence to this day.

3. The General Agreement on Tariffs and Trade was designed to provide rules for the world trading system until the Havana Charter came into force. At the second session of the CONTRACTING PARTIES it was decided that the secretariat of ICITO would be employed on a reimbursable basis to serve as secretariat to the CONTRACTING PARTIES, and the Executive Secretary of ICITO has since been serving as Director-General (called the Executive Secretary until 1965) of the CONTRACTING PARTIES. This arrangement was confirmed in an exchange of letters between the then Executive Secretary of GATT and the then Secretary-General of the United Nations in August 1952. (Copies of the letters are attached to document E/5476/Add.12 of 24 May 1974.)

4. The 1952 letters also confirmed that the existence of the above arrangement, coupled with the close *de facto* working arrangements which existed between the United Nations Secretariat and the secretariat of the Interim Commission, rendered it unnecessary to make separate or formal agreements between the CONTRACTING PARTIES and the Economic and Social Council relating to the work of the General Agreement. This formal exchange of letters defined, and continues to define, the relationship between the CONTRACTING PARTIES and the United Nations, under which GATT is treated as a specialized agency on a *de facto* basis. As a result arrangements of a practical nature have developed in the course of years covering *inter alia* the following areas:

*Exchange of Information and Documents*

5. The United Nations receives copies of all GATT documents regularly distributed to GATT CONTRACTING PARTIES. The GATT receives copies of documents for the General Assembly and the Economic and Social Council, and of other United Nations organs which are of interest to GATT.

6. In addition, GATT provides such special information as may be requested by the United Nations.

*Resolutions of the United Nations*

7. Any resolution relating to GATT, referred to the CONTRACTING PARTIES by the General Assembly or the Economic and Social Council, is taken into consideration and, upon request, GATT submits a report on any action taken as a result of its consideration. On essentially political matters the CONTRACTING PARTIES follow the policy expressed in article 86 of the Havana Charter, namely, to avoid passing judgement in any way on such matters and to follow decisions of the United Nations on such questions (SR.22/3 of 8 March 1965).

*Reciprocal Representation*

8. The Secretary-General of the United Nations, or his representative, is invited to attend sessions of the CONTRACTING PARTIES, of the GATT Council and all regular GATT committees and working parties.

9. The Director-General of GATT, or his representative, is invited to attend plenary meetings of the General Assembly and its committees and meetings of the Economic and Social Council and, as appropriate, its subsidiary bodies. As regards the Economic and Social Council the question of GATT participation under the new rules of procedure of the Council was discussed during the fifty-ninth session of the Council in July 1975. It was agreed that GATT should continue to participate on the same footing as before (E/SR.1973 of 23 July 1975).

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*Co-Ordination*

10. The GATT participates in the work of the Administrative Committee on Co-ordination and its relevant subsidiary organs and, as appropriate, of any other bodies established by the United Nations to facilitate such co-operation and co-ordination. Mention may be made, in particular, of the ACC Preparatory Committee and the Consultative Committee on Administrative Questions (CCAQ). The GATT contributes its *pro rata* share in the budget of CCAQ.

*Co-Operation Between Secretariats*

11. A close working relationship exists between the Secretariat of the United Nations, including the secretariats of the Economic and Social Council and the regional commissions, and the secretariat of GATT.

*Statistical Services*

12. In order to avoid undesirable duplication between the statistical services of the United Nations and GATT, regular consultations take place between the services on the most efficient use of resources. Such consultations take place directly between the services concerned, or through the annual meetings of the ACC Sub-Committee on Statistics.

13. Consequently, GATT greatly relies on supply of statistics by the United Nations statistical services. Where appropriate, the United Nations provides statistical information on computer tapes.

14. The GATT participates in the co-operative arrangement between several agencies for electronic data processing through the International Computing Centre and it shares in the costs of ICC.

*Personnel Arrangements*

15. The GATT applies the United Nations Staff Rules and Regulations and United Nations Financial Regulations. Deviations from the application of these rules and regulations require a specific approval by the CONTRACTING PARTIES. The continued application to GATT of the United Nations Staff Rules and Regulations and United Nations Financial Regulations and Rules was confirmed by the CONTRACTING PARTIES in December 1970 (L/3454, C/M/65).

16. Under present arrangements members of the GATT staff may use the United Nations *laissez passer* as a travel document.

### *Administrative Co-Operation*

17. The GATT participates in a number of co-operative arrangements of an administrative nature, established between the United Nations and the international organizations in Geneva, such as the Joint Medical Service, the Joint Housing Service, the Joint Purchasing Service, the United Nations Staff Mutual Insurance Society against Sickness and Accident, the United Nations Language Courses and Staff Development Programme etc. The costs of these co-operative arrangements are shared on a *pro rata* basis by the participating organizations.

### *Affiliation of GATT to the United Nations Pension Fund*

18. The GATT is affiliated to the United Nations Joint Staff Pension Fund. The regulations of the Pension Fund were amended to that effect by General Assembly resolution 874 (IX) and an agreement was concluded by the Secretary-General of the United Nations and the Executive Secretary of ICITO on 20 May 1957.

### *Regional Commissions and Other United Nations Organs*

19. The above arrangements regarding reciprocal representation and exchange of information and documents equally apply to the regional commissions and other United Nations organs. Invitations to be represented at sessions of the CONTRACTING PARTIES, the GATT Council and the GATT committees and working parties are regularly extended to the executive secretaries of the regional commissions and the Secretary-General of UNCTAD as well as to the executive heads of the various United Nations organs and agencies.

20. Furthermore, over a period of years GATT has co-operated with the regional commissions, in particular the Economic Commission for Africa, in the joint sponsoring of commercial policy training courses organized for officials of the member countries of the region. While at present such courses are organized under the exclusive responsibility of the regional commission concerned, GATT continues to lend its support by providing lecturers to participate in such courses whenever requested.

### *International Trade Centre UNCTAD-GATT*

21. The International Trade Centre (ITC) was established by a decision of the CONTRACTING PARTIES of 19 March 1964 (SR.21/9) and came into operation in May 1964. Since 1968 the Centre has been jointly operated by GATT and the United Nations Conference on Trade and Development. This joint operation has been approved by the General Assembly (resolution 2297 (XXII) of 12 December 1967) and by the CONTRACTING PARTIES (SR.24/11 of 23 November 1967). Initially the working arrangements of the joint operation were

of an interim character. The legal status of the Trade Centre vis-à-vis the United Nations system was reviewed in 1973 and 1974 and new administrative arrangements were approved by the CONTRACTING PARTIES on 19 November 1974 and by the General Assembly on 18 December 1974. The two sponsoring organizations, the CONTRACTING PARTIES to GATT and UNCTAD, have a joint and equal responsibility for the general policy and orientation of ITC's work programme. The Trade Centre is recognized as a joint subsidiary organ of GATT and the United Nations, the latter acting through UNCTAD. The two organizations each contribute an equal share to the Centre's budget, which is supplemented by funds earmarked for special projects from the United Nations Development Programme, and by voluntary contributions by some Governments.

#### *Commercial Policy Courses*

22. Since 1955 two courses in commercial policy are organized by GATT in Geneva each year; one for English-speaking participants from February to June, and the second for French-speaking participants from August to December. The courses are open to officials from developing countries (GATT and non-GATT alike), who have, or may in future have, responsibilities in the formulation and conduct of foreign trade policy. The courses are financed by fellowships granted under the United Nations Development Programme and by GATT under its regular budget for the supply of staff and services.

#### *Relations with the International Monetary Fund*

23. Practical working arrangements have been established with all United Nations organs and specialized agencies in so far as related to matters of interest to GATT.

24. As regards IMF, however, the provisions of article XV of the General Agreement specifically require that the CONTRACTING PARTIES shall seek co-operation with the Fund so that GATT and the Fund may pursue a coordinated policy with regard to questions of quantitative restrictions and other trade measures within the jurisdiction of GATT, and exchange questions within the jurisdiction of the Fund. Whenever the CONTRACTING PARTIES are called upon to consider problems of a monetary nature there is an obligation for GATT to consult fully with the Fund and to accept the determination of the Fund in respect of the financial and balance-of-payments aspects of the matter. Arrangements have been made by means of exchanges of letters between the Chairman of the CONTRACTING PARTIES and the Managing Director of the Fund for co-operation, consultation and co-ordination in the collection of information and making of public announcements. The texts of these letters are attached to document E/5476/Add.12.

## COMMITTEE ON TRADE AND ENVIRONMENT

### ESTABLISHMENT OF THE COMMITTEE

*Decision of the General Council on 31 January 1995  
(WT/L/42)*

Pursuant to the Marrakesh Ministerial Decision on Trade and Environment contained in MTN.TNC/45(MIN), Annex II, the General Council at its meeting on 31 January 1995 established the Committee on Trade and Environment.<sup>1</sup>

### DECISION-MAKING PROCEDURES UNDER ARTICLES IX AND XII OF THE WTO AGREEMENT

*Decision of the General Council on 15 November 1995  
(WT/L/93)*

1. On occasions when the General Council deals with matters related to requests for waivers or accessions to the WTO under Articles IX or XII of the WTO Agreement respectively, the General Council will seek a decision in accordance with Article IX:1. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting under the relevant provisions of Articles IX or XII.
2. The above procedure does not preclude a Member from requesting a vote at the time the decision is taken.
3. Consequently, if any Member has a particular problem with a proposed decision regarding a request for a waiver or an accession to the WTO, it should ensure its presence at the meeting in which this matter will be considered. The absence of a Member will be assumed to imply that it has no comments on or objections to the proposed decision on the matter.

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<sup>1</sup> The terms of reference and the programme of work of the Committee can be found in the Marrakesh Ministerial Decision on Trade and Environment.

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FINALIZATION OF NEGOTIATIONS ON SCHEDULES  
ON GOODS AND SERVICES

*Decision of the General Council on 31 January 1995  
(WT/L/30)*

1. The General Council,
2. *Recalling* that Article XI of the Agreement establishing the WTO requires that "the contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Concessions and Commitments are annexed to GATS shall become original Members of the WTO".
3. *Noting* that certain contracting parties to GATT 1947 which became contracting parties in the course of 1994 and were not able to conclude negotiations on their draft final schedules before the entry into force of the WTO, and would need additional time to finalize negotiations on these schedules with other Uruguay Round participants,
4. *Noting* that it had been the intention of these contracting parties to accept the WTO Agreement under Article XIV of the Agreement Establishing the WTO and desiring to facilitate the accession of these contracting parties under Article XII on terms identical to those which would have applied had they been able to finalize negotiations on their schedules prior to the entry into force of the WTO Agreement;
5. *Decides* as follows:

Contracting parties to the GATT 1947, which became contracting parties in the course of 1994, and which submitted their draft Schedules to the GATT 1994 and to the GATS before the date of entry into force of the WTO Agreement but were unable to complete the negotiations on them before that date, may submit the negotiated Schedules to the GATT 1994 and the GATS to the General Council until 31 March 1995. The approval by the General Council of such schedules shall be deemed to be the approval of the terms of accession by the Members of the WTO under Article XII, paragraph 2 of the WTO Agreement.

## ACCESSION OF GRENADA

*Decision of the General Council on 15 November 1995<sup>1</sup>*  
(WT/L/96)

1. The General Council
2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),
3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,
4. *Noting* that the negotiations on the schedules of Grenada have been completed and a Protocol of Accession for Grenada has been prepared,
5. *Decides*, in accordance with Article XII of the Agreement Establishing the World Trade Organization, that Grenada may accede to the Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

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<sup>1</sup> Adopted in accordance with the Procedures on WTO Decision-Making under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).

ACCESSION OF PAPUA NEW GUINEA

*Decision of the General Council on 15 November 1995<sup>1</sup>*  
(WT/L/98)

1. The General Council
2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),
3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,
4. *Noting* that the negotiations on the schedules of Papua New Guinea have been completed and a Protocol of Accession for Papua New Guinea has been prepared,
5. *Decides*, in accordance with Article XII of the Agreement Establishing the World Trade Organization, that Papua New Guinea may accede to the Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

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<sup>1</sup> Adopted in accordance with the Procedures on WTO Decision-Making under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).

## ACCESSION OF THE STATE OF QATAR

*Decision of the General Council on 15 November 1995<sup>1</sup>*  
(WT/L/100)

1. The General Council
2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),
3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,
4. *Noting* that the negotiations on the schedules of Qatar have been completed and a Protocol of Accession for the State of Qatar has been prepared,
5. *Decides*, in accordance with Article XII of the Agreement Establishing the World Trade Organization, that the State of Qatar may accede to the Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

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<sup>1</sup> Adopted in accordance with the Procedures on WTO Decision-Making under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).

## ACCESSION OF SAINT KITTS AND NEVIS

*Decision of the General Council on 15 November 1995<sup>1</sup>*  
(WT/L/94)

1. The General Council
2. *Recalling* that certain contracting parties which became contracting parties to the GATT 1947 during the course of 1994 were unable to complete the negotiations on their schedules to the GATT 1994 and the General Agreement on Trade in Services (hereinafter referred to as the "GATS"),
3. *Recalling further* that the General Council decided on 31 January 1995 that these contracting parties to the GATT 1947 should be able to accede to the WTO Agreement in accordance with special procedures under which the General Council's approval of the schedules to the GATT 1994 and the GATS shall be deemed to be the approval of their terms of accession,
4. *Noting* that the negotiations on the schedules of Saint Kitts and Nevis have been completed and a Protocol of Accession for Saint Kitts and Nevis has been prepared,
5. *Decides*, in accordance with Article XII of the Agreement Establishing the World Trade Organization, that Saint Kitts and Nevis may accede to the Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

GUIDELINES FOR APPOINTMENT OF OFFICERS  
TO WTO BODIES

*Decision of the General Council on 31 January 1995*  
(WT/L/31)

1. The following guidelines should be applied in the process of consultations on appointment of officers to the WTO bodies.
2. For this purpose the bodies under the WTO have been separated into eight groups in accordance with the Annex to this paper.
3. Given its particular nature, these guidelines do not apply to the Textiles Monitoring Body (Group 3 in the Annex). Reference to "Groups" in the guidelines below is done in accordance with the Annex.
4. Similarly, these guidelines cannot be applied to the appointment of officers of bodies established by the Plurilateral Trade Agreements (Group 7), as

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<sup>1</sup> Adopted in accordance with the Procedures on WTO Decision-Making under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).

their chairpersons should be selected from amongst signatories of the respective agreements and the criteria of selection, the terms of office and other conditions will be decided by the bodies concerned.

5. The guidelines below may be reviewed in light of experience as necessary.

1. *Qualifications and Requirements for Appointment to Posts*

6. Chairpersons must be representatives of Members. Representatives of Members in financial arrears for over one full year cannot be considered for appointment.

7. The choice of a chairperson should primarily reflect the capacity of that person to undertake the special responsibilities required of such posts in the WTO system.

8. Appointments must be acceptable to the membership as a whole and not only to regions or groupings that may have proposed them.

2. *Overall Balance of Representation*

9. A balance which reflects overall membership of the WTO should be achieved in the appointment of officers.

10. Such overall balance should be sought in particular for posts under Groups 1, 2, 4 and 5 taken as a whole.

11. Separately a similar balance should be sought in the appointment of chairpersons under Group 6.

12. Chairpersons to Group 8 should be appointed on an *ad hoc* basis, and in the light of qualifications and availability.

3. *Distribution of Chairs*

13. Each body should have a separate chairperson.

4. *Level of Representation*

14. For bodies under Group 1 and 2 chairpersons should be appointed from among Geneva-based Heads of Delegations. In the case of Groups 4, 5, 6 and 8, chairpersons should be Heads of Delegations or officials of delegations of Members of the WTO in Geneva. Non-residents may be appointed in exceptional circumstances where the necessary expertise can only be found in capitals.

### 5. *Term of Office*

15. Rotation should be the general rule; the term of office for chairing a body should therefore be one year. Nevertheless, in bodies under Groups 4, 5 and 6 the incumbent chairperson may be considered for reappointment whenever this is found to be in the interest of the efficient functioning of the body.

16. Chairpersons of bodies in Group 8 should normally retain their posts until such bodies have concluded their work.

17. If a chairperson is transferred from Geneva to another post, either the vice-chairperson would assume the responsibilities of the chairperson, or a new chairperson would be appointed. The original chairperson may be retained only in exceptional circumstances, providing this person is able to come to Geneva whenever necessary and the travel and other related costs are paid by the respective government. The same should apply in the event that a non-Geneva-based person is appointed for exceptional reasons to chair a body.

### 6. *Procedures for Appointment of Officers*

18. Once the WTO is established the outgoing chairperson of the General Council will normally conduct consultations on the appointment of the chairpersons for the bodies in Groups 1, 2, 4 and 5.

19. There should be no automaticity in succession to posts.

20. The chairpersons in Group 2 will normally conduct consultations on the appointment of the chairpersons of bodies in Group 6(A), (B) and (C) under the respective authority of the Council they chair.

21. The Chairperson of the body which is establishing a subordinate body in Group 8 will hold *ad-hoc* consultations on the appointment of a chairperson for the latter.

22. The same procedures are applicable whenever a chair becomes vacant in the course of a term.

## ANNEX

### *Structure of Bodies under the WTO*

<i>Group 1</i>	General Council General Council meeting as Dispute Settlement Body General Council meeting as Trade Policy Review Body
<i>Group 2</i>	Council for Trade in Goods Council for Trade in Services

- Council for TRIPS
- Group 3* Textiles Monitoring Body)
- Group 4* Committee on Trade and Development  
Committee on Balance-of-Payments Restrictions  
Committee on Budget, Finance and Administration
- Group 5* Committee on Trade and Environment  
(Any other body to be established by the Ministerial Conference or the General Council)
- Group 6(A)* Committee on Market Access  
Committee on Agriculture  
Committee on Sanitary and Phytosanitary Measures  
Committee on Technical Barriers to Trade  
Committee on TRIMS  
Committee on Anti-Dumping Practices  
Committee on Customs Valuation  
Committee on Rules of Origin  
Committee on Import Licensing  
Committee on Subsidies and Countervailing Measures  
Committee on Safeguards  
Working Party on Article XVII Notifications  
(Any other body to be established by the Council on Trade in Goods).
- Group 6(B)* Working Party on Professional Services  
Negotiating Group on Basic Telecommunications  
Negotiating Group on Financial Services  
Negotiating Group on Movement of Natural Persons  
Negotiating Group on Maritime Transport Services  
(Any other body to be established by the Council on Trade in Services).
- Group 6(C)* (Any subsidiary bodies under the Council for TRIPS)
- Group 7* Committees established pursuant to the Plurilateral Trade Agreements (Annex 4 Agreements)
- Group 8* Other Working Groups and Working Parties (accession; Article XXIV etc.)

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PROCEDURES FOR AN ANNUAL OVERVIEW OF WTO  
ACTIVITIES AND FOR REPORTING UNDER THE WTO

*Decision of the General Council on 15 November 1995  
(WT/L/105)*

*1. Reporting Procedures for Sectoral Councils and their Subsidiary  
Bodies<sup>1</sup>*

1. All bodies constituted under Annex 1A Agreements shall be required to submit a factual report to the Council for Trade in Goods. The same shall apply to the subsidiary bodies established by the Council for Trade in Services and the Council for Trade-Related Intellectual Property Rights. The reports of the sectoral councils would be factual in nature, containing an indication of actions and decisions taken, with cross references to reports of subordinate bodies and could follow the model of the GATT 1947 Council reports to the CONTRACTING PARTIES. The respective sectoral councils should report in November each year to the General Council on the activities in the Council as well as in the subsidiary bodies.

*2. Reporting Procedures for the Committees on Trade and Development,  
on Budget, Finance and Administration and on Balance-of-  
Payments Restrictions*

2. The Committee on Trade and Development shall submit a report to the General Council at the end of each year. The Committees on Budget, Finance and Administration and on Balance-of-Payments will also submit, in addition to reports submitted during the course of the year on specific issues, a short factual report at the end of the year.

*3. Reporting Procedures for the Committees on Plurilateral Trade  
Agreements*

3. The Committees on the Plurilateral Trade Agreements referred to in Article IV:8 of the WTO Agreement shall be invited to report annually to the General Council.

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<sup>1</sup> It should be noted that the Marrakesh Ministerial Decision on Trade and Environment, which decided on the establishment of a Committee on Trade and Environment, directed that Committee to report to the first biennial meeting of the Ministerial Conference "when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the Committee." This Committee is therefore not referred to in the reporting procedures set out below.

4. *Action by the General Council and the Sectoral Councils*

4. The sectoral councils will take note of reports of their subsidiary bodies.
5. The General Council will take note of the reports by the sectoral councils, which would serve as a basis for an overview of the activities of the WTO in the course of the year. The report of the Committee on Trade and Development will be adopted by the General Council. The reports of the other subsidiary bodies mentioned in item 2 above would be duly noted.
6. The General Council would also take note of the reports by the Committees on Plurilateral Trade Agreements referred to in Article IV:8 of the WTO Agreement.

5. *Overview by the Ministerial Conference*

7. The General Council will prepare a report on its activities every year which would contain a first section of a factual nature, summarizing actions and decisions taken by the General Council during the year; a section on dispute settlement; a section on trade policy reviews; and a cross reference to the reports of sectoral councils and the Committees mentioned in item 2 above.
8. The Ministerial Conference would carry out an overview of the activities of the WTO over the previous two years on the basis of the annual reports of the General Council. In years when the Ministerial Conference does not meet, the General Council would carry out an annual overview of the WTO activities as mentioned in item 4 above.
9. The overview of activities of the WTO based on these reports could be part of an Agenda item for general statements at the Ministerial Conference, which could read as follows: "Overview of WTO Activities."

## TERMS OF REFERENCE OF SUBSIDIARY BODIES

### COMMITTEE ON AGRICULTURE

*Decision Adopted by the General Council on 31 January 1995  
(WT/L/43)*

1. At its meeting on 31 January 1995 the General Council adopted the following terms of reference of the WTO Committee on Agriculture:<sup>1</sup>
2. "The Committee shall oversee the implementation of the Agreement on Agriculture. The Committee shall afford members the opportunity of consulting on any matter relating to the implementation of the provisions of the Agreement."

### COMMITTEE ON BALANCE-OF-PAYMENTS RESTRICTIONS

*Decision Adopted by the General Council on 31 January 1995  
(WT/L/45)*

1. At its meeting on 31 January 1995 the General Council established the WTO Committee on Balance-of-Payments Restrictions with the following terms of reference:<sup>1</sup>
  - "(a) to conduct consultations, pursuant to Article XII:4, Article XVIII:12 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, on all restrictive import measures taken or maintained for balance-of-payments purposes and, pursuant to Article XII:5 of the General Agreement on Trade in Services, on all restrictions adopted or maintained for balance-of-payments purposes on trade in services on which specific commitments have been undertaken; and,
  - "(b) to carry out any additional functions assigned to it by the General Council."

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<sup>1</sup> Upon adoption of the Terms of Reference, the General Council took note of the accompanying statement or understanding referred to in paragraph 40 of the Report of the Preparatory Committee (see p. 216).

COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION

*Decision Adopted by the General Council on 31 January 1995  
(WT/L/44)*

1. At its meeting on 31 January 1995 the General Council established the WTO Committee on Budget, Finance and Administration with the following terms of reference:<sup>1</sup>

*Terms of Reference:*

- (i) To examine any questions arising in connection with the audited accounts, proposals for the budgets of the WTO and of the International Trade Centre UNCTAD/WTO, and the financing thereof.
- (ii) To study any financial and administrative questions which may be referred to it by the Ministerial Conference or the General Council, or submitted to it by the Director-General, and undertake such other studies as may be assigned to it by the Ministerial Conference or the General Council.

*Membership:*

2. Membership in the Committee will be open to all WTO Members. Without prejudice to Article IV:7 of the WTO Agreement, and taking account of the technical nature of the Committee and past GATT practice, it is recognized that a limited membership could be more efficient and in the overall administrative interests of the WTO.

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<sup>1</sup> Adopted in accordance with the Procedures on WTO Decision-Making under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93).

COMMITTEE ON MARKET ACCESS

*Decision Adopted by the General Council  
on 31 January 1995  
(WT/L/47)*

1. At its meeting on 31 January 1995 the General Council established the WTO Committee on Market Access with the following terms of reference:<sup>1</sup>

"The Committee on Market Access shall:

- (a) in relation to market access issues not covered by any other WTO body:
  - supervise the implementation of concessions relating to tariffs and non-tariff measures;
  - provide a forum for consultation on matters relating to tariffs and non-tariff measures;
- (b) oversee the application of procedures for modification or withdrawal of tariff concessions;
- (c) ensure that GATT Schedules are kept up-to-date, and that modifications, including those resulting from changes in tariff nomenclature, are reflected;
- (d) conduct the updating and analysis of the documentation on quantitative restrictions and other non-tariff measures, in accordance with the timetable and procedures agreed by the CONTRACTING PARTIES in 1984 and 1985 (BISD 31S/227 and 228, and BISD 32S/92 and 93).
- (e) oversee the content and operation of, and access to, the Integrated Data Base;
- (f) report periodically - and in any case not less than once a year - to the Council on Trade in Goods."

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<sup>1</sup> Upon adoption of the Terms of Reference, the General Council also took note of the accompanying statement or understanding to the text contained in document PC/IPL/M/9, paragraphs 6, 7 and 8.

## COMMITTEE ON TRADE AND DEVELOPMENT

*Decision Adopted by the General Council on 31 January 1995  
(WT/L/46)*

1. At its meeting on 31 January 1995 the General Council established the WTO Committee on Trade and Development with the following terms of reference:<sup>\*</sup>

To serve as a focal point for consideration and coordination of work on development in the World Trade Organization (WTO) and its relationship to development-related activities in other multilateral agencies.<sup>1</sup>

To keep under continuous review the participation of developing country Members in the multilateral trading system and to consider measures and initiatives to assist developing country Members, and in particular the least-developed country Members, in the expansion of their trade and investment opportunities, including support for their measures of trade liberalization.<sup>2</sup>

To review periodically, in consultation as appropriate with the relevant bodies of the WTO, the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular least-developed country Members, and report to the General Council for appropriate action.

To consider any questions which may arise with regard to either the application or the use of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members and report to the General Council for appropriate action.

To provide guidelines for, and to review periodically, the technical cooperation activities of the WTO<sup>3</sup> as they relate to developing country Members.

The Committee will establish a programme of work which may be reviewed as necessary each year.

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<sup>\*</sup> Upon adoption of the Terms of Reference, the General Council took note of the accompanying statement or understanding to the text referred to in paragraph 40 of the report of the Preparatory Committee (see p. 216).

<sup>1</sup> It is understood that matters relating to activities in other multilateral agencies will come under the guidance of the General Council.

<sup>2</sup> The Committee would give consideration, *inter alia*, to any report that the Committee on Agriculture may decide to refer to it following paragraph 6 of the "Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries" and Article XVI of the Agreement on Agriculture.

<sup>3</sup> The technical cooperation activities referred to in this provision do not include technical assistance for accession negotiations.

## TEXTILES

*Composition of the Textiles Monitoring Body  
Decision of the General Council on 31 January 1995  
(WT/L/26 and Add.1)*

*The General Council decides as follows:*

1. The composition of the Textiles Monitoring Body as set out below is for a period of three years i.e. 1 January 1995 to 31 December 1997.

2. The ten TMB members shall be appointed by the WTO Members designated from the constituencies below. Unless otherwise stated below, the time period for rotation of TMB members within a constituency is to be decided by the constituencies themselves. TMB members may appoint their respective alternates.

- (a) the ASEAN Member countries (to rotate among themselves);
- (b) Canada;
- (c) China\* and Pakistan (to alternate with each other);
- (d) the European Communities;
- (e) Hong Kong and Korea (to alternate with each other);
- (f) India and Egypt\*\*/Morocco/Tunisia\*\* (India to alternate with one of the three);
- (g) Japan;
- (h) Latin American and Caribbean Member countries (to rotate among themselves; this constituency may appoint a second alternate<sup>1</sup> if it so decides);
- (i) in the first year Norway, Turkey\*\* and Czech Republic/Hungary/Poland\*\*/Romania/Slovak Republic (Norway to have the member); in the second and third years, Turkey\*\*, Switzerland\*\* and Czech Republic/Hungary/Poland\*\*/Romania/Slovak Republic. (Turkey to have the member in the second year, the member for the third year to be decided by the constituency itself.) This constituency may appoint a second alternate, if it so decides;
- (j) the United States.

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\* In the event that China does not become a WTO Member by 31 December 1995, a WTO Member, to be proposed by the WTO Members that are members of the International Textiles and Clothing Bureau, shall be included in this constituency until such time as China becomes a WTO Member.

N.B. Pursuant to this footnote, "the General Council took note of a proposal by the WTO Members that are members of the ITCB that Macau be included in the China/Pakistan constituency until such a time as China becomes a WTO Member, or until 31 December 1997, whichever comes first" (abstract from WT/L/26/Add.1).

\*\* Upon WTO membership.

<sup>1</sup> The second alternate will not rotate with the member or with the first alternate.

3. One of the three constituencies (b), (g) and (j) will include Switzerland\*\* in the first year and, in the second and third years, Norway.
4. There will be a second alternate<sup>1</sup> from a least-developed textile exporting Member in constituency (e).
5. Two non-participating observers will be appointed by Members not already represented by the arrangements in paragraphs 2 and 4, one each being designated from Africa and Asia.
6. The Textiles Monitoring Body will take all its decisions by consensus.<sup>2</sup>

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<sup>2</sup> As provided for in Article 8.2 of the Agreement on Textiles and Clothing, in case of an unresolved issue under review by the TMB, it is understood that consensus within the TMB does not require the assent or concurrence of members appointed by Members involved in such unresolved issue.

**DISPUTE SETTLEMENT BODY****ESTABLISHMENT OF THE APPELLATE BODY**

*Recommendations by the Preparatory Committee for the  
WTO Approved by the Dispute Settlement Body on  
10 February 1995  
(WT/DSB/1)*

1. The Dispute Settlement Understanding (DSU) provides that a standing Appellate Body shall be established by the DSB to hear appeals from panel cases on issues of law covered in the panel report and legal interpretations developed by the panel. However, the DSU does not answer all questions which must be settled before the Appellate Body can function effectively. Based on the provisions of the DSU, input from delegations, and data from the Secretariat on experience with past disputes, this note addresses these issues and makes proposals.
2. In making these proposals, it is understood that not all issues connected with the Appellate Body require decisions or recommendations at this point. Many issues, such as the size and powers of the Appellate Body, are already determined in the DSU and do not therefore require decisions. Of those issues requiring a decision, some, such as the selection of the Appellate Body members, clearly must be decided before that body can function. Others, such as matters related to the working procedures of the Appellate Body, are only to be taken after that body is established. It is not therefore necessary to tie up all loose ends at this stage.
3. Decisions taken before the entry into force of the WTO will have to be taken by the Preparatory Committee, and will technically take the form of "recommendations to the WTO".<sup>1</sup> Decisions taken after the entry into force of the WTO may be taken by the General Council (sitting as the DSB) Or, the Appellate Body itself, in consultation with the Chairman of the DSB and the Director-General.<sup>2</sup> Proposals put forward here concern the composition of the Appellate Body, including conditions of employment of its members and conflict of interest guidelines for members and supporting staff, and the type of administrative support given to it.

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<sup>1</sup> Decision on the Establishment of the Preparatory Committee of the World Trade Organization, Article 7.

<sup>2</sup> DSU Article 17:9.

A. *Composition of the Appellate Body*

4. The DSU provides that the DSB shall appoint seven persons to serve on the Appellate Body.<sup>3</sup> It is to be a standing body, with members serving four-year terms, except for three initial appointees determined by lot whose terms expire at the end of two years.<sup>4</sup> Vacancies are to be filled as they arise and, in the case of an unfinished term, last only until the end of that term.<sup>5</sup> The success of the WTO will depend greatly on the proper composition of the Appellate Body, and persons of the highest calibre should serve on it. Issues arise as to its members' expertise, representative balance, impartiality, conditions of employment, and the selection procedures to be used.

1. *Expertise of Persons Serving on the Appellate Body*

5. The DSU provides that the Appellate Body "shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally." The expertise should be of a type that allows Appellate Body members to resolve "issues of law covered in the panel report and legal interpretations developed by the panel."<sup>6</sup>

2. *Representative Balance*

6. While the overriding concern is to provide highly-qualified members for the Appellate Body, the DSU also requires that the Appellate Body membership be "broadly representative" of the membership in the WTO. Therefore factors such as different geographical areas, levels of development, and legal systems shall be duly taken into account. The question of how this balance is to be achieved is best left to be worked out during the actual consultation and selection procedures.

3. *Impartiality and Confidentiality*

7. The DSU provides that members of the Appellate Body "shall not be affiliated with any government."<sup>7</sup> Members of the Appellate Body should not therefore have any attachment to a government that would compromise their independence of judgement. This requirement would not necessarily rule out persons who, although paid by a government, serve in a function rigorously and demonstrably independent from that government.

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<sup>3</sup> DSU Article 17:1, 2.

<sup>4</sup> DSU Article 17:2, sentence 1.

<sup>5</sup> DSU Article 17:2, sentences 3, 4.

<sup>6</sup> DSU Article 17:6.

<sup>7</sup> DSU Article 17:3, sentence 2.

8. The DSU also provides that the members of the Appellate Body "shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest."<sup>8</sup> It would appear desirable to clarify the scope of this requirement through the elaboration of high standards of conduct. Members of the Appellate Body would adhere to such standards and, in a particular case, disclose any relevant financial, business and professional interests.

9. The DSU further provides that "the proceedings of the Appellate Body shall be confidential."<sup>9</sup> It would thus be desirable to elaborate rules protecting the confidentiality of the deliberations of the Appellate Body, and ensuring the non-disclosure by Appellate Body members and support staff of confidential information provided by participants in the dispute settlement process.

#### 4. *Conditions of Employment of Members*

10. The DSU provides that Appellate Body members "shall be available at all times and on short notice".<sup>10</sup> The first part of this clause suggests that members of the Appellate Body have a priority working relationship with the WTO. The second part of the clause suggests that members may have other activities. The DSU also provides that all members "shall stay abreast of dispute settlement activities and other relevant activities of the WTO."<sup>11</sup>

11. The contractual basis of members of the Appellate Body should reflect the overriding concern that candidates are of a high enough calibre to ensure the integrity and authority of decisions taken by the Appellate Body. The requirement that high-calibre members be available at all times could be met, on a flexible basis, by offering Appellate Body members contracts based on a monthly retainer plus a fee for actual days worked. This contractual arrangement could also lead to a wider range of candidates being available, since members could continue to pursue other activities where they were resident. This arrangement could be kept under review by the DSB, and considered at the latest at the first Ministerial Conference, to determine whether a move to full-time employment was warranted.

12. The amount of a retainer/fee package would have to be large enough to offset a member's opportunity cost of work foregone because of potential conflicts of interest, or incompatibility with sporadic trips to Geneva. This cost would also include the disruption of a member's career due to the uncertain but limited length of the Appellate Body assignment (two or four years initially, with a possibility of a one further period of four years) and the uncertainty of the total remuneration actually received. Further, the compensation should be high enough to provide an incentive for a member not to take on work which might create a conflict of interest. Accordingly, it would appear that the retainer should be set at

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<sup>8</sup> DSU Article 17:3, sentence 5.

<sup>9</sup> DSU Article 17:10, sentence 10.

<sup>10</sup> DSU Article 17:3, sentence 2.

<sup>11</sup> DSU 17:3, sentence 4.

a minimum of SF 7,000 per month, plus a fully-adequate daily fee, travel expenses and a per diem. The actual amounts should be set on the basis of further research on current rates for equivalent services under similar conditions. The contractual conditions for each member of the Appellate Body should be the same, reflecting the principle that all the members should have equal status.

### 5. *Selection Procedure*

13. The DSU provides that "the DSB shall appoint persons to serve on the Appellate Body."<sup>12</sup> The decision by the DSB to appoint Appellate Body members could be made on the basis of a proposal formulated jointly, after appropriate consultations, by the Director-General, the Chairman of the DSB, and the Chairmen of the Goods, Services, TRIPS and General Councils. Suggestions for candidates could be forwarded by delegations to the Director-General. These suggestions could include candidates of nationalities other than that of the forwarding delegation.

#### *B. Matters Concerning the Internal Procedures of the Appellate Body*

14. The DSU provides that "working procedures shall be drawn up by the Appellate Body in consultation with the " man of the DSB and the Director-General, and communicated to the Members for their information."<sup>13</sup> Matters such as guaranteeing the rotation required by the DSU and facilitating communications, if necessary, within the Appellate Body should form part of the working procedures. The DSB Chairman, at the appropriate time, should consult with Members in order to obtain their views on the working procedures prior to advising the Appellate Body.

#### *C. Administrative and Legal Support*

15. The DSU provides that the Appellate Body "shall be provided with appropriate administrative and legal support as it requires."<sup>14</sup> The number of support staff needed depends on the anticipated workload of the Appellate Body. This in turn will depend largely on the number of new panel cases and the anticipated propensity to appeal panel decisions. Under the GATT, there was an average of six new panel cases per year during the past five years, with actual annual numbers fluctuating between two and ten. At one point during that period, sixteen panel cases were under way at one time. Two additional factors could also lead to much greater dispute settlement activity: the increased scope of review resulting

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<sup>12</sup> DSU Section 17:2, sentence 1.

<sup>13</sup> DSU Article 17:9.

<sup>14</sup> DSU Article 17:7.

from services and intellectual property disputes, and the increased attractiveness of a more automatic dispute settlement system.

16. Based on these factors, a reasonable level of support in the initial stages of operation of the Appellate Body would be one registrar, three professional assistants with legal training, and sufficient clerical staff. The registrar would be in charge of support to the Appellate Body, ensuring that there was a pool of appropriate legal and trade policy expertise, and administrative assistance, available to the Body and its members.

17. The Appellate Body and its support staff should be independent from the Secretariat. The support staff should be selected by the Director-General, in consultation with the Chairman of the DSB, on a competitive basis following a public advertisement. They should be employed by the WTO, on conditions similar to those accorded secretariat staff of similar rank, but should otherwise be administratively separate from it and answerable to the Appellate Body. Any movement of support staff from the Appellate Body to the WTO Secretariat should be on a competitive basis following a public advertisement, and not by simple administrative transfer. The Secretariat shall put aside sufficient space to house the Appellate Body.

## COMPOSITION OF THE APPELLATE BODY

*(Abstract from WT/DSB/M/9)*

1. The *Chairman* made the following statement:

"Following completion of further consultations subsequent to the adjourned DSB meeting of 1 November, he wished to put before the Members at the present meeting a recommendation on behalf of the six member "Selection Committee" (the Committee), for the appointment of seven persons to the Appellate Body provided for in the DSU. Members would recall that the elements of this recommendation had been outlined to them at an informal meeting held on 25 October. As Members were aware, the Committee comprising the Director-General, the Chairman of the DSB and the Chairmen of the Goods, Services, TRIPS and General Councils had been given a mandate in the Appellate Body guidelines paper (WT/DSB/1) to bring a recommendation on Appellate Body membership to the DSB. As Members were also aware the Committee had been engaged in arriving at an acceptable outcome for this important task since the beginning of this year. They had thirty-two different candidates from twenty-three different countries but with only seven places to fill. The task faced by the Committee had been made especially difficult by the excellence of all of the thirty-two candidates who had been proposed for appointment to the Appellate Body. Throughout the months that the Committee had been carefully applying itself to the task of choosing seven competent and appropriate appointees from this list to recommend to the

DSB for appointment to the Appellate Body, they had constantly in their minds the guidelines in the DSU and WT/DSB/1 governing the selection and appointment of Appellate Body members, and the need to ensure that the outcome was consistent with those guidelines. During this process, the Committee had consulted both individually with delegations and multilaterally. The Committee had also met in Geneva and had detailed discussions with each of the thirty-two candidates for appointment to the Appellate Body.

"Based on the above processes the Committee had reached a conclusion on the seven persons which he now recommended to the DSB for appointment to the Appellate Body in accordance with the relevant provisions of the DSU. These persons in alphabetical order were: Mr. James Bacchus (United States), Mr. Christopher Beeby (New Zealand), Mr. Claus-Dieter Ehlermann (Germany), Mr. Said El-Naggar (Egypt), Mr. Justice Florentino P. Feliciano (Philippines), Mr. Julio Lacarte Muro (Uruguay), and Mr. Mitsuo Matsushita (Japan). As indicated above, this recommendation was being put to the DSB at the present meeting, on behalf of the Committee as a whole, for approval. All of these people were highly-qualified for appointment to the Appellate Body and just as the Committee had, delegations had also the opportunity to study their detailed curricula vitae which had been available from the Secretariat for some months. He also wished to inform Members that all these seven persons had confirmed to him in writing their readiness to accept the draft code of conduct currently in the final stages of preparation. In addition to asking the DSB to accept at the present meeting that the seven recommended persons be appointed to the Appellate Body, he was also asking the DSB to accept that they be formally appointed from mid-December 1995. In submitting this recommendation to the DSB, he reiterated precisely what the collective task was at the present meeting. The DSB was in effect making the initial seven appointments to the Appellate Body. This was the only occasion on which the DSB would appoint all the seven people on a single occasion. According to the "staggered term" arrangements written into the DSU, the seven persons appointed to the Appellate Body would not be replaced simultaneously. This should enable flexibility to be maintained in the composition of the Appellate Body consistent with the guidelines that Members already had. He thought it was important as they were taking their decision at the present meeting, that Members understood and kept those facts very clearly in mind.

"He was sure that Members would also readily agree that in future appointments to the Appellate Body the DSB would have to be guided by the need to have persons of the highest calibre with demonstrated expertise in the law, international trade, and the subject matter of the covered agreements, the need also for an Appellate Body which would be broadly representative of the WTO membership, would reflect different legal systems and take other factors such as different geographical areas and levels of development into account. These principles would ensure that appoint-

ments to the Appellate Body would remain an open competition aimed at ensuring that highly competent people were always secured for this important task. The decision to be taken at the present meeting on the Committee's proposal did not mean that the composition of the Appellate Body would remain the same over time and no rights might be derived from the initial composition. The particular regional or national distribution of initial appointments to the Appellate Body therefore, in no way compromised the scope for different regional or national compositions on future occasions.

"One other point that he wished to raise was the need for Appellate Body members, once appointed, to work closely together to ensure that there was policy consistency, that the Appellate Body operated in a coherent way as envisaged by the DSU and that obligations under the DSU and the covered agreements were not increased or rights diminished through the appeals process. He indicated his intention to request the Appellate Body in drawing up its internal working procedures to work out appropriate arrangements, consistent with the provisions of the DSU, to cover these issues. On the basis of the processes which had enabled the Committee to reach its conclusion on initial appointments to the Appellate Body and the understandings outlined above, which he proposed be included in the record of this meeting, he was submitting for approval to the DSB the above-mentioned seven persons as initial appointees to the WTO Appellate Body and for agreement to their formal appointment from mid-December 1995."

The Dispute Settlement Body ... *approved* the recommendation on the composition of the Appellate Body proposed by Chairman on behalf of the "Selection Committee".

## COUNCIL FOR TRADE IN GOODS

### NOTIFICATION PROCEDURES FOR QUANTITATIVE RESTRICTIONS

*Decision Adopted by the Council for Trade in Goods  
on 1 December 1995  
(G/L/59)*

The Committee, in pursuance of its mandate (paragraph (d) of document WT/L/47<sup>1</sup>), *agrees* that:

- Members shall make complete notifications of the quantitative restrictions which they maintain by 31 January 1996 and at two-yearly intervals thereafter, and shall notify changes to their quantitative restrictions as and when these changes occur;
- such notifications shall contain:
  - a full description of the products and tariff lines (or parts of tariff lines) affected together with the relevant heading or sub-heading in the Harmonized System nomenclature;
  - a precise indication of the type of restriction, using the agreed symbols (BISD 32S/108) as annexed;
  - an indication of the grounds and WTO justification for the measures maintained, including the precise provisions which they cite as a justification;
  - a statement on the trade effects of the measure; in order to ensure full transparency, the notification should include a description of the administrative mechanism associated with the measure, unless this mechanism has been notified under the Agreement on Import Licensing Procedures or another WTO Agreement. Also under trade effects, the notification should include information on the quantity of permissible imports, on the degree of quota utilization (in the case of exiting quotas) and, where available, on the level of production or consumption.
- Members which have made, under other WTO provisions, notifications of quantitative restrictions (including notifications to the GATT Technical Committee on Quantitative Restrictions and Other Non-Tariff Measures) which fulfil the requirements for quantitative restrictions notifications under the 1984 and 1985 decisions and which are up-to-date, shall notify the fact; thereupon, the Secretariat shall input such notifications into the quantitative restrictions data base;

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<sup>1</sup> The statement or understanding contained in document PC/IPL/M/9, paragraphs 6, 7 and 8 applies also to this Decision.

- it will be open to Members to make reverse notifications where they deem appropriate;
- the Secretariat shall provide, to assist delegations in the preparation of their notifications, on request, the extract of the quantitative restrictions data base pertaining to its own restrictions;
- the notifications shall be stored in a new data base, identical to the existing quantitative restrictions data base. The latter shall cease to exist when the GATT 1947 is terminated;
- the Secretariat shall publish periodically a document listing the WTO Members having made a notification. The Secretariat shall make available to Members, as and when requested, on paper or computer tape, detailed extracts of the quantitative restrictions data base. The notifications themselves shall be available for consultation in the Secretariat;
- the Committee shall, at two-yearly intervals after receipt of the complete notifications, review the notifications received, on the basis of Secretariat summaries similar to the summaries prepared for the GATT Technical Group on Quantitative Restrictions and Other Non-Tariff Measures.

### **ANNEX TO THE DECISION ON NOTIFICATION OF QUANTITATIVE RESTRICTIONS**

Symbols to be used in notifications of quantitative restrictions<sup>2</sup>

P	Prohibition
CP	Prohibition except under defined conditions
GQ	Global quota
GQC	Global quota allocated by country
BQ	Bilateral quota (i.e. anything less than a global quota)
AL	Automatic licensing
NAL	Non-automatic licensing
STR	Quantitative restriction made effective through state-trading operations
MXR	Mixing regulation
MPR	Minimum price, triggering a quantitative restriction
VER	"Voluntary" export restraint

add the following suffixes to the above as appropriate:

-S	Seasonal restriction
-X	Export restriction

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<sup>2</sup> BISD 32S/108.

## REVERSE NOTIFICATION OF NON-TARIFF MEASURES

*Decision Adopted by the Council for Trade in Goods on 1 December 1995  
(G/L/60)*

The Committee, in pursuance of its mandate (paragraph (d) of document WT/L/47<sup>1</sup>), *agrees* that:

- Members shall have the possibility of making notifications of non-tariff measures maintained by other Members in so far as such measures are neither subject to any existing WTO notification obligations nor to any other reverse notification possibilities under the WTO Agreement;
- such notifications shall contain:
  - an indication of the precise nature of the measure;
  - where applicable, a full description of the products affected, including the corresponding HS headings or sub-headings;
  - where appropriate, a reference to the relevant WTO provisions;
  - a statement on the trade effects of the measure;
- the Member maintaining the measures shall comment on each of these points; such comments shall be included in the Inventory together with the notification;
- in cases where the inclusion or the contents of the notification is challenged, further information will be sought from the notifying Member. In these cases, the Members concerned might hold bilateral consultations with the aim of verifying the existence of the measure and its precise and complete description. The result of these consultations shall be transmitted to the Secretariat for appropriate action (that is, whether or not to include the notification in the Inventory);
- the new Inventory of Non-Tariff Measures shall be open for notification as from the date of this Decision. The existing Inventory of Non-Tariff Measures (Industrial Products) shall cease to exist when the GATT 1947 is terminated;
- the Inventory of Non-Tariff Measures shall cover all non-tariff measures relating to all products (Chapters 1-97 of the HS nomenclature);
- the Inventory shall be made available to Members in a loose-leaf format in the 3 WTO languages; amendments to the Inventory (including additions and deletions) shall be circulated to all Members by the Secretariat;
- when a measure which has been the subject of a reverse notification is notified by the maintaining Member under another WTO provision, the maintaining Member shall so notify the Secretariat. Upon receipt of such notification, the Secretariat shall, having satisfied itself that the subject of

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<sup>1</sup> The statement or understanding contained in document PC/IPL/M/9, paragraphs 6, 7 and 8 applies also to this Decision.

- the two notifications is the same, delete the reverse notification from the Inventory and inform Members of the action taken;
- the Committee shall, at two-yearly intervals on the occasion of the review of the notifications of quantitative restrictions, review the reverse notifications of non-tariff measures received, on the basis of Secretariat analyses similar to the analyses prepared for the GATT Technical Group on Quantitative Restrictions and Other Non-Tariff Measures.

## COMMITTEE ON AGRICULTURE

### PREPARATORY WORK PROGRAMME OF THE MINISTERIAL DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD- IMPORTING DEVELOPING COUNTRIES

*Adopted by the Committee on Agriculture on 21 November 1995  
(G/AG/4)*

- A. *Review of Food Aid Levels*
  - (i) International commitments in respect of food aid (Food Aid Convention)
  - (ii) Preparation of statistical tables on food aid levels, including origin and destination based on relevant published sources and notifications (in particular G/AG/2, Table NF:1)
  
- B. *Guidelines Relating to Concessionality of Food Aid*
  - (i) Existing guidelines
  - (ii) Statistical data on concessionality of food aid transactions based on relevant published sources and notifications (in particular G/AG/2, Table NF:1)
  
- C. *Procedures for Submission of Detailed Proposals on Matters Relevant under A and B Above*

WTO LIST OF NET FOOD-IMPORTING DEVELOPING  
COUNTRIES FOR THE PURPOSES OF THE MARRAKESH MINISTERIAL  
DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE  
EFFECTS OF THE REFORM PROGRAMME ON THE LEAST DEVELOPED  
AND NET FOOD-IMPORTING DEVELOPING COUNTRIES  
("THE DECISION")

*Decision of the Committee on Agriculture on 21 November 1995  
(G/AG/3)*

1. The following countries shall be listed as beneficiaries in respect of the measures provided for within the framework of the Decision:
  - (a) least developed countries as recognized by the Economic and Social Council of the United Nations; plus
  - (b) any developing country Member of the WTO which was a net importer of basic foodstuffs in any three years of the most recent five-year period for which data are available and which notifies the Committee of its decision to be listed as a Net Food-Importing Developing Country for the purposes of the Decision.
2. Notifications under paragraph 1(b) above should be accompanied by relevant statistical data in respect of total and net imports, on a value and quantity basis, and of their relative importance as a proportion of domestic consumption of the products concerned. Such notifications should be made at least 15 days prior to the regular March meeting of the Committee in any year.
3. The Committee shall establish a list of Net Food-Importing Developing Country Members on the basis of these notifications. This list shall be reviewed by the Committee at its regular March meetings.

ORGANIZATION OF WORK AND WORKING PROCEDURES  
OF THE COMMITTEE

*Adopted by the Committee on Agriculture on 28 March 1995<sup>1</sup>  
(G/AG/1)*

*General*

1. In accordance with its terms of reference (WT/L/43) the Committee on Agriculture ("the Committee") shall oversee the implementation of the Agreement on Agriculture ("the Agreement"). The Committee shall afford Members

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<sup>1</sup> The general points made by the Chairman in connection with the adoption hereof are reflected in document G/AG/R/1.

the opportunity of consulting on any matter relating to the implementation of the provisions of the Agreement.

### *Meetings of the Committee*

2. The Committee shall meet at regular intervals to review progress in the implementation of the Uruguay Round reform programme under Article 18:1 & 2 of the Agreement (the "review process") and generally to carry out such other tasks as are provided for in the Agreement, or which may be required to be dealt with.

3. The agenda for regular meetings and the work of the Committee itself shall be in two parts: Part I shall comprise items relating to the review process; Part II shall comprise items relating to other matters within the purview of the Committee, as well as items relating to reports to be submitted by the Committee to other WTO bodies.

4. Notice of regular meetings of the Committee and a draft agenda shall be issued at least 10 days prior to the date of the meeting. Any Member may request, in writing to the Secretariat, the inclusion of items under Part I or II of the proposed agenda up to, but not including, the day of which the notice convening the meeting is to be issued.

5. Regular meetings of the Committee shall be held in March, September and November. Each regular meeting shall schedule the dates for the next meeting. Additional regular meetings of the Committee may be scheduled as appropriate.

6. At the request of a Member and where the matter involved is one of significant importance or urgency, the Chairperson may, unless it is considered that resort to other procedures would be more appropriate, convene a special meeting of the Committee.

### *Part I of Regular Meetings of the Committee - The Review Process*

7. In general the review process under Part I of a regular meeting of the Committee shall be conducted on the basis of notifications which have been circulated to the Members prior to the notice convening the meeting and are listed in that notice.

8. A Member which proposes to raise any matter relating to a particular notification in the course of a regular meeting shall give notice of its intention to the notifying Member concerned and to the Secretariat, together with an outline of its concerns, as far as possible in advance of the meeting but not later than one day prior to the day on which the notice convening the meeting is to be issued. Notifications in respect of which points have been raised under this paragraph shall be annotated accordingly in the proposed agenda. The purpose of this procedure is to enable the notifying Member to provide adequate responses to these points in the course of the review process.

9. Notifications circulated or made available after the date on which the notice convening the meeting is issued shall be considered under a distinct item of Part I of the agenda. Such notifications shall also be inscribed in Part I of the agenda of the next meeting of the Committee.

10. A Member which proposes to raise or revert to any matter in connection with a notification considered at a previous meeting of the Committee shall give notice of its intention to the notifying Member concerned and to the Secretariat, together with an outline of its concerns, as far as possible in advance of the meeting concerned but not later than 1 day prior to the day on which the notice convening that meeting is to be issued. Notifications in respect of which points have been raised under this paragraph shall be annotated accordingly in the proposed agenda.

11. Counter notifications under Article 18:7 of the Agreement shall be considered by the Committee at the earliest opportunity.

12. A Member raising a matter relevant to the implementation commitments under Article 18:6, may request the Member to which the matter in question relates, through the Chairperson of the Committee, to provide in writing specific information, or an explanation of the relevant facts or circumstances, regarding the matter that has been raised. The role of the Chairperson shall be to ensure that there are reasonable grounds for the request and that as far as possible duplication and unduly burdensome requests are avoided. The information or explanation thus requested should normally be provided to the Committee by the Member to which the request is addressed within 30 days.

13. With respect to any matter which has been raised under the Agreement, the Chairperson may, at the request of the Members directly concerned, assist them in dealing with the matter in question. The chairperson shall normally report to the Committee on the general outcome with respect to the matter in question.

14. A Member which has commitments in Section II of Part IV of its Schedule in respect of incorporated products shall, where so requested by another Member through the Chairperson, provide appropriate information to the Committee, normally within 30 days of the request, on per unit subsidies in terms of Article 11 of the Agreement in relation to transactions during a particular period as specified in the request to the Member concerned.

15. As regards tariff and other market access quota commitments specified in Schedules, a Member may request another Member, through the Chairperson, to provide information to the Committee on the functioning of a specific quota, including the quantity of imports effected or authorized under that quota. The information requested should normally be provided within 30 days of the request. The role of the Chairperson shall be to ensure that there are reasonable grounds for the request and that as far as possible duplication and unduly burdensome requests are avoided.

*Part II of Regular Meetings of the Committee*

16. The work of the Committee under Part II shall comprise items relating to other matters within the purview of the Committee, as well as items relating to reports to be submitted by the Committee to other WTO bodies.

17. The annual consultation pursuant to Article 18:5 of the Agreement shall be undertaken at the November meetings of the Committee.

18. There shall be an opportunity at any regular meeting of the Committee to raise any matter relating to the Decision on Measures concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. The Committee shall at its November meetings monitor actions taken within the framework of the Decision pursuant to Article 16:2 of the Agreement on the basis, *inter alia*, of notifications submitted to the Committee. A report on the follow-up to this Decision shall be prepared by the Committee for the purposes of the review to be undertaken by the Ministerial Conference.

*Other Matters*

19. Representatives of international intergovernmental organizations may be invited to attend regular meetings as observers in accordance with the guidelines to be adopted by the General Council.

## NOTIFICATION REQUIREMENTS AND FORMATS

*Adopted by the Committee on Agriculture on 8 June 1995*

*(G/AG/2)*

1. The following tables set out the requirements and formats for notifications under Article 18:2 and other relevant provisions of the Agreement on Agriculture. Each table or set of tables is preceded by notes indicating which Members are required to notify, at what frequency and in what manner.

2. Notifications to the Committee should be accompanied by a diskette containing the same information in Lotus format (tables) or Word Perfect format (text).

3. Elements of the notification in text form (e.g. descriptions of policies) will be translated into the official languages.

4. Information submitted under these formats is without prejudice to the consistency of the arrangements notified with the relevant provisions of the WTO.

TARIFF AND OTHER QUOTAS  
(Tables MA:1 and MA:2)

*Notifying Members:* all Members with tariff and other quota commitments recorded in Section I-B (or Section I-A) of their Schedules for the products concerned.

*Notification frequency and format:*

- (i) a comprehensive one-off notification in 1995 on the administration of quotas (Table MA:1) followed by the ad hoc notification of any changes in their administration. The initial notification should normally be made in advance of the opening of the quota but in any event no later than 30 days following that date. Notifications of changes should be made, where possible, prior to the change being implemented, but in any event not later than 30 days following the change;
- (ii) an annual notification following the end of the calendar (or, marketing, fiscal, etc.) year in question showing imports under tariff and other quotas (Table MA:2). The notification should normally be made 30 days following the year but, in any event, no later than 60 days following the year in question.

Table MA:1

MARKET ACCESS: name of Member  
 REPORTING PERIOD: calendar year, marketing year, etc.

*Implementation of market access opportunities: tariff and other quota commitments*

Description of products	Tariff item number(s) encompassed in product description	Description of import arrangement applicable
(from Section I-B (or I-A) of Part I of the Schedule)	(from Section I-B (or I-A) of Part I of the Schedule)	Description of the arrangements to be applied in order to provide the market access opportunities specified in the Member's Schedule, including, as appropriate:
1	2	3
		(a) allocation of quotas to supplying countries, including: (i) details of basis for determining the allocation (e.g. representative period or "other terms and conditions" as specified in Part I, Section I of Schedules); (ii) any limitation on the period of access; (b) allocation of licenses or of access to quotas to importers, including details of: (i) government agency, trading or administrative body competent to grant licenses or access to quotas, including those which have formally, or in effect, exclusive or special privileges; (ii) any limitations on eligibility of applicants; (iii) how licenses or access are to be allocated by the competent agency (e.g. first-come-first-served, pro rata); (iv) any limitations on the period of validity or use of the licenses granted; (c) details of other arrangements (not involving import licenses) under which access to quotas is to be administered; (d) any other information relevant to the implementation of market access opportunities under such arrangements.

Table MA:2

MARKET ACCESS: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*List relating to tariff and other quota commitments*

Description of products (from Section I-B (or I-A) of Part I of the Schedule)	Tariff item number(s) encompassed in product description (from Section I-B (or I-A) of Part I of the Schedule)	Tariff quota quantity for period in question (derived from Section I-B (or I-A) of Part I of the Schedule)	In-quota imports during period
1	2	3	4

**SPECIAL SAFEGUARD**  
(Tables MA:3 to MA:5)

*Notifying Members:* all Members having reserved the right in their Schedules to use the Special Safeguard Provisions (Article 5 of the Agreement on Agriculture).

*Notification frequency and format:*

- (i) in the case of the "volume-based" special safeguard, a notification in the form of Table MA:3 should be made as far as practicable before taking such action for the first time in any year in respect of each product, and in any event within 10 days of the implementation of such action;
- (ii) in the case of the "price-based" special safeguard, a notification in the form of Table MA:4 should be submitted. Table MA:4 can be used either to provide an "up-front" notification of trigger prices or on a case-by-case basis for the first use of the price-based special safeguard for any particular product (to be notified to the extent possible in advance, but in any event within 10 days of the taking of such action unless an up-front notification of the relevant trigger price has been made);
- (iii) an annual notification in the form of Table MA:5 should be made indicating the use of the special safeguard provisions in any year. The notification should be submitted no later than 30 days following the year in question. Where the special safeguard provisions have not been invoked in any year, a statement to this effect should be made.

Table MA:3

MARKET ACCESS: name of Member

*Notification under Article 5 of the Agreement:  
special safeguard: volume-based*

- |     |  |        |
|-----|--|--------|
| (1) | Description of product:                                    |        |
| (2) | Tariff item number:  |        |
| (3) | Trigger level:<br>(as calculated in Annex 1)               | tonnes |
| (4) | Volume of imports entering<br>territory in current period: | tonnes |

- (5) Period of application:  
 (calendar/marketing year or shorter period  
 for perishable or seasonal products (specify))

SPECIAL SAFEGUARD: VOLUME-BASED: Annex 1 to MA:3  
 Information required for the calculation of the Trigger Level

Imports in the 3 preceding years:	Year 1:	tonnes
	Year 2:	tonnes
	Year 3:	tonnes
	Average:	tonnes

And if import penetration is taken into account:

Consumption in the 3 preceding years:	Year 1:	tonnes
	Year 2:	tonnes
	Year 3:	tonnes
	Average:	tonnes

Method of allocation of change in consumption to the tariff line concerned:

Table MA:4

MARKET ACCESS: name of Member

*Notification under Article 5 of the Agreement:  
 special safeguard: price-based*

A: *"UP-FRONT" NOTIFICATION OF TRIGGER PRICES*

Where a Member provides an up-front notification of trigger prices the following format should be used:

<b>Tariff item number</b>	<b>Description of product</b>	<b>Trigger price</b>
(as calculated in Annex 1)		

B: *AD HOC NOTIFICATION*

Where no up-front notification of the trigger prices is made, the following format should be used on the first use of the price-based special safeguard for any product:

- (1) Description of product:
- (2) Tariff item number:
- (3) Trigger price:  
 (as calculated in Annex 1)
- (4) Date of application:

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SPECIAL SAFEGUARD: PRICE-BASED: Annex 1 to Table MA:4  
Information required for the calculation of the Trigger Price

Prices in the reference period:	1986:	/tonne
	1987:	/tonne
	1988:	/tonne
	Average:	/tonne
Source of price information:		

Table MA:5

MARKET ACCESS: name of Member  
 REPORTING PERIOD: calendar year, marketing year, etc.

*Annual summary of special safeguard actions taken*

Tariff item number	Description of product	Whether volume-based action taken during period	Whether price-based action taken during period
1	2	3	4

CURRENT TOTAL AGGREGATE MEASUREMENT OF SUPPORT  
(Table DS:1 and Supporting Tables DS:1 to DS:9)

*Notifying Members:* all Members.

*Notification frequency and format:*

- (i) for all Members with base and annual commitment levels shown in Section I of Part IV of their Schedule, a notification should be made no later than 90 days following the end of the calendar (or, marketing, fiscal, etc.) year in question. Where the notification submitted within the 90 day period is provisional, the final notification should be submitted no later than 120 days following the end of the year. A summary table (Table DS:1) and supporting tables (Supporting Tables DS:1 to DS:9) as attached should be submitted;
- (ii) for those Members with no base or annual commitment levels shown in Section I of Part IV of their Schedule:
  - all Members with the exception of least-developed Members should submit an annual notification providing that the Committee may, at the request of a developing country Member, set aside this requirement other than in respect of Supporting Tables DS:1 to DS:3;
  - least-developed Members should submit Supporting Tables DS:1 to DS:3 every two years.

Where no support exists, a statement to this effect should be made.

Table DS:1

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Current Total Aggregate Measurement of Support*

Total AMS commitment level for period in question (from Section I of Part IV of the Schedule)	Currency (from Section I of Part IV of the Schedule)	Current Total AMS (from attached Supporting Tables)
1	2	3

Supporting Table DS:1

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Measures exempt from the reduction commitment - "Green Box"*

Measure type	Name and description of measure with reference to criteria in Annex 2	Monetary value of measure in year in question	Data sources
1	2	3	4
(a) "general services"			
(b) "public stockholding for food security purposes"			
(c) "domestic food aid"			
(d) "decoupled income support"			
(e) "income insurance and income safety-net programmes"			
(f) "payments for relief from natural disasters"			
(g) "structural adjustment assistance provided through producer retirement programmes"			
(h) "structural adjustment assistance provided through resource retirement programmes"			
(i) "structural adjustment assistance provided through investment aids"			
(j) "environmental programmes"			
(k) "regional assistance programmes"			
(l) "other"			

## Supporting Table DS:2

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Measures exempt from the reduction commitment - Special and Differential Treatment - "Development Programmes"*

Measure type	Name and description of measure with reference to criteria in Article 6:2	Monetary value of measure in year in question	Data sources
1	2	3	4
(a)	"investment subsidies generally available to agriculture"		
(b)	"input subsidies generally available to low-income or resource-poor producers"		
(c)	"support to encourage diversification from growing illicit narcotic crops"		

## Supporting Table DS:3

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Measures exempt from the reduction commitment - Direct Payments under Production-Limiting Programmes - "Exempt Direct Payments"*

Measure type	Name and description of measure with reference to criteria in Article 6:5	Monetary value of measure in year in question	Data sources
1	2	3	4
(a)	"payments based on fixed area and yields"		
(b)	"payments based on 85 per cent or less of the base level of production"		
(c)	"livestock payments made on a fixed number of head"		

Supporting Table DS:4

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Calculation of the Current Total Aggregate Measurement of Support*

Description of basic products (including non-product specific AMS)	1	2	3	4
	1	2	3	4
	Description of basic products (including non-product specific AMS)	Product-specific AMS (from Supporting Tables DS:5 to DS:7 below)	Product-specific measurements of support (from Supporting Table DS:8 below)	Current Total AMS (aggregate)
Product A				Total Product A
Product B				Total Product B
Product C				Total Product C
...				...
Non-product-specific AMS				Total Non-product-specific AMS (from Supporting Table DS:9 below)
<hr/>				TOTAL: Current Total AMS

Supporting Table DS:5

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Product-Specific Aggregate Measurements of Support: Market Price Support*

Description of basic products	Calendar / marketing year beginning ...	Measure type(s)	Applied administered price	External reference price (generally from AGST/...)	Eligible production	Associated fees/levies	Total market price support	Data sources
1	2	3	4	5	6	7	8 (4-5*6)-7	9

Supporting Table DS:6

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Product-Specific Aggregate Measurements of Support: Non-Exempt Direct Payments*

Description of basic product	Calendar / marketing year beginning ...	Measure type(s)	Applied administered price	External reference price (generally from AGST/...)	Eligible production	Total price-related direct payments	Other non-exempt direct payments	Associated fees/levies	Total direct payments	Data sources
1	2	3	4	5	6	7 (4-5)*6	8	9	10 (7+8-9)	11

Supporting Table DS:7

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Product-Specific Aggregate Measurements of Support: Other Product-Specific Support and Total Product-Specific AMS*

Description of basic product	Calendar / marketing year beginning ...	Measure type(s)	Other product-specific budgetary outlays	Other product-specific support (include calculation details)	Associated fees/levies	Total other product-specific support	Market price support (Supporting Table DS:5)	Non-exempt direct payments (Supporting Table DS:6)	Total AMS	Data sources
1	2	3	4	5	6	7	8	9	10	11
						(4+5-6)			(7+8+9)	

Supporting Table DS:8

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Product-Specific Equivalent Measurements of Support*

Description of basic products	Calendar / marketing year beginning ...	Measure type(s)	Applied adminis-tered price	Production eligible to receive the adminis-tered price	Market price support budgetary outlays	Equivalent measurement of support (include calculation details)	Non-exempt direct payments	Other product-specific support	Associated fees/levies	Total monetary value of equivalent commitment	Data sources
1	2	3	4	5	6	7	8	9	10	11	12
										(7+8+9-10)	

## Supporting Table DS:9

DOMESTIC SUPPORT: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Non-Product-Specific AMS*

Measure type(s)	Calendar / marketing year beginning ...	Non-product-specific budgetary outlays	Other non-product-specific support (include calculation details)	Associated fees/levies	Total non-product-specific support	Data sources
	2	3	4	5	6 (3+4-5)	7
1						

NEW OR MODIFIED DOMESTIC SUPPORT MEASURES EXEMPT FROM  
REDUCTION  
(Table DS:2)

*Notifying Members:* all Members introducing a new support measure, or making modifications to an existing measure, for which an exemption from reduction is claimed. Exemptions from domestic support reduction commitments can fall under one or more of the following three categories:

- (i) measures that have no or at most minimal trade-distorting effects or effects on production. The criteria relating to these "green box" measures are contained in Annex 2 to the Agreement on Agriculture;
- (ii) investment subsidies which are generally available to agriculture in developing country Members, agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members and domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. The criteria relating to these "development programmes" of developing country Members are contained in Article 6:2 of the Agreement on Agriculture; and
- (iii) direct payments under production-limiting programmes. The criteria relating to these "exempt direct payments" (or "blue box" measures) are contained in Article 6:5 of the Agreement on Agriculture.

*Notification frequency and format:* a notification as attached should be submitted for each new or modified measure as far as practicable before such measures are adopted and in any event within 30 days of adoption.

Table DS:2

DOMESTIC SUPPORT: name of Member

*Notification under Article 18:3 of the Agreement: New or Modified  
Domestic Support Measures Exempt from Reduction*

- (1) Full title of measure:
- (2) Domestic legislation reference:
- (3) Detailed description of measure with reference to criteria, i.e. those in: Annex 2: Green box: (a) "general services"; (b) "public stockholding for food security purposes"; (c) "domestic food aid"; (d) "decoupled income support"; (e) "income insurance and income safety-net programmes"; (f) "payments for relief from natural disasters"; (g) "structural adjustment assistance provided through producer retirement programmes"; (h) "structural adjustment assistance provided through resource retirement pro-

grammes"; (i) "structural adjustment assistance provided through investment aids; (j) "environmental programmes"; (k) "regional assistance programmes"; (l) "other"; *and/or*

Article 6:3: Development programmes: (a) "investment subsidies generally available to agriculture"; (b) "input subsidies generally available to low-income or resource-poor producers"; (c) "support to encourage diversification from illicit narcotic crops"; *and/or*

Article 6:5: Exempt direct payments: (a) "payments based on fixed area and yields"; (b) payments based on 85 per cent or less of the base level of production"; (c) "livestock payments made on a fixed number of head".

- (4) Cost of measure:
- (5) Date of entry into effect:
- (6) Period of application:
- (7) Products to principally benefit (if any individual product(s)):

#### EXPORT SUBSIDY COMMITMENTS (Tables ES:1 to ES:3 and Supporting Tables ES:1 and ES:2)

*Notifying Members:* all Members.

*Notification frequency and format:*

- (i) for all Members with base and annual commitment levels shown in Section II of Part IV of their Schedule, an annual notification following the end of the calendar (or, marketing, fiscal, etc.) year in question should be made. A notification should be made no later than 60 days following end of the year in question. Where the notification submitted within the 60 day period is provisional, the final notification should be submitted no later than 120 days following the end of the year in question. The notification should take the form of Table ES:1 accompanied by Supporting Table ES:1. Where necessary, details of the use of downstream flexibility should be included in the notification;
- (ii) for those Members with no base or annual commitment levels shown in Section II of Part IV of their Schedule, an annual notification following the end of the year in question should be made no later than 30 days following the period in the form of a statement confirming that no export subsidies exist or, in the case of developing country Members using exempt export subsidies (Article 9:1(d) and (e)), in the form of Supporting Table ES:2;
- (iii) for all Members with base and annual commitment levels shown in Section II of Part IV of their Schedule plus all other Members which are significant exporters of the products listed hereunder,

namely, those Members whose share of total world exports in any one or more of the following products or groups of products exceeds 5%, an annual notification of the total volume of exports of the product(s) concerned should be made. Notifications in respect of the first two years of implementation should be made no later than 120 days following the end of the calendar (or, marketing, fiscal, etc.) year in question. Where a notification with respect to any product or group of products is provisional a final notification shall be made no later than 180 days following the end of the year in question. In respect of the third and subsequent years of implementation notifications shall be made no later than 120 days following the end of the implementation year in question. A list of Members that are significant exporters for the purposes of this notification requirement and of the products concerned shall be established by the Chairman following consultation as appropriate and shall be reviewed after two years. Notifications should take the form of Table ES:2 and, in the case of Members with base and annual commitment levels shown in Section II of Part IV of their Schedule, the data on total exports shall be on a basis comparable to that provided in Table ES:1. The products or groups of products concerned are:

(i) Wheat and wheat flour	(ix) Skim milk powder	(xvii) Eggs
(ii) Coarse grains	(x) Cheese	(xviii) Wine
(iii) Rice	(xi) Other milk products	(xix) Fruit
(iv) Oilseeds	(xii) Bovine Meat	(xx) Vegetables
(v) Vegetable oils	(xiii) Pigmeat	(xxi) Tobacco
(vi) Oilcakes	(xiv) Poultry meat	(xxii) Cotton
(vii) Sugar	(xv) Sheepmeat	
(viii) Butter and butter oil	(xvi) Live animals	

- (iv) for all food donor Members, a notification in the form of Table ES:3 showing the total volume of food aid should be provided (unless this information is required to be provided under (i) above). For the purposes of ES:3, the list of products or groups of products shown under (iii) above should be used. The notification should be made no later than 120 days following the end of the year in question.

Table ES:1

EXPORT SUBSIDIES: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Export Subsidies: Budgetary Outlay and Quantity Reduction Commitments*

Description of products (from Section II of Part IV)	Calendar / marketing year beginning ...	Subsidized exports		Food aid <sup>1</sup>		Annual commitment levels	
		Outlays	Quantity	Quantity	Outlays	Quantity	Quantity
1	2	3	4	5	6	7	7

<sup>1</sup> Members are to provide data on food aid to all destinations.

Table ES:2

EXPORT SUBSIDIES: name of Member  
 REPORTING PERIOD: calendar year, marketing year, etc.  
*Export Subsidies: Notification of Total Exports*

Description of products	Calendar / marketing year beginning ...	Quantity of total exports
1	2	3

Table ES:3

EXPORT SUBSIDIES: name of Member  
 REPORTING PERIOD: calendar year, marketing year, etc.  
*Export Subsidies: Notification of the total volume of food aid*

Description of products	Calendar / marketing year beginning ...	Quantity of food aid to all destinations
1	2	3

## Supporting Table ES:1

EXPORT SUBSIDIES: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

*Export Subsidies: Outlay and Quantity Reduction Commitments*

Description of products	Direct export subsidies	Sales of stocks	Producer financed subsidies	Cost reduction measures	Internal transport subsidies	Total product specific export subsidies	Quantity of subsidized exports	Data source
1	2	3	4	5	6	7	8	9

## Supporting Table ES:2

EXPORT SUBSIDIES: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

EXPORT SUBSIDIES: OUTLAY AND QUANTITY REDUCTION COMMITMENTS:  
DEVELOPING COUNTRY MEMBERS USING ARTICLE 9:1(D) AND/OR (E) EXPORT SUBSIDIES

Description of products	Cost reduction measures	Internal transport subsidies	Total product specific export subsidies	Quantity of subsidized exports	Data source
1	2	3	4	5	6

EXPORT PROHIBITIONS AND RESTRICTIONS  
(Table ER:1)

*Notifying Members:* any Member instituting an export prohibition or restriction covered by Article 12 of the Agreement on Agriculture (except developing country Members which are not net exporters of the product concerned).

*Notification frequency and format:* a notification as attached should be made as far as practicable in advance of the measure being taken.

Table ER:1            EXPORT RESTRICTIONS: name of Member

*Notification under Article 12 of the Agreement:  
Export prohibitions and restrictions*

- (1) Description of product:
- (2) Tariff item number(s):
- (3) Nature of, and justification for, measure to be introduced:
- (4) Duration of application of measure:

MONITORING OF THE FOLLOW-UP TO THE DECISION ON MEASURES  
CONCERNING THE POSSIBLE NEGATIVE EFFECTS  
OF THE REFORM PROGRAMME ON LEAST-DEVELOPED  
AND NET FOOD-IMPORTING DEVELOPING COUNTRIES  
(Table NF:1)

*Notifying Members:* Members in respect of actions taken within the framework of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

*Notification frequency and format:* a notification should be made by all donor Members at least annually with respect to items (1), (2) and (3) in Table NF:1. The notification should be made no later than 60 days following the relevant period.

Table NF:1

NOTIFICATION UNDER ARTICLE 16:2 OF THE AGREEMENT:  
MONITORING OF THE FOLLOW-UP TO THE DECISION ON MEASURES  
CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM  
PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING  
DEVELOPING COUNTRIES: name of Member

REPORTING PERIOD: calendar year, marketing year, etc.

- (1) Quantity of food aid provided to least-developed and net food-importing developing countries:
- (2) Indication of the proportion in fully grant form or appropriate concessional terms:
- (3) Technical and financial assistance under paragraph 3(iii) of the Decision:
- (4) Other relevant information with respect to actions taken within the framework of the Decision:

LIST OF "SIGNIFICANT EXPORTERS" FOR THE PURPOSES OF THE  
NOTIFICATION REQUIREMENTS IN RESPECT OF EXPORT SUBSIDY  
COMMITMENTS

*(G/AG/2/Add.1)*

Addendum

The following list of "significant exporters" that are required annually to submit data on their total exports in the form of Table ES:2 has been established by the Chairman of the Committee on Agriculture in accordance with paragraph (iii) of the notification requirements in respect of export subsidy commitments:

<i>Product Group</i>	<i>Significant Exporters</i>
Wheat and wheat flour	Australia
Coarse grains	Argentina
Rice	Pakistan, Thailand
Oilseeds	Argentina, Brazil, United States
Vegetable oils	Argentina, Indonesia, Malaysia, Philippines
Oilcakes	Argentina, United States
Sugar	Australia, Cuba, Thailand
Butter and butter oil	New Zealand
Skim milk powder	New Zealand

Cheese	New Zealand
Other milk products	New Zealand
Bovine meat	Australia, New Zealand
Pigmeat	Canada
Poultry meat	Thailand
Sheepmeat	Australia, New Zealand
Fruit	Chile, Costa Rica, Honduras, Philippines, United States
Vegetables	United States
Tobacco	United States, Zimbabwe
Cotton	Australia, Pakistan, United States

*Note:* The annual notifications in the form of Table ES:2 should, as appropriate, include exports of any product within the scope of the relevant product group as specified in paragraph (iii) of the notification requirements in respect of export subsidy commitments.

## COMMITTEE ON ANTI-DUMPING PRACTICES

### GUIDELINES FOR INFORMATION PROVIDED IN THE SEMI-ANNUAL REPORTS

*Adopted by the Committee on Anti-Dumping Practices  
on 30 October 1995  
(G/ADP/1)*

1. The information should always make clear which country<sup>1</sup> is subject to the measure reported.
2. In order to systematically present data in the semi-annual reports, the names of the countries whose imports are subject to action must be organized in alphabetical order.
3. If any single country, e.g. Alpha in the illustrative report in the Annex, has more than one case, the different cases for this country must be organized in chronological order.
4. When imports of any particular product from more than one country are investigated, the names of the countries concerned should be provided separately, i.e. each product-country combination should be treated as one case. This is shown, for example, for product category "machine tufted carpeting" in the illustrative report in the Annex.

<sup>1</sup> In this note, the term "country" should be interpreted to include customs territories also.

5. As indicated by the titles for columns 4, 5 and 6 in the semi-annual report, the date when the measure is taken should always be provided.
6. Columns 4, 5 and 6 in the semi-annual reports should contain the dates on which measures entered into force rather than the dates on which findings were made.
7. The titles for columns 4, 5 and 6 also indicate that the dumping margins must be provided along with the dates for the measures reported in these columns. When there are several dumping margins, a range of the margins could be provided. The actual margins of dumping should be indicated for the preliminary and final duties mentioned in the reports.
8. If the rate of duty imposed is less than the dumping margin, then the rate of duty should also be provided along with the dumping margin. If the lower duty rate cannot be provided, this should be indicated by a footnote.
9. For the information in column 11, the reporting party should clarify the coverage of the data on "Trade volume" that is provided, i.e. whether this data refers to the total trade volume of the subject product from the country under investigation, or to total trade volume from the country which is determined to be dumped, or some other notion of trade volume. The Committee could reach an agreement on the symbols to be used for indicating the coverage of such data.
10. When no information is provided under columns 11 to 13, then the reporting Party should give a reason for not providing such data. In this context, new symbols which could be used are "CF" to denote confidentiality and "n/a" to denote that the data is not provided because it may not be available or relevant in a situation of a review.
11. In columns 11 to 13, whenever relevant information is available it should be provided from the time when provisional measures are taken, and the information in these columns should be updated in order to provide the most recent relevant data pertinent to the latest decision point covered by the report, e.g. provisional measures or definitive duties.
12. For the information provided in columns 11 to 13, it would be desirable to indicate the time period for which the information is provided.
13. In column 14, the symbol "TM" should be accompanied by the name of the third country whose market prices were used as a basis for calculations. The footnote to the table in the semi-annual report clearly indicates that such information should be specified in the report.
14. An initiation of a completely new investigation should be distinguished from the reopening of a suspended investigation or the opening of an investigation in the context of a review of an existing anti-dumping measure. This should be done by using the symbol (R) after the date of initiation for reviews or for reopening of a suspended investigation.
15. A list of the outstanding measures at the end of the reporting period and a list of measures revoked during the reporting period should be provided along with the other information in the report.

16. Provisional measures should never be listed in the annex "All outstanding anti-dumping actions". The measures listed in this annex should be divided into two categories: a first category comprising all definitive duties and a second category listing price undertakings.
17. The list of outstanding measures should contain measures in force at the end of the reporting period, i.e. the measure in force on 30 June or 31 December, rather than measures in force at the time of the submission of the report to the Committee.
18. The information on the measures in place at the end of the reporting period should include dates since the measures have been in place.<sup>2</sup>
19. For further improving the transparency of the anti-dumping investigations, information on all cases pending at the end of the period should be reported even if there was no action taken during the period for which the report is provided.
20. The authorities should, as far as possible, compare the information in a semi-annual report with that provided in the previous report in order to correct past errors and to avoid any errors in the latest report.
21. Nothing in this format requires the notification of confidential information, including confidential business information.

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<sup>2</sup> The format for review investigations will be discussed by the Committee.

Reporting Party: Illustrative

## ANNEX

**ILLUSTRATIVE SEMI-ANNUAL REPORT OF ANTI-DUMPING ACTIONS**  
For the period 1 July - 31 December 1992

Country	Product	Initiation*	FINAL MEASURES			NO FINAL MEASURES				Trade volume**	Dumped imports as % of domestic consumption	% of trade volume investigated (of the exporting country)	Basis of determination
			Provisional measures/determinations	Definitive duty	Price undertaking	No dumping	No injury	Case w/drawn	Other				
1	2	3	4	5	6	7	8	9	10	11	12	13	14
		Date	Date, dumping margin	Date, dumping margin	Date, dumping margin	Date	Date	Date	Date				
Alpha	Coated ground-wood paper	1.1.1992	4.5.1992 8-21%	8.10.1992 5-18%						32,000 M.T.	12%	100%	HM
Alpha	Machine tufted carpeting	3.2.1992	29.7.1992 4-45%		4.10.1992 3-34%					14 million square m.	37%	75%	CV
Alpha	Printcloth	1.4.1992	4.8.1992 12%				20.12.1992						

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Beta	Coated groundwood paper	1.1.1992	4.5.1992 12-18%		7.8.1992 12-15%					23,000 M.T.	8%	85%	HM, OP
Gamma	Pure and alloy magnesium	4.3.1992	5.7.1992 35%	15.12.1992 20%						15 Mil. Kg.	n/a	100%	TM-Alpha
Delta	Machine tufted carpeting	3.2.1992	29.7.1992 35-52%	20.12.1992 20-42%						CF	CF	CF	HM, CV
Delta	Video tapes in cassettes	1.6.1992 (R)	12.12.1992 55%							CF	CF	CF	HM
Delta	Barium chloride	7.4.1992	15.11.1992 23%							n/a	n/a	n/a	CV

\* The symbol (R) should be used if an investigation is opened in the context of a review of an existing anti-dumping measure, or after an allegation of a breach of an undertaking.

\*\* Trade volume based on statistical data for the latest available calendar year prior to initiation (1991 for the data provided in this report).

† The data on trade volume is provided for the total trade volume of the subject product from the country/customs territory under investigation. Percentage

or amount per unit if appropriate.

CF Information not provided for reasons of confidentiality.

n/a Not available.

Note: List in Annex (1) definitive duties and price undertakings in force at 30 June or 31 December as appropriate, and in Annex (2) revocations of anti-dumping measures.

Basis for determination codes:

HM - Home market price

TM - Third country market price (specify country)

CV - Constructed value

SP - Prices charged by same producer

OP - Prices charged by other producer

OPT -

OCT -

O -

LDC -

FA -

Prices charged by other producer in third country

Costs of other producer in third country

Other (specify)

Treatment having regard to Article 15 of the Agreement.

Facts Available

OUTSTANDING ANTI-DUMPING MEASURES DEFINITIVE DUTIES IN  
FORCE  
(As of 31 December 1992)

Country/Customs Territory	Product	Date of Imposition
Alpha	Widgets	10.12.1992
Theta	Snub-nosed screwdrivers	17.06.1993

UNDERTAKINGS IN FORCE  
(As of 31 December 1992)

Country/Customs Territory	Product	Date of Undertaking
Gamma	Stuffed rabbits	08.06.92

REVOCATION OF ANTI-DUMPING MEASURES  
(1 July - 31 December 1992)

Country/Customs Territory	Product	Date of Revocation
Sigma	Oat bran	11.11.94

MINIMUM INFORMATION TO BE PROVIDED UNDER ARTICLE 16.4 OF  
THE AGREEMENT IN THE REPORTS ON ALL PRELIMINARY OR FINAL  
ANTI-DUMPING ACTIONS

*Adopted by the Committee on Anti-Dumping Practices  
on 30 October 1995  
(G/ADP/2)*

1. Title of the public notice regarding the action.
2. Date and place of publication.
3. Investigation (Regulation) Number and other notices relating to the same investigation (e.g. for initiation, provisional measure).
4. Margin(s) of dumping found and the basis of calculation.

5. Where anti-dumping measures are imposed, the product (including customs classification), origin (country/customs territory/firm), rate of duty and the effective date for each source of imports.
6. Where an undertaking is involved, the product, country/customs territory/firm, and effective date of the undertaking.
7. The period of investigation (dumping, injury).
8. Date of the dumping determination.
9. Date of the injury determination.
10. Type of injury found (material injury, threat, material retardation).
11. Volume and import penetration of dumped imports.
12. Effect on domestic prices of the like product (whether there was significant price undercutting/price suppression or depression).
13. Evidence on the impact on the domestic industry (i.e. the factors mentioned in Article 3:3 of the Agreement which were the basis for the finding regarding the impact on the domestic industry).
14. Evidence of causation of injury to domestic industry (the basis for determining the causation of injury, and other factors which might at the same time be causing injury to the domestic industry).

## COMMITTEE ON RULES OF ORIGIN

### NOTIFICATION PROCEDURES

*Agreed by the Committee on Rules of Origin on 4 April 1995  
(G/RO/1)*

The Committee on Rules of Origin, at its first meeting on 4 April 1995, noted that the Agreement on Rules of Origin was silent on the language in which notifications under Article 5.1 and paragraph 4 of Annex II are to be made, but that a notification made in a language other than one of the WTO working languages could cause difficulties to other Members. It, therefore, *agreed* that, if a notification were to be made in a language other than one of the WTO working languages, such notification should be accompanied by a summary in one of the WTO working languages.

## COMMITTEE ON SAFEGUARDS

### NOTIFICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROCEDURES RELATING TO SAFEGUARD MEASURES

*Adopted by the Committee on Safeguards on 24 February 1995  
(G/SG/N/1)*

1. Under Article 12.6 of the Agreement on Safeguards, Members shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.
2. Members are therefore invited to submit, in a working language of the WTO, their laws, regulations and administrative procedures relating to safeguard measures. Members which have no such laws or regulations are invited to notify the Committee accordingly.
3. The laws and regulations received in response to the above request will be circulated in addenda to this document.
4. A format is suggested below for these notifications under Article 12.6 of the Agreement on Safeguards in order to assist Members to focus on the type of information to be submitted in the notifications and to obtain similar responses from different Members.

#### Suggested format for notifications under Article 12.6 of the Agreement on Safeguards

Prompt notification to the Committee on Safeguards of laws,  
regulations and administrative procedures relating to safeguard  
measures as well as any modifications made to them

*Note:* The format is suggested without prejudice to the interpretation of the relevant provisions in the Agreement on Safeguards by the competent bodies. Members are also reminded of the provision in Article 12.11 of the Agreement on Safeguards, which reads as follows: "The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."

5. In the first notification under Article 12.6, please provide the full texts of the laws and regulations relating to safeguard measures, and notify the administrative procedures relating to safeguard measures.

6. Specify the authorities competent to initiate and conduct investigations.
7. Provide the text of any modifications made to the laws and regulations relating to safeguard measures, and notify any modifications to administrative procedures relating to safeguard measures.

#### NOTIFICATION OF PRE-EXISTING ARTICLE XIX MEASURES

*Adopted by the Committee on Safeguards on 24 February 1995  
(G/SG/N/2)*

1. Under Article 12.7 of the Agreement on Safeguards, Members maintaining measures described in Article 10 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement, i.e. *not later than 2 March 1995*.
2. Members are therefore invited to notify all safeguard measures taken pursuant to Article XIX of GATT 1947 that were in existence on 1 January 1995. Notifications received in response to this request will be circulated in addenda to this document.
3. A format is suggested below for these notifications under Article 12.7 of the Agreement on Safeguards in order to assist Members to focus on the type of information to be submitted in the notifications and to obtain similar responses from different Members.

#### Suggested format for notifications under Article 12.7 of the Agreement on Safeguards

#### Notifications to the Committee on Safeguards of measures described in Articles 10, existing on 1 January 1995

- Note:* The format is suggested without prejudice to the interpretation of the relevant provisions in the Agreement on Safeguards by the competent bodies. Members are also reminded of the provision in Article 12.11 of the Agreement on Safeguards, which reads as follows: "The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."
4. Specify the measure taken under Article XIX of GATT 1947.
  5. Specify the product subject to the measure.
  6. Specify the date on which the measure was first applied.

7. Provide the reference to the GATT document through which the measure was first notified to the CONTRACTING PARTIES.

NOTIFICATION UNDER ARTICLE 12.7 OF MEASURES SUBJECT TO THE  
PROHIBITION AND ELIMINATION OF CERTAIN MEASURES UNDER  
ARTICLE 11.1 OF THE AGREEMENT ON SAFEGUARDS

*Adopted by the Committee on Safeguards on 24 February 1995  
(G/SG/N/3)*

1. Under Article 12.7 of the Agreement on Safeguards, Members maintaining measures described in Article 11.1 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement, i.e. *not later than 2 March 1995*. These measures are those subject to the "prohibition and elimination of certain measures" under Article 11, i.e. the measures specified in Article 11.1(b).
2. Members are therefore invited to notify all measures specified in Article 11.1(b) that were in existence on 1 January 1995. Notifications received in response to this request will be circulated in addenda to this document.
3. A format is suggested below for these notifications under Article 12.7 of the Agreement on Safeguards in order to assist Members to focus on the type of information to be submitted in the notifications and to obtain similar responses from different Members.

Suggested format for notifications under Article 12.7  
of the Agreement on Safeguards

Notifications to the Committee on Safeguards of measures  
described in 11.1 (b), existing on 1 January 1995

- Note:* The format is suggested without prejudice to the interpretation of the relevant provisions in the Agreement on Safeguards by the competent bodies. Members are also reminded of the provision in Article 12.11 of the Agreement on Safeguards, which reads as follows: "The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."
4. Specify the type of measure (please see Article 11.1(b) and footnote 4 for examples).
  5. Specify the Members concerned (please see the ANNEX to the Agreement on Safeguards for an example)

6. Specify the product subject to the measure.

NOTIFICATION OF THE EXCEPTION UNDER ARTICLE 11.2  
OF THE AGREEMENT ON SAFEGUARDS

*Adopted by the Committee on Safeguards on 24 February 1995  
(G/SG/N/4)*

1. Under Article 11.2 of the Agreement on Safeguards, all measures referred to in Article 11.1(b) have to be phased out or brought into conformity with the Agreement by the Members within four years after the date of entry into force of the WTO Agreement, except for one specific measure per importing Member for which the duration of the period will be more than four years, i.e. it will be until 31 December 1999. Under Article 11.2 of the Agreement, such an exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the entry into force of the WTO Agreement, i.e. *not later than 31 March 1995*.
2. Members are therefore invited to notify the exception under Article 11.2 which has been mutually agreed between the Members directly concerned. Notifications received in response to this request will be circulated in addenda to this document.
3. A format is suggested below for these notifications under Article 11.2 of the Agreement on Safeguards in order to assist Members to focus on the type of information to be submitted in the notifications and to obtain similar responses from different Members.

Suggested format for notifications under Article 11.2  
of the Agreement on Safeguards

Exception under Article 11.2 which must be mutually agreed between  
the Members directly concerned and notified to the Committee on  
Safeguards for its review and acceptance within 90 days of the entry into force of  
the WTO Agreement

- Notes:*
- (a) The format is suggested without prejudice to the interpretation of the relevant provisions in the Agreement on Safeguards by the competent bodies.
  - (b) Members are reminded of the provision in Article 12.11 of the Agreement on Safeguards, which reads as follows: "The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice

the legitimate commercial interests of particular enterprises, public or private."

- (c) This exception is to be notified by the Member that is importing the product which is subject to the measure described in Article 11.1.
4. Specify the type of measure (please see Article 11.1(b) and footnote 4 for examples).
  5. Specify the Members concerned (please see the ANNEX to the Agreement on Safeguards for an example)
  6. Specify the product subject to the measure.

NOTIFICATION UNDER ARTICLE 11.2 OF THE AGREEMENT ON  
SAFEGUARDS ON TIMETABLES FOR PHASING OUT MEASURES  
REFERRED TO IN ARTICLE 11.1(B) OR FOR BRINGING THEM INTO  
CONFORMITY WITH THE AGREEMENT

*Adopted by the Committee on Safeguards on 24 February 1995  
(G/SG/N/5)*

1. Under Article 11.2 of the Agreement on Safeguards, the phasing out of measures referred to in Article 11.1(b) shall be carried out according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement, i.e. *by 30 June 1995*. These timetables shall provide for all measures referred to in Article 11.1(b) to be phased out or brought into conformity with the Agreement on Safeguards within a period not exceeding four years after the date of entry into force of the WTO Agreement, subject to not more than one specific measure per importing Member, the duration of which shall not extend beyond 31 December 1999.
2. Requests for notifications of measures referred to in Article 11.1(b) and of the exception under Article 11.2, i.e. "one specific measure per importing Member, the duration of which shall not extend beyond 31 December 1999", have already been circulated in G/SG/N/3 and 4. For the timetables to be provided under Article 11.2, a format is suggested below to assist Members to focus on the type of information to be submitted in the notifications and to obtain similar responses from different Members.

Suggested format for notifications under Article 11.2  
of the Agreement on Safeguards

Notification of timetables to be presented to the Committee on Safeguards within 180 days after the entry into force of the WTO Agreement, for phasing out measures referred to in Article 11.1(b) or for bringing them into conformity with the Agreement on Safeguards

*Note:* The format is suggested without prejudice to the interpretation of the relevant provisions in the Agreement on Safeguards by the competent bodies. Members are also reminded of the provision in Article 12.11 of the Agreement on Safeguards, which reads as follows: "The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."

3. Specify the type of measure (please see Article 11.1(b) and footnote 4 for examples).
4. Specify the Members concerned (please see the ANNEX to the Agreement on Safeguards for an example)
5. Specify the product subject to the measure.
6. Specify timetable for phasing out the measure or for bringing it into conformity with the Agreement on Safeguards. Such timetables should be presented to the Committee on Safeguards both for those measures which have to be phased out or brought into conformity with the Agreement on Safeguards within four years after the date of entry into force of the WTO Agreement and for the "one specific measure per importing Member, the duration of which shall not extend beyond 31 December 1999" (Article 11.2).

NOTIFICATION UNDER ARTICLE 12.1(A) OF THE AGREEMENT ON  
SAFEGUARDS ON INITIATION OF AN INVESTIGATION AND THE  
REASONS FOR IT

*Adopted by the Committee on Safeguards on 24 February 1995  
(G/SG/N/6)*

1. Under Article 12.1(a) of the Agreement on Safeguards, a Member shall immediately notify the Committee on Safeguards upon initiating an investigatory process relating to serious injury or threat thereof and the reasons for it.
2. In view of the requirement that a notification has to be provided immediately upon initiating an investigation, and the possibility that certain Members may need to make such a notification prior to any discussion on the relevant format by the Committee on Safeguards, a format is suggested below for these noti-

fications under Article 12.1(a) of the Agreement on Safeguards to assist Members to focus on the type of information to be submitted in the notifications and to obtain similar responses from different Members.

Suggested format for notifications under Article 12.1(a)  
of the Agreement on Safeguards

Notification to the Committee on Safeguards upon  
initiation of an investigation process relating to serious  
injury or threat thereof and the reasons for it

*Note:* The format is suggested without prejudice to the interpretation of the relevant provisions in the Agreement on Safeguards by the competent bodies. Members are also reminded of the provision in Article 12.11 of the Agreement on Safeguards, which reads as follows: "The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."

3. Specify the date when the investigation was initiated.
4. Specify the product subject to the investigation.
5. Provide the reasons for the initiation of investigation, for example:
  - (i) Was the investigation initiated pursuant to a petition from the domestic industry?
  - (ii) Evidence on the basis of which the investigation was initiated.
  - (iii) Evidence, if any, on critical circumstances where delay would cause damage which it would be difficult to repair.

## COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES

### GUIDELINES FOR INFORMATION PROVIDED IN THE SEMI-ANNUAL REPORTS

*Adopted by the Committee on Subsidies and  
Countervailing Measures on 13 June 1995  
(G/SCM/2)*

1. The information should always make clear which country<sup>1</sup> is subject to the measure reported.
2. In order to systematically present data in the semi-annual reports, the names of the countries whose imports are subject to action shall be organized in alphabetical order.
3. If any single country, e.g. Alpha in the illustrative report in the Annex, is subject to more than one case, the different cases for this country shall be organized in chronological order.
4. When imports of any particular product from more than one country are investigated, the names of the countries concerned should be provided separately, i.e. each product-country combination should be treated as one case. This is shown, for example, for the product category "machine tufted carpeting" in the illustrative report in the Annex.
5. As indicated by the titles for columns 4, 5 and 6 in the semi-annual report, the date when the measure is taken should always be provided.
6. Columns 4, 5 and 6 in the semi-annual reports should contain the dates on which measures entered into force rather than the dates on which findings were made.
7. The titles for columns 4, 5 and 6 also indicate that the amount of subsidization, expressed as a percentage or amount per unit, must be provided along with the dates for the measures reported in these columns. When the amount of subsidization differs, a range of the amounts of subsidization could be provided.
8. If the rate of duty imposed is less than the amount of subsidization, then the rate of duty should also be provided along with the amount of subsidization. If the lower duty rate cannot be provided, this should be indicated by a footnote.
9. For the information in column 11, the reporting country should clarify the coverage of the data on "Trade volume" that is provided, i.e. whether this data refers to the total trade volume of the subject product from the country under investigation, or to total trade volume from the country which is determined to be

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<sup>1</sup> In this note, the term "country" includes customs territories.

subsidized, or some other notion of trade volume. The Committee could reach an agreement on the symbols to be used for indicating the coverage of such data.

10. When no information is provided under columns 11 or 12, then the reporting country should give a reason for not providing such data. In this context, new symbols which could be used are "CF" to denote confidentiality and "n/a" to denote that the data is not provided because it may not be available or relevant in a situation of a review.

11. In columns 11 and 12, whenever relevant information is available it should be provided from the time when provisional measures are taken, and the information in these columns should be updated in order to provide the most recent relevant data pertinent to the latest decision point covered by the report, e.g. provisional measures or definitive duties.

12. For the information provided in columns 11 and 12, it would be desirable to indicate the time period for which the information is provided.

13. An initiation of a completely new investigation should be distinguished from the reopening of a suspended investigation or the opening of an investigation in the context of a review of an existing subsidization measure. This should be done by using the symbol (R) after the date of initiation for reviews or for reopening of a suspended investigation.

14. For further improving the transparency of countervailing investigations, information on all cases pending at the end of the period should be reported even if there was no action taken during the period for which the report is provided.

15. Lists of definitive duties and undertakings in force as of the end of the reporting period should be provided along with the other information in this report.

16. The lists of definitive duties and undertakings in force should contain measures in force at the end of the reporting period, i.e. measures in force on 30 June or 31 December, rather than measures in force at the time of the submission of the report to the Committee.

17. The information on the measures in place at the end of the reporting period should include the date on which the measures were put in place.<sup>2</sup>

18. A list of countervailing measures revoked during the reporting period should also be provided.

19. Nothing in this format requires the notification of confidential information, including confidential business information.

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<sup>2</sup> The format for review investigations will be discussed by the Committee.

Reporting Party: Illustrative

## ANNEX

## ILLUSTRATIVE SEMI-ANNUAL REPORT OF COUNTERVAILING DUTY ACTIONS

For the period 1 July - 31 December 1994

Country or customs territory	Product	Initiation*	Provisional measures/determinations	FINAL MEASURES		NO FINAL MEASURES					Subsidized imports as % of domestic consumption
				Definitive duty	Price under-taking	No subsidization	No injury	Case w/drawn	Other	Trade volume **	
1	2	3	4	5	6	7	8	9	10	11	12
		Date	Date, amount of subsidization <sup>1</sup>	Date, amount of subsidization <sup>1</sup>	Date, amount of subsidization <sup>1</sup>	Date	Date	Date	Date		
Alpha	Coated groundwood paper	1.1.1994	4.5.1994 8-21%	8.10.1994 5-18%						32,000 M.T.	12%
Alpha	Machine tufted carpeting	3.2.1994	29.7.1994 4-45%		4.10.1994 3-34%					14 million square m.	37%
Alpha	Princloth	1.4.1994	4.8.1994 12%				20.12.1994				
Beta	Coated groundwood paper	1.1.1994	4.5.1994 12-18%		7.8.1994 12-15%					23,000 M.T.	8%
Delta	Machine tufted carpeting	3.2.1994	29.7.1994 35-52%	20.12.1994 20-42%						CF	CF

1	2	3	4	5	6	7	8	9	10	11	12
Delta	Video tapes in cassettes	1.6.1994 (R)	12.12.1994 55%							CF	CF
Delta	Barium chloride	7.4.1994	15.11.1994 23%							n/a	n/a
Gamma	Pure and alloy magnesium	4.3.1994	5.7.1994 35%	15.12.1994 20%						15 Mil. Kg.	n/a

\* The symbol (R) should be used if an investigation is opened in the context of a review of an existing countervailing measure, or after an allegation of a breach of an undertaking.

\*\* Trade volume based on statistical data for the latest available calendar year prior to initiation (1993 for the data provided in this report). The data on trade volume is provided for the total trade volume of the subject product from the country/customs territory under investigation.

! Percentage or amount per unit if appropriate.

CF = Information not provided for reasons of confidentiality.

n/a = Not available.

OUTSTANDING COUNTERVAILING MEASURES DEFINITIVE DUTIES  
IN FORCE  
(As of 31 December 1994)

Country/Customs Territory	Product	Date of Imposition
Alpha	Widgets	10.12.1992
Theta	Snub-nosed screwdrivers	17.06.1993

UNDERTAKINGS IN FORCE  
(As of 31 December 1994)

Country/Customs Territory	Product	Date of Undertaking
Gamma	Stuffed rabbits	08.06.92

REVOCAION OF COUNTERVAILING MEASURES  
(1 July - 31 December 1994)

Country/Customs Territory	Product	Date of Revocation
Sigma	Oat bran	11.11.94

MINIMUM INFORMATION TO BE PROVIDED UNDER ARTICLE 25.11  
OF THE AGREEMENT IN THE REPORTS ON ALL PRELIMINARY OR  
FINAL COUNTERVAILING ACTIONS

*Adopted by the Committee on Subsidies and Countervailing  
Measures on 13 June 1995  
(G/SCM/3)*

1. Title of the public notice regarding the action.
2. Date and place of publication.
3. Investigation (Regulation) number and other notices relating to the same investigation (e.g. for initiation, provisional measure).
4. For each subsidy investigated, (a) the form of subsidy (*e.g.*, grant, loan, equity infusion), (b) nature of subsidy (export or other) (c) identity of the granting authority, (d) the basis for the determination of specificity, and (e) amount of subsidization (percentage or amount per unit, as appropriate).
5. Where countervailing measures are imposed, the product (including customs classification), origin (country/customs territory/firm), rate of duty and the effective date for each source of imports.
6. Where an undertaking is involved, the product, country/customs territory/firm, and effective date of the undertaking.
7. The period of investigation (subsidization, injury).

8. Date of the subsidization determination.
9. Date of the injury determination.
10. Type of injury found (material injury, threat, material retardation).
11. Volume and import penetration of subsidized imports.
12. Effect on domestic prices of the like product (whether there was significant price undercutting/price suppression or depression).
13. Evidence on the impact regarding the domestic industry (i.e. the factors mentioned in Article 15.4 of the Agreement which were the basis for the finding regarding the impact on the domestic industry).
14. Evidence of causation of injury to domestic industry (the basis for determining the causation of injury, and other factors which might at the same time be causing injury to the domestic industry).

#### PERMANENT GROUP OF EXPERTS

*Adopted by the Committee on Subsidies and Countervailing  
Measures on 13 June 1995  
(G/SCM/4)*

##### *Term of Office*

1. The initial five persons elected to the Permanent Group of Experts ("PGE") shall serve staggered terms of office of 1, 2, 3, 4 and 5 years. The decision as to which person shall serve which of these initial terms of office shall be decided by lot after the initial membership of the PGE has been established.
2. Thereafter, all persons elected to the PGE shall serve five-year terms, except that a person elected to replace a person whose term of office has not expired shall hold office for the remainder of his or her predecessor's term.

##### *Selection of Experts*

3. The Chairman and Vice-Chairman of the Committee shall propose to the Committee candidates for election to the PGE. Best efforts shall be made to propose a slate of initial candidates by the earliest practicable date.
4. The proposal shall be based on suggestions submitted by Members and shall be made after informal consultations with delegations. The suggestions may include candidates of nationalities other than that of the forwarding delegation. Delegations shall endeavour to submit their suggestions by 1 October 1995.

*Independence and Qualifications of Candidates*

5. Candidates proposed shall meet the requirement that the PGE be composed of independent persons, highly qualified in the fields of subsidies and trade relations.

*Conditions of Service*

6. It is the sense of the Committee that persons serving on the PGE should be compensated on the same basis as members of panels and other experts serving the World Trade Organization. The Chairman of the Committee shall communicate the view of the Committee in this regard to the Chairman of the Committee on Budget, Finance and Administration.

*Administrative and Technical Support*

7. Administrative and technical support for the PGE shall be provided by the WTO Secretariat.

*Rules of Procedure*

8. The PGE shall develop rules of procedure, taking into account any guidance provided by the Committee. The PGE may also propose modifications to its rules of procedure in light of experience. These rules of procedure and any modifications thereto shall be subject to approval by the Committee.

*Review Clause*

9. The Committee may re-examine any aspect of this decision in light of subsequent experience.

QUESTIONNAIRE FORMAT FOR SUBSIDY NOTIFICATIONS  
UNDER ARTICLE 25 OF THE AGREEMENT ON SUBSIDIES  
AND COUNTERVAILING MEASURES AND UNDER  
ARTICLE XVI OF GATT 1994

*Adopted by the Committee on Subsidies and  
Countervailing Measures on 21 July 1995 and  
Approved by the Council for Trade in Goods  
on 26 September 1995  
(G/SCM/6)*

*General Rules*

1. The following subsidies are subject to notification under Article 25 of the Agreement on Subsidies and Countervailing Measures and under Article XVI of GATT 1994:
  - (a) all specific subsidies, as defined in Articles 1 and 2 of the Agreement on Subsidies and Countervailing Measures ("the SCM Agreement"), shall be notified pursuant to Article 25.2 of the SCM Agreement;
  - and
  - (b) all other subsidies (i.e., *in addition to those described in (a)*), which operate directly or indirectly to increase exports of any product from, or to reduce imports of any product into, the territory of the Member granting or maintaining the subsidies, shall be notified pursuant to Article XVI:1 of GATT 1994.
2. It is understood that notifications made in accordance with the following questionnaire format will satisfy the notification requirements of both Article 25 of the SCM Agreement and Article XVI of GATT 1994.
3. Any Member considering that there are no measures in its territory requiring notification under the SCM Agreement and Article XVI of GATT 1994 shall so inform the Secretariat in writing.
4. The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidies.
5. It is recognized that notification of a measure does not prejudice either its legal status under GATT 1994 and the SCM Agreement, the effects under the SCM Agreement, or the nature of the measure itself.
6. To the extent that subsidies are provided to specific products or sectors, notifications of those subsidies should be organized by product or sector.
7. To the extent that information called for in any question is not provided, the response to that question shall explain why not.

8. In accordance with Article 25.1 of the SCM Agreement, subsidy notifications shall be submitted no later than 30 June of each year.

9. Members shall submit new and full notifications each third year (with 1995 understood to be the year for the first new and full notifications under Article 25 of the SCM Agreement and under Article XVI of GATT 1994), and shall submit updating notifications in the intervening years.

*Information to be Provided*<sup>1</sup>

10. Title of the subsidy programme, if relevant, or brief description or identification of the subsidy.

11. Period covered by the notification.

12. Policy objective and/or purpose of the subsidy.

13. Background and authority for the subsidy (including identification of the legislation under which it is granted).

14. Form of the subsidy (i.e., grant, loan, tax concession, etc.).

15. To whom and how the subsidy is provided (whether to producers, to exporters, or others; through what mechanism; whether a fixed or fluctuating amount per unit; if the latter, how determined).

16. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year). Where provision of per unit subsidy information (for the year covered by the notification, for the previous year, or both) is not possible, a full explanation.

17. Duration of the subsidy and/or any other time limits attached to it, including date of inception/commencement.

18. Statistical data permitting an assessment of the trade effects of the subsidy. The specific nature and scope of such statistics is left to the judgement of the notifying Member. To the extent possible, relevant and/or determinable, however, it is desirable that such information include statistics of production, consumption, imports and exports of the subsidized product(s) or sector(s):

- (a) for the three most recent years for which statistics are available;
- (b) for a previous representative year, which, where possible and meaningful, should be the latest year preceding the introduction of the subsidy or preceding the last major change in the subsidy.

<sup>1</sup> The information requested in points 1-9 below must be provided in full:

- (a) for all subsidies in the case of full notifications
- (b) for subsidies notified for the first time in update notifications.

In the case of subsidies which have previously been notified, the information provided in update notifications under points 3, 4, 5, 6 and 8 may be limited to indicating any modifications (or the absence thereof) from the previous notification.

## COMMITTEE ON TRADE-RELATED INVESTMENT MEASURES

### NOTIFICATIONS UNDER ARTICLE 5.5 OF THE TRIMS AGREEMENT

*Decision of the Committee on Trade-Related  
Investment Measures on 19 October 1995  
(G/TRIMS/3)*

1. At its meeting of 19 October 1995, the Committee on Trade-Related Investment Measures adopted the following standard format for notifications under Article 5.5 of the Agreement.
2. Identification, by referring to the relevant notification under Article 5.1, of the pre-existing TRIM that is being applied to a new investment.
3. Description of the new investment to which the TRIM is being applied.
4. Date of application of the TRIM to the new investment.
5. Information on the products covered by the new investment as compared with those of the established enterprises covered by the previously notified TRIM.
6. Explanation of why the application of the TRIM to the new investment is necessary to avoid distorting the conditions of competition between the new investment and established enterprises, and an explanation of how it is ensured that the competitive effect of the TRIM applied to a new investment is equivalent to the competitive effect of the TRIM applicable to established enterprises.
7. The domestic law, regulation or administrative guideline under which the TRIM is applied to the new investment. A copy should be supplied to the Secretariat to be available for inspection by interested delegations - unless this has already been done in connection with the original notification of the TRIM.
8. Any other information about the application of the TRIM to the new investment that differs from that previously notified in respect of the TRIM in response to section (i), points 1-5 and 10, and section (ii) of the format for notifications under Article 5.1<sup>1</sup> and confirmation that the remainder of the previously notified information is also valid in respect of the application of the TRIM to the new investment.

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<sup>1</sup> Document G/TRIMS/1.

## COUNCIL FOR TRADE IN SERVICES

### DECISION ON INSTITUTIONAL ARRANGEMENTS FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

*Adopted by the Council for Trade in Services on 1 March 1995  
(S/L/1)*

1. *The Council for Trade in Services,*
2. *Acting* pursuant to Article XXIV with a view to facilitating the operation and furthering the objectives of the General Agreement on Trade in Services,
3. *Decides* as follows:
4. Any subsidiary bodies that the Council may establish shall report to the Council annually or more often as necessary. Each such body shall establish its own rules of procedure, and may set up its own subsidiary bodies as appropriate.
5. Any sectoral committee shall carry out responsibilities as assigned to it by the Council, and shall afford Members the opportunity to consult on any matters relating to trade in services in the sector concerned and the operation of the sectoral annex to which it may pertain. Such responsibilities shall include:
  - (a) to keep under continuous review and surveillance the application of the Agreement with respect to the sector concerned;
  - (b) to formulate proposals or recommendations for consideration by the Council in connection with any matter relating to trade in the sector concerned;
  - (c) if there is an annex pertaining to the sector, to consider proposals for amendment of that sectoral annex, and to make appropriate recommendations to the Council;
  - (d) to provide a forum for technical discussions, to conduct studies on measures of Members and to conduct examinations of any other technical matters affecting trade in services in the sector concerned;
  - (e) to provide technical assistance to developing country Members and developing countries negotiating accession to the Agreement Establishing the World Trade Organization in respect of the application of obligations or other matters affecting trade in services in the sector concerned; and
  - (f) to cooperate with any other subsidiary bodies established under the General Agreement on Trade in Services or any international organizations active in any sector concerned.
6. There is hereby established a Committee on Trade in Financial Services which will have the responsibilities listed in paragraph 2.

DECISION ON CERTAIN DISPUTE SETTLEMENT PROCEDURES FOR  
THE GENERAL AGREEMENT ON TRADE IN SERVICES

*Adopted by the Council for Trade in Services on 1 March 1995  
(S/L/2)*

1. *The Council for Trade in Services,*
2. *Taking into account* the specific nature of the obligations and specific commitments of the Agreement, and of trade in services, with respect to dispute settlement under Articles XXII and XXIII,
3. *Decides* as follows:
4. A roster of panellists shall be established to assist in the selection of panellists.
5. To this end, Members may suggest names of individuals possessing the qualifications referred to in paragraph 3 for inclusion on the roster, and shall provide a curriculum vitae of their qualifications including, if applicable, indication of sector-specific expertise.
6. Panels shall be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to the General Agreement on Trade in Services and/or trade in services, including associated regulatory matters. Panellists shall serve in their individual capacities and not as representatives of any government or organization.
7. Panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns.
8. The Secretariat shall maintain the roster and shall develop procedures for its administration in consultation with the Chairman of the Council.

DECISION ON PROFESSIONAL SERVICES

*Adopted by the Council for Trade in Services on 1 March 1995  
(S/L/3)*

1. *The Council for Trade in Services,*
2. *Recognizing* the impact of regulatory measures relating to professional qualifications, technical standards and licensing on the expansion of trade in professional services;
3. *Desiring* to establish multilateral disciplines with a view to ensuring that, when specific commitments are undertaken, such regulatory measures do not constitute unnecessary barriers to the supply of professional services;
4. *Decides* as follows:
5. The work programme foreseen in paragraph 4 of Article VI on Domestic Regulation should be put into effect immediately. To this end, a Working Party

on Professional Services shall be established to examine and report, with recommendations, on the disciplines necessary to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements in the field of professional services do not constitute unnecessary barriers to trade.

6. As a matter of priority, the Working Party shall make recommendations for the elaboration of multilateral disciplines in the accountancy sector, so as to give operational effect to specific commitments. In making these recommendations, the Working Party shall concentrate on:

- (a) developing multilateral disciplines relating to market access so as to ensure that domestic regulatory requirements are: (i) based on objective and transparent criteria, such as competence and the ability to supply the service; (ii) not more burdensome than necessary to ensure the quality of the service, thereby facilitating the effective liberalization of accountancy services;
- (b) the use of international standards and, in doing so, it shall encourage the cooperation with the relevant international organizations as defined under paragraph 5(b) of Article VI, so as to give full effect to paragraph 5 of Article VII;
- (c) facilitating the effective application of paragraph 6 of Article VI of the Agreement by establishing guidelines for the recognition of qualifications.

7. In elaborating these disciplines, the Working Party shall take account of the importance of the governmental and non-governmental bodies regulating professional services.

## DECISION ON TRADE IN SERVICES AND THE ENVIRONMENT

*Adopted by the Council for Trade in Services on 1 March 1995  
(S/L/4)*

1. *The Council for Trade in Services,*
2. *Acknowledging* that measures necessary to protect the environment may conflict with the provisions of the Agreement; and
3. *Noting* that since measures necessary to protect the environment typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV;
4. *Decides* as follows:
5. In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, to request the Committee on Trade and Environment to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Committee shall also examine the rele-

vance of inter-governmental agreements on the environment and their relationship to the Agreement.

6. The Committee shall report the results of its work to the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization.

#### GUIDELINES FOR NOTIFICATIONS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES

*Adopted by the Council for Trade in Services on 1 March 1995  
(S/L/5)*

1. These Guidelines identify the provisions of the General Agreement on Trade in Services (GATS) that contain notification requirements and the elements to be included in such notifications, and propose a common format to be used by Members in making notifications.
2. The relevant parts of the GATS containing specific notification requirements are the following:

**Article III: (paragraph 3) - Transparency;** *"Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement".*

**Article V (paragraph 7) - Economic Integration;** *"Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article".*

**Article V bis (paragraph (b)) - Labour Markets Integration Agreements;** *"(b) is notified to the Council for Trade in Services".*

**Article VII (paragraph 4) - Recognition;** *"Each Member shall:*

- (a) *within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;*
- (b) *Promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate*

*their interest in participating in the negotiations before they enter a substantive phase;*

- (c) *promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1".*

**Article VIII (paragraph 4) - Monopolies and Executive Service Suppliers;** *"If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.*

**(Paragraph 5)** *The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory".*

**Article X (paragraph 2) - Emergency Safeguard Measures;** *"In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI".*

**Article XII (paragraph 4) - Restrictions to Safeguard the Balance of Payments;** *"Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the General Council".*

**Article XIV bis (paragraph 2) - Security Exceptions;** *"The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination".*

**Article XXI (paragraph 1(b)) - Modification of Schedules;** *"A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal".*

**Annex on Article II Exemptions (paragraph 7)** *"A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement".*

3. It should be noted that Article V:7 establishes the obligation to notify the full texts of the agreements concerned, or any significant modification of them, for the purpose of their analysis in a working party. Article V bis also requires

the full text of labour markets integration agreements to be notified to the Council. A copy of the full text of the agreements should therefore be provided for retention by the Secretariat and consultation by interested members; a synthesis of the main elements of the agreements should be included in the standard format for notification purposes.

4. In relation to Article VII (Recognition) the notification should contain a synthesis of the main elements of the measure or the international agreement in question and advice on where additional information is available (e.g., enquiry point established under Article III:4 or the WTO Secretariat).

5. The notification requirement in Article XII:4 differs from those contained in other Articles of the Agreement in the sense that the notification has to be made to The General Council instead of The Council on Trade in Services. Since any discussion on balance of payments restrictions will take place in The Balance of Payments Committee and the notification of measures taken under this Article should presumably be made in conjunction with that of measures adopted under GATT disciplines, modalities for notifications made under Article XII:4 will be determined by the Balance of Payments Committee and the General Council.

6. In order to avoid unnecessary reproduction and distribution of all international agreements notified under the GATS, the WTO Secretariat will be the depository of the agreements notified by Members. Copies of such agreements will be available to Members upon request. For the purpose of any working parties that maybe established under Article V - Integration Agreements, Members that are parties to such agreements will provide copies for distribution.

7. Notifications made under the provisions of the GATS will follow the standard format attached to this Note and be submitted in one of the WTO's three official languages.

8. In order to avoid duplication of notifications, Members should not need to notify a measure or an international agreement more than once. It would be enough in making the first notification to indicate any other provisions of the GATS under which the same subject-matter is being notified.

## NOTIFICATION

1.	Members(s) notifying. If applicable the Sub central government or authority or non governmental bodies involved should be specified.						
2.	Notification under Article(s):						
3.	Date of entry into force/duration:						
4.	Agency responsible for enforcement of the measure:						
5.	Complete description of the measure* indicating the modes of supply covered, the effect on trade in services (e.g., restrictions/liberalization measures) and the impact of the measure on commitments in the Member's schedule and Article II (MFN) exemption list, if relevant:						
6.	Members specifically affected, if any:						
7.	Text available from: <table style="width: 100%; border: none;"> <tr> <td style="padding-left: 20px;">- Enquiry point</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td style="padding-left: 20px;">- WTO Secretariat</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> <tr> <td style="padding-left: 20px;">- Other sources (address, fax and telephone of other body)</td> <td style="text-align: right;"><input type="checkbox"/></td> </tr> </table>	- Enquiry point	<input type="checkbox"/>	- WTO Secretariat	<input type="checkbox"/>	- Other sources (address, fax and telephone of other body)	<input type="checkbox"/>
- Enquiry point	<input type="checkbox"/>						
- WTO Secretariat	<input type="checkbox"/>						
- Other sources (address, fax and telephone of other body)	<input type="checkbox"/>						

### DECISION ON THE APPLICATION OF THE SECOND ANNEX ON FINANCIAL SERVICES

*Adopted by the Council for Trade in Services on 30 June 1995  
(S/L/6)*

1. *The Council for Trade in Services,*
2. *Having regard to the Second Annex on Financial Services,*
3. *Acting pursuant to paragraph 3 of that Annex,*
4. *Decides as follows:*
5. A Member may notify changes to specific commitments on financial services inscribed in its Schedule and notify measures relating to financial services which are inconsistent with paragraph 1 of Article II of the GATS no later than 28 July 1995.

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\* Including international agreements, recognition measures on other types.

## DECISION ON MOVEMENT OF NATURAL PERSONS

*Adopted by the Council for Trade in Services on 30 June 1995  
(S/L/7)*

1. *The Council for Trade in Services,*
2. *Having regard to the Marrakesh Ministerial Decision on Negotiations on Movement of Natural Persons,*
3. *Decides as follows:*
4. The process for the revision of the Schedules of Specific Commitments for further progress in the area of Movement of Natural Persons for the purpose of supplying services may continue until 28 July 1995 with a view to allowing higher levels of commitments under the GATS. Such commitments shall be inscribed in Members' Schedules of Specific Commitments.

## DECISION ON COMMITMENTS IN FINANCIAL SERVICES

*Adopted by the Council for Trade in Services on 21 July 1995  
(S/L/8)*

1. *The Council for Trade in Services,*
2. *Having regard to the Second Annex on Financial Services, and the Second Protocol to the General Agreement on Trade in Services,*
3. *Having regard to the Decision on the Application of the Second Annex on Financial Services adopted by the Council for Trade in Services on 30 June 1995,*
4. *Noting the results of the negotiations carried out under the terms of the Decision on Financial Services adopted at Marrakesh on 15 April 1994,*
5. *Decides as follows:*
6. If the Second Protocol to the General Agreement on Trade in Services (GATS) does not enter into force in accordance with paragraph 3 therein:
  - (a) Notwithstanding Article XXI of the GATS, a Member may during a period of sixty days beginning on 1 August 1996, modify or withdraw all or part of the Specific Commitments on Financial services inscribed in its Schedule.
  - (b) Notwithstanding Article II of the GATS and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during the same period referred to in paragraph 1, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the GATS.
7. The Committee on Trade in Financial Services shall establish any procedures necessary for the implementation of paragraph 1.

SECOND DECISION ON FINANCIAL SERVICES

*Adopted by the Council for Trade in Services on 21 July 1995  
(S/L/9)*

1. *The Council for Trade in Services,*
2. *Having regard to the Second Annex on Financial Services,*
3. *Noting the results of the negotiations carried out under the terms of the Decision on Financial Services adopted at Marrakesh on 15 April 1994,*
4. *Having regard to the Decision on the Application of the Second Annex on Financial Services adopted by the Council for Trade in Services on 30 June 1995,*
5. *Decides as follows:*
6. Notwithstanding Article XXI of the General Agreement on Trade in Services (GATS), a Member may during a period of sixty days beginning on 1 November 1997, modify or withdraw all or part of the Specific Commitments on Financial Services inscribed in its Schedule.
7. Notwithstanding Article II of the GATS and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during the same period referred to in paragraph 1, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the GATS.
8. The Committee on Trade in Financial Services shall oversee any negotiations that may take place prior to the date specified in paragraph 1. It shall also establish any procedures necessary for the application of paragraphs 1 and 2.
9. The application of this Decision shall be contingent upon the entry into force of the Second Protocol to the General Agreement on Trade in Services.

DECISION ON MOVEMENT OF NATURAL PERSONS COMMITMENTS

*Adopted by the Council for Trade in Services on 21 July 1995  
(S/L/10)*

1. *The Council for Trade in Services,*
2. *Having regard to the results of the negotiations conducted under the terms of the Decision on Movement of Natural Persons adopted at Marrakesh on 15th April 1994,*
3. *Having regard to the Decision on the Movement of Natural Persons adopted by the Council for Trade in Services on 30 June 1995,*
4. *Decides as follows:*
5. To adopt the text of the "Third Protocol to the General Agreement on Trade in Services".

6. Commencing immediately and continuing until the date of entry into force of the Third Protocol to the General Agreement on Trade in Services, Members concerned shall, to the fullest extent consistent with their existing legislation, not take measures which would be inconsistent with their undertakings resulting from these negotiations.

7. The Council for Trade in Services shall monitor the acceptance of the Protocol by Members concerned and shall, at the request of a Member, examine any concerns raised regarding the application of paragraph 2 above.

#### DECISION ADOPTING THE SECOND PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES

*Adopted by the Committee on Trade in Financial Services  
on 21 July 1995  
(S/L/13)*

1. *The Committee on Trade in Financial Services,*
2. *Having regard to the results of the negotiations conducted under the terms of the Decision on Financial Services adopted at Marrakesh on 15 April 1994,*
3. *Having regard to the Second Annex on Financial Services, and to the Decision on the application of that Annex adopted by the Council for Trade in Services on 30 June 1995,*
4. *Decides as follows:*
5. To adopt the text of the "Second Protocol to the General Agreement on Trade in Services".
6. Commencing immediately and continuing until the date of entry into force of the Second Protocol to the General Agreement on Trade in Services, Members concerned shall, to the fullest extent consistent with their existing legislation, not take measures which would be inconsistent with their undertakings resulting from these negotiations.
7. The Committee on Trade in Financial Services shall monitor the acceptance of the Protocol by Members concerned and shall, at the request of a Member, examine any concerns raised regarding the application of paragraph 2 above.

#### DECISION ON THE TERMS OF REFERENCE FOR THE COMMITTEE ON SPECIFIC COMMITMENTS

*Adopted by the Council for Trade in Services on 22 November 1995  
(S/L/16)*

1. *The Council for Trade in Services,*
2. *Acting pursuant to Article XXIV of the General Agreement on Trade in Services with a view to furthering the objectives of that Agreement,*

3. *Having* regard to the Decision on Institutional Arrangements for the General Agreement on Trade in Services adopted on 1 March 1995,
4. *Having* regard to its Decision at its meeting on 4 October 1995 to establish the Committee on Specific Commitments,
5. *Decides* as follows:
6. The Committee on Specific Commitments shall carry out the following responsibilities in relation to all services sectors other than those for which standing sectoral bodies have been established:
  - (a) Oversee the implementation of specific commitments in all modes of supply, including specific commitments relating to Movement of Natural Persons, contained in Members' Schedules.
  - (b) Examine, at the request of Members, schedules of specific commitments and lists of Exemptions from Article II of the GATS, particularly with a view to improving their technical accuracy and coherence in the future.
  - (c) Oversee the application of the procedures for the modification of schedules pursuant to Article XXI of the GATS.
7. Nothing in paragraph 1 shall preclude the Committee from addressing any issues of a horizontal nature.
8. The Committee shall report to the Council for Trade in Services and formulate proposals and recommendations as necessary.

#### ISSUES RELATING TO THE SCOPE OF THE GATS

*Report by the Chairman of the Sub-Committee on Services Presented to the Council for Trade in Services on 1 March 1995  
(S/C/1)*

1. During the Uruguay Round negotiations, questions were raised as to whether certain categories of measures fall within the scope of the General Agreement on Trade in Services (GATS). Towards the end of the negotiations it was felt by many participants that the questions raised had not been sufficiently discussed by the Group of Negotiations on Services (GNS). On 10 December 1993, the Chairman of the GNS issued a formal statement (MTN.GNS/49) saying:

"I wish to re-emphasize, perhaps more strongly than in my earlier statement, that pending further clarification of this and other questions relating to the scope of the Agreement, that it is assumed that participants would refrain from taking issues arising in this area to dispute settlement but would try to settle them through bilateral consultations. However, participants must assume their own responsibilities in deciding whether any measures of this sort which they maintain should be scheduled or made the subject of MFN exemptions - though in this respect also it is hoped that restraint will be shown."

2. Subsequently, the Chairman of the GNS issued another formal statement dated 14 December 1993 (MTN.GNS/W/260) reflecting a common understanding among participants that more discussion was needed on these issues. He stated:

"A number of delegations have raised concerns about the extent to which the categories of measures contained in the Secretariat's note entitled *Issues Relating to the Scope of the General Agreement on Trade in Services* (MTN.GNS/W/177/Rev.1) fall within the scope of the GATS. Accordingly, participants will be given an additional period up to 15 December 1994 to consult with a view to reaching a better common understanding of the ways in which measures of this kind may affect trade in services. The result of the consultation shall be reported to the Council for Trade in Services for appropriate decision."

3. The categories of measures referred to in the Note by the Secretariat (MTN.GNS/W/177/Rev.1) are:

- (i) Measures relating to *social security*, including those pursuant to bilateral agreements on the avoidance of double contributions to, and/or double benefits from social security systems.
- (ii) Measures relating to *judicial and administrative assistance* between governments, including those pursuant to international agreements on such matters.
- (iii) Measures relating to the *settlement of disputes* pursuant to bilateral investment protection agreements.
- (iv) Measures relating to the *entry and stay of natural persons*, including those pursuant to international agreements on labour mobility.
- (v) Measures relating to the *entry and temporary stay of natural persons* pursuant to bilateral agreements on:
  - entry and temporary stay of agricultural workers on a seasonal basis;
  - working holidays and young workers programmes;
  - programmes for the exchange of University professors and school teachers;
  - cultural affairs."

4. At the first meeting of the Sub-Committee on Services held on 15 July 1994, it was agreed that continuing work on issues relating to the scope of the GATS should be a matter of priority for the Sub-Committee in the light of the agreed deadline of 15 December 1994, and that the Chairman should start a process of informal consultations on the subject. It was also understood among participants that the categories of measures referred to in document MTN.GNS/W/177/Rev.1 represented a closed list of issues to be addressed by the Sub-Committee.

5. Informal consultations took place on 17 June, 8 and 12 July, 19 September, 4 and 26 October, 24 November and 13 December, after each of which the Chairman made a progress report to the Sub-Committee.

6. The Sub-Committee have reached agreed conclusions on the following items:

- *Measures relating to judicial and administrative assistance*

At the end of the Uruguay Round it had been agreed by participants that Article 11 of the GATS (MFN) would not apply to measures relating to judicial and administrative assistance. This agreement was reflected in document MTN.GNS/W/177/Rev.1/Add.1 which states:

"It is agreed by participants that the provisions of Article 11 (Most-Favoured National Treatment) do not apply to measures relating to judicial and administrative assistance. In the light of this agreement, the former footnote to Article 11 has been deleted."

The agreement was based on the view that discrimination between service suppliers of different Members arising from judicial and administrative assistance measures, apart from what is already stipulated by the provisions of the GATS, would not have any significant effect on conditions of competition between service suppliers. In the subsequent consultations it was agreed that the same logic could be applied to the whole of the GATS and that therefore none of the provisions of the GATS would apply to such measures. It was further agreed that this conclusion should be embodied in a draft decision to be submitted to the Council for Trade in Services for adoption.

- *Measures relating to the entry and stay of natural persons*

The main question addressed with respect to measures relating to the entry and stay of natural persons was: on what basis would a distinction be made between "temporary" and "permanent" residency and employment? This question was raised during the Uruguay Round negotiations in an attempt to clarify commitments by participants in the area of movement of natural persons. Participants in the consultations considered whether the definitions contained in national schedules were sufficient to make clear what participants meant by "temporary" stay or whether there was need for further clarification. It was concluded that what appears in the schedules of participants is sufficiently clear and to report to the Sub-Committee that there was no need for further multilateral work on this issue.

7. With regard to the three remaining categories of measures under consideration, that is:

- *Measures relating to social security*
- *Measures relating to the settlement of disputes pursuant to bilateral investment protection agreements*
- *Measures relating to the entry and temporary stay of natural persons pursuant to certain bilateral agreements*

it has not been possible to reach a better common understanding of the ways in which measures of this kind may affect trade in services. Some delegations maintained that these measures are outside the scope of the Agreement, others that they are inside. Discussion of ways in which such measures may affect trade in services did not resolve this difference of views.

8. In accordance with the statement by the Chairman of the GNS on 14 December 1993, at the conclusion of the consultation process the Chairman of the Sub-Committee on Services submitted a draft report with a view to its adoption by the Sub-Committee and its submission to the Council for Trade in Services. No agreement was reached on the draft report and the Chairman is therefore submitting this report on his own responsibility to the Council for Trade in Services for appropriate decision.

**COUNCIL FOR TRADE-RELATED ASPECTS OF  
INTELLECTUAL PROPERTY RIGHTS**

**PROCEDURES FOR NOTIFICATION OF, AND POSSIBLE  
ESTABLISHMENT OF A COMMON REGISTER OF, NATIONAL LAWS  
AND REGULATIONS UNDER ARTICLE 63.2**

*Adopted by the Council for Trade-Related Aspects of  
Intellectual Property Rights on 21 November 1995  
(IP/C/2)*

1. These procedures will be reviewed by the Council, in the light of experience, at the end of 1997, *inter alia* to identify any elements which have proved unduly burdensome in relation to the usefulness of the information provided.

*Section 1: General*

2. Each Member shall notify to the TRIPS Council, through the WTO Secretariat, its laws and regulations pertaining to the subject matter of the TRIPS Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights), in accordance with the guidelines set out below.

3. As of the time that a Member is obliged to start applying a provision of the TRIPS Agreement, the corresponding laws and regulations shall be notified without delay (normally within 30 days, except where otherwise provided by the TRIPS Council).

4. Any subsequent amendments of a Member's laws and regulations shall be notified without delay after their entry into force (normally within 30 days where no translation is required and within 60 days where translation is necessary).

5. A Member who has amended a law or regulation to bring it into conformity with provisions of the TRIPS Agreement in advance of its obligation under the TRIPS Agreement to start applying those provisions will use its best endeavours to notify such law or regulation as soon as possible after its entry into force.

6. Where, on the date of its initial notification of a law or regulation relating to a provision of the TRIPS Agreement, a Member has already communicated the law or regulation in question to the International Bureau of WIPO in a language or languages consistent with these guidelines, that Member would be free, if it so wishes, to provide the WTO Secretariat with a statement to the effect that the full text can be found in the WIPO collections, instead of sending the full text to the WTO Secretariat. The WTO Secretariat would seek from the International Bu-

reau of WIPO a copy from its collections which would then be treated in accordance with Sections 2 and 3 below.

7. Wherever possible, notifications shall be made in machine-readable as well as hard copy form.

### *Section 2: Main Dedicated Intellectual Property Laws and Regulations*

8. Each Member shall notify in a WTO language the texts of its main laws and regulations dedicated to intellectual property. These laws and regulations would include the main laws and regulations on the availability, scope and acquisition of each of the categories of intellectual property covered by the TRIPS Agreement, together with such other main laws and regulations as are dedicated to intellectual property, such as those on border enforcement.

9. These laws and regulations will be immediately circulated in the relevant WTO language by the WTO Secretariat to Members of the TRIPS Council as Council documents. Translation into other WTO languages will only be undertaken by the WTO Secretariat on the request of a Member made in the TRIPS Council and within the limits of the WTO Secretariat's resources.

10. Where an authentic national text of a law or regulation is not available in a WTO language, copies of the authentic text of that law or regulation in a national language shall be notified, in addition to the translation into a WTO language. Such copies shall be available in the WTO Secretariat for consultation by interested delegations.

### *Section 3: Other Laws and Regulations*

11. This heading relates to all national laws and regulations which are not dedicated to intellectual property rights as such but which nonetheless pertain to the availability, scope, acquisition, enforcement and prevention of abuse of intellectual property rights (notably laws and regulations in the areas of enforcement and the prevention of abusive practices) as well as those laws and regulations dedicated to intellectual property which are not considered "main laws and regulations" falling under Section 2 above.

12. Each Member shall notify these laws and regulations in a national language to the WTO Secretariat. They shall also provide in a WTO language a listing of these laws and regulations, together with a brief description of the relevance of each law and regulation to the provisions of the TRIPS Agreement.

13. This listing will be distributed as a TRIPS Council document to the Members of the TRIPS Council. The copies of the laws and regulations in question will be available for consultation in the WTO Secretariat by interested delegations. Copies will only be distributed as Council documents if a request is made in the TRIPS Council. If such a request is made and where the law and regulation in question has not been notified in a WTO language, the notifying Member shall

make available a copy of the law or regulation, or relevant part of the law or regulation, in a WTO language. Members agree to keep such requests to a minimum and, wherever possible, to seek the translation of a particular part of a legislative instrument, rather than request the whole text to be translated.

14. In regard to the provisions of the TRIPS Agreement on enforcement, each Member shall, in addition, provide, as soon as possible after the date of its application of these provisions, responses to the attached checklist of issues contained in document IP/C/5 indicating how its national legislation responds to the requirements of the TRIPS Agreement identified in the checklist. These responses shall identify the relevant provisions of national laws and regulations. The responses will be circulated as a document of the TRIPS Council.

FORMAT FOR LISTING OF "OTHER LAWS AND REGULATIONS" TO BE NOTIFIED UNDER ARTICLE 63.2

*Adopted by the Council for Trade-Related Aspect of  
Intellectual Property Rights on 21 November 1995  
(IP/C/4)*

1. When notifying "other laws and regulations" in accordance with Section 3 of the Decision on Procedures for Notification of, and Possible Establishment of a Common Register of, National Laws and Regulations under Article 63.2 (IP/C/2), each Member shall provide the listing of such laws and regulations on the basis of the attached format.

2. The listings shall be structured along the lines of the categorization in the TRIPS Agreement itself, i.e.

- Copyright and related rights
- Trademarks
- Geographical indications
- Industrial designs
- Patents (including plant variety protection)
- Layout-designs (topographies) of integrated circuits
- Protection of undisclosed information
- Prevention of the abuse of intellectual property rights
- Civil judicial procedures and remedies
- Provisional judicial measures
- Special requirements related to border measures
- Criminal procedures
- Any administrative procedures and remedies not covered above

3. Where a law or regulation is relevant to more than one heading, it would need to be mentioned under each of the relevant headings.



laws and regulations. Where a response differs according to the intellectual property right (IPR) in question, the response should be given on an IPR-by-IPR basis. The checklist follows the structure of Part III of the TRIPS Agreement; when considering what information would be relevant in response to the issues listed, Members may wish to consult the corresponding provision of Part III of the TRIPS Agreement on the Enforcement of Intellectual Property Rights.

2. The checklist will be reviewed by the Council, in the light of experience at the end of 1997, *inter alia* to identify any elements which have proven unduly burdensome in relation to the usefulness of the information provided.

### *Civil and Administrative Procedures and Remedies*

#### *(a) Civil Judicial Procedures and Remedies*

3. Specify the courts which have jurisdiction over IPR infringement cases.
4. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?
5. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?
6. What means exist to identify and protect confidential information brought forward as evidence?
7. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:
  - injunctions;
  - damages, including recovery of profits, and expenses, including attorney's fees;
  - destruction or other disposal of infringing goods and materials/implements for their production;
  - any other remedies.
8. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?
9. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?
10. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

(b) *Administrative Procedures and Remedies*

11. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

*Provisional Measures*

(a) *Judicial Measures*

12. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

13. In what circumstances may such measures be ordered *inaudita altera parte*?

14. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

15. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

(b) *Administrative Measures*

16. Reply to the above questions in relation to any administrative provisional measures.

*Special Requirements Related to Border Measures*

17. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

18. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?

19. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?
20. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?
21. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

### *Criminal Procedures*

22. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.
23. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?
24. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?
25. Do private persons have standing to initiate criminal proceedings and, if so, who?
26. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:
  - imprisonment;
  - monetary fines;
  - seizure, forfeiture and destruction of infringing goods and materials and implements for their production;
  - other.
27. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

IMPLEMENTATION OF THE OBLIGATIONS UNDER  
THE TRIPS AGREEMENT STEMMING FROM THE  
INCORPORATION OF THE PROVISIONS OF  
ARTICLE 6TER OF THE PARIS CONVENTION (1967)

*Decision of the Council for Trade-Related Aspect of  
Intellectual Property Rights on 11 December 1995  
(IP/C/7)*

1. For the purposes of the implementation of obligations between WTO Members under the TRIPS Agreement stemming from the incorporation into the TRIPS Agreement of the provisions of Article 6ter of the Paris Convention (1967), the following arrangements shall apply:

- (i) the communication of emblems and the transmittal of objections between WTO Members by the International Bureau of the World Intellectual Property Organization in accordance with the Agreement between the World Intellectual Property Organization and the World Trade Organization of 22 December 1995 shall constitute the communication of emblems and the transmittal of objections under the TRIPS Agreement;
- (ii) on the date that Article 2 of the TRIPS Agreement applies to a WTO Member that is also a State party to the Paris Convention, that WTO Member shall have the same obligations under the TRIPS Agreement vis-à-vis other WTO Members also States party to the Paris Convention that it has under the Paris Convention, without prejudice to the additional obligations under the TRIPS Agreement on WTO Members not bound under the Paris Convention to protect the emblems of international intergovernmental organizations;
- (iii) where an emblem is communicated to a WTO Member from another WTO Member and at least one of the WTO Members in question is not a party to the Paris Convention, the period of 12 months available under the TRIPS Agreement for the transmittal of objections pursuant to the provisions of Article 6ter(4) of the Paris Convention shall not begin earlier than the date of application of Article 2 of the TRIPS Agreement by the WTO Member receiving the communication. The same shall apply in respect of any communication of an emblem of an international intergovernmental organization to a WTO Member not party to the Paris Convention or not bound under the Paris Convention to protect such emblems.

2. For the purposes of the above, "emblem" means any armorial bearing, flag and other State emblem of a WTO Member, or any official sign or hallmark indicating control and warranty adopted by it, and, in the case of an international intergovernmental organization, any armorial bearing, flag, other emblem, abbreviation or name of that organization.

**COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION**

*Abstract of the Report Adopted by the General Council  
on 15 November 1995  
(WT/BFA/13)*

1. The Director-General is authorized to make budgetary expenditures during the year 1996 not exceeding a total of SwF 115,693,503.
2. This expenditure is to be financed by contributions amounting to SwF 113,300,000, by miscellaneous income estimated at SwF 1,559,503 and by transfer of SwF 834,000 from the anticipated 1995 Surplus Account or from the Working Capital Fund should no positive balance remain in the Surplus Account.

<b>SCALE OF CONTRIBUTION FOR 1996<sup>1</sup></b>		
<b>MEMBERS</b>	<b>%</b>	<b>Sw F</b>
Antigua and Barbuda	0.03	33,990
Argentina	0.37	419,210
Australia	1.27	1,438,910
Austria	1.69	1,914,770
Bahrain	0.10	113,300
Bangladesh	0.08	90,640
Barbados	0.03	33,990
Belgium	3.02	3,421,660
Belize	0.03	33,990
Bolivia	0.03	33,990
Botswana	0.04	45,320
Brazil	0.81	917,730
Brunei Darussalam	0.05	56,650
Burkina Faso	0.03	33,990
Burundi	0.03	33,990
Canada	3.87	4,384,710
Central African Republic	0.03	33,990
Chile	0.30	339,900

<sup>1</sup> The contribution of each Member and associated governments is calculated on the basis of its share in the total trade of the contracting parties and associated governments. The share in the total trade of the Members and associated governments in the total trade are computed on the basis of foreign trade figures of the last three available years. The scale of contributions includes a minimum contribution of 0.03 per cent for countries whose trade value is 0.03 per cent or less of the total trade of the Members and associated governments.

<b>SCALE OF CONTRIBUTION FOR 1996<sup>1</sup></b>		
<b>MEMBERS</b>	<b>%</b>	<b>Sw F</b>
Colombia	0.19	215,270
Costa Rica	0.06	67,980
Côte d' Ivoire	0.07	79,310
Cuba	0.11	124,630
Cyprus	0.07	79,310
Czech Republic	0.38	430,540
Denmark	1.11	1,257,630
Djibouti	0.03	33,990
Dominica	0.03	33,990
Dominican Republic	0.06	67,980
Egypt	0.29	328,570
El Salvador	0.03	33,990
European Communities	-	-
Finland	0.67	759,110
France	7.01	7,942,330
Gabon	0.05	56,650
Germany	10.79	12,225,070
Ghana	0.03	33,990
Greece	0.40	453,200
Guatemala	0.05	56,650
Guinea	0.03	33,990
Guinea-Bissau	0.03	33,990
Guyana	0.03	33,990
Honduras	0.03	33,990
Hong Kong	3.28	3,716,240
Hungary	0.30	339,900
Iceland	0.05	56,650
India	0.56	634,480
Indonesia	0.84	951,720
Ireland	0.66	747,780
Israel	0.57	645,810
Italy	5.37	6,084,210
Jamaica	0.05	56,650
Japan	8.56	9,698,480
Kenya	0.05	56,650
Korea, Republic of	2.36	2,673,880

<b>SCALE OF CONTRIBUTION FOR 1996<sup>1</sup></b>		
<b>MEMBERS</b>	<b>%</b>	<b>Sw F</b>
Kuwait	0.25	283,250
Lesotho	0.03	33,990
Liechtenstein	0.03	33,990
Luxembourg	0.26	294,580
Macau	0.07	79,310
Madagascar	0.03	33,990
Malawi	0.03	33,990
Malaysia	1.06	1,200,980
Maldives	0.03	33,990
Mali	0.03	33,990
Malta	0.06	67,980
Mauritania	0.03	33,990
Mauritius	0.05	56,650
Mexico	1.28	1,450,240
Morocco	0.16	181,280
Mozambique	0.03	33,990
Myanmar, Union of	0.03	33,990
Namibia	0.03	33,990
Netherlands, Kingdom of	3.75	4,248,750
New Zealand	0.28	317,240
Nicaragua	0.03	33,990
Nigeria	0.26	294,580
Norway	1.02	1,155,660
Pakistan	0.23	260,590
Paraguay	0.06	67,980
Peru	0.11	124,630
Philippines	0.37	419,210
Poland	0.44	498,520
Portugal	0.61	691,130
Romania	0.15	169,950
Saint Lucia	0.03	33,990
St. Vincent & the	0.03	33,990
Senegal	0.03	33,990
Sierra Leone	0.03	33,990
Singapore	1.92	2,175,360
Slovak Republic	0.19	215,270

<b>SCALE OF CONTRIBUTION FOR 1996<sup>1</sup></b>		
<b>MEMBERS</b>	<b>%</b>	<b>Sw F</b>
Slovenia	0.18	203,940
South Africa	0.58	657,140
Spain	2.43	2,753,190
Sri Lanka	0.08	90,640
Suriname	0.03	33,990
Swaziland	0.03	33,990
Sweden	1.55	1,756,150
Switzerland	1.82	2,062,060
Tanzania	0.03	33,990
Thailand	1.03	1,166,990
Togo	0.03	33,990
Trinidad and Tobago	0.04	45,320
Tunisia	0.14	158,620
Turkey	0.60	679,800
Uganda	0.03	33,990
United Kingdom of Great Britain & Northern Ireland	5.98	6,775,340
United States of America	15.87	17,980,710
Uruguay	0.06	67,980
Venezuela	0.37	419,210
Zambia	0.03	33,990
Zimbabwe	0.05	56,337
<b>TOTAL</b>	<b>100.00</b>	<b>113,300,000</b>

## COMMITTEE ON TRADE AND DEVELOPMENT

### DECISION FOR THE ESTABLISHMENT OF THE WTO SUB-COMMITTEE ON LEAST-DEVELOPED COUNTRIES

*Adopted by the Committee on Trade and Development on 5 July 1995  
(WT/COMTD/2)*

1. "In the light of paragraph 7 of Article IV of the Agreement Establishing the World Trade Organization, paragraph 5 of the Marrakesh Declaration, the Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking and the Decision on Measures in Favour of Least-Developed Countries, the Committee on Trade and Development agrees to establish a Sub-Committee on Least-Developed Countries with the following terms of reference:

- (a) to give particular attention to the special and specific problems of least-developed countries;
- (b) to review periodically the operation of the special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of the least-developed country Members;
- (c) to consider specific measures to assist and facilitate the expansion of the least-developed countries' trade and investment opportunities, with a view to enabling them to achieve their development objectives;<sup>1</sup> and,
- (d) to report to the Committee on Trade and Development for consideration and appropriate action."

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<sup>1</sup> The Sub-Committee would give consideration, *inter alia*, to any report that the Committee on Agriculture may decide to refer to it following paragraph 6 of the "Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries" and Article XVI of the Agreement on Agriculture.

## WAIVERS

### WAIVERS GRANTED UNDER ARTICLE XXV OF GATT 1947

*Waivers in Force as of 1 January 1995  
(WT/L/3)*

As stated in the footnote to Annex IA, Section on GATT 1994, subparagraph 1(b)(iii) of the Agreement establishing the World Trade Organization, the Ministerial Conference is required to establish at its first session a revised list of waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement. Listed below are these waivers.<sup>1</sup>

<i>Country</i>	<i>Waiver</i>	<i>Expiry</i>	<i>Reference</i>
Argentina	Establishment of a new Schedule LXIV	30.6.1995	L/7592
Australia	Base dates under Article I:4	No time limit	BISD 9S/46
Australia	Treatment of products of Papua New Guinea	No time limit	BISD 8S/28
Australia	Tariff preferences for less developed countries	No time limit	BISD 14S/23
Bangladesh	Establishment of a new Schedule LXX	30.6.1995	L/7593
Bolivia	Establishment of a new Schedule LXXXIV	30.6.1995	L/7594
Canada	CARIBCAN	15.6.1998	BISD 33S/97
Cuba	Provisions of Article XV:6	No time limit	BISD 13S/23
El Salvador	Establishment of a new Schedule LXXXVII	30.6.1995	L/7595
Member states of the European Coal and Steel Community	Waiver granted in connection with the ECSC	No time limit	BISD 1S/17
European Community	Fourth ACP-EEC Convention of Lomé	29.2.2000	L/7604
European Communities	Transitional measures to take account of the external economic impact of German unification	31.12.1995	L/7605
France	Trading arrangements with Morocco	No time limit	BISD 9S/39
Guatemala	Establishment of a new Schedule LXXXVIII	30.6.1995	L/7596
Israel	Establishment of a new Schedule XLII	30.6.1995	L/7597
Jamaica	Margins of preference	No time limit	BISD 18S/33

<sup>1</sup> This is an update of the list contained in MTN/FA II.

<i>Country</i>	<i>Waiver</i>	<i>Expiry</i>	<i>Reference</i>
Jamaica	Establishment of a new Schedule LXVI	30.6.1995	L/7598
Malawi	Base dates under Article I:4	No time limit	BISD 9S/46
Malawi	Renegotiation of Schedule LVIII	30.6.1995	L/7589
Morocco	Establishment of a new Schedule LXXXI	30.6.1995	L/7599
Nicaragua	Establishment of a new Schedule XXIX	30.6.1995	L/7600
Pakistan	Establishment of a new Schedule XV	30.6.1995	L/7601
Senegal	Renegotiation of Schedule XLIX	30.6.1995	L/7590
South Africa	Base dates under Article I:4	No time limit	BISD 9S/46
Sri Lanka	Establishment of a new Schedule VI	30.6.1995	L/7602
Trinidad & Tobago	Establishment of a new Schedule LXVII	30.6.1995	L/7603
Tunisia	Temporary suspension of bound duties	31.12.1996	L/7380
United Kingdom	Items traditionally admitted free of duty from countries of the Commonwealth	No time limit	BISD 3S/25
United Kingdom	Special problems of dependent overseas territories	No time limit	BISD 3S/21
United States	Waiver in respect of products of the Trust Territory of Pacific Islands	No time limit	BISD Vol.II, p.9
United States	Imports of automotive products	No time limit	BISD 14S/37
United States	Caribbean Economic Recovery Act	30.9.1995	BISD 31S/20
United States	Andean Trade Preference Act	4.12.2001	L/6961
Zaire	Renegotiation of Schedule LXVIII	30.6.1995	L/7591
Zambia	Renegotiation of Schedule LXXVIII	30.11.1995	L/7329
Zimbabwe	Customs treatment for products of United Kingdom territories	No time limit	BISD 9S/47
Zimbabwe	Base dates under Article I:4	No time limit	BISD 9S/46

## ANNEX

1. Waivers which have been added to the list contained in MTN/FA II, pages 11 and 12, footnote 7

<i>Country</i>	<i>Waiver</i>	<i>Expiry</i>	<i>Reference</i>
El Salvador	Establishment of a new Schedule LXXXVII	30.6.1995	L/7595
European Communities	Fourth ACP-EEC Convention of Lomé	29.2.2000	L/7604
European Communities	Transitional measures to take account of the external economic impact of German unification	31.12.1995	L/7605
Guatemala	Establishment of a new Schedule LXXXVIII	30.6.1995	L/7596
Nicaragua	Establishment of a new Schedule XXIX	30.6.1995	L/7600
Tunisia	Temporary suspension of bound duties	31.12.1996	L/7380

\* Note: The waiver on "transitional measures to take account of the external economic impact of German unification", requested by the European Communities, expired in December 1993, as indicated in the list contained in MTN/FA II, pages 11 and 12, footnote 7. The new waiver on the same subject does not represent an extension of the previous one since the scope of that waiver has changed. It has, therefore, been listed as a new waiver.

2. Waivers which were included in the list contained in MTN/FA II, pages 11 and 12, footnote 7 and have been extended

<i>Country</i>	<i>Waiver</i>	<i>Expiry</i>	<i>Reference</i>
Argentina	Establishment of a new Schedule LXIV	30.6.1995	L/7592
Bangladesh	Establishment of a new Schedule LXX	30.6.1995	L/7593
Bolivia	Establishment of a new Schedule LXXXIV	30.6.1995	L/7594
Israel	Establishment of a new Schedule XLII	30.6.1995	L/7597
Jamaica	Establishment of a new Schedule LXVI	30.6.1995	L/7598
Malawi	Renegotiation of Schedule LVIII	30.6.1995	L/7589
Morocco	Establishment of a new Schedule LXXXI	30.6.1995	L/7599
Pakistan	Establishment of a new Schedule XV	30.6.1995	L/7601
Senegal	Renegotiation of Schedule XLIX	30.6.1995	L/7590
Sri Lanka	Establishment of a new Schedule VI	30.6.1995	L/7602
Trinidad & Tobago	Establishment of a new Schedule LXXVII	30.6.1995	L/7603
Zaire	Renegotiation of Schedule LXVIII	30.6.1995	L/7591

3. Waivers contained in MTN/FA II, pages 11 and 12, footnote 7, which expired and are not included in the document WT/L/3

<i>Country</i>	<i>Waiver</i>	<i>Expiry</i>	<i>Reference</i>
Brazil	Establishment of a new Schedule III	31.12.1993	L/7273
Chile	Establishment of a new Schedule VII	31.12.1993	L/7274
Egypt	Renegotiation of Schedule LXIII	31.12.1993	L/7281
Mexico	Establishment of a new Schedule LXXVII	31.12.1993	L/7276
Peru	Establishment of a new Schedule XXXV	31.12.1993	L/7245
Uruguay	Renegotiation of Schedule XXXI	31.12.1993	L/7280
Venezuela	Establishment of a new Schedule LXXXVI	30.6.1994	L/7316

## WAIVERS UNDER ARTICLE IX OF THE WTO AGREEMENT

<i>Country</i>	<i>Type</i>	<i>Decision of</i>	<i>Expiry</i>	<i>Document</i>
Bangladesh	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/80
		13.12.1995	30.6.1996	WT/L/114
Bolivia	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	13.12.1995	30.6.1996	WT/L/115
Guatemala	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/81
		13.12.1995	30.6.1996	WT.L.116
Israel	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/82
Jamaica	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/83
		13.12.1995	30.6.1996	WT/L/117
Morocco	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/84
		13.12.1995	30.6.1996	WT/L/118
Nicaragua	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	13.12.1995	30.6.1996	WT/L/119
Pakistan	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	15.12.1995	31.12.1995	WT/L/102
Sri Lanka	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/86
		13.12.1995	30.6.1996	WT/L/120
Trinidad & Tobago	Implementation of the Harmonized Commodity Description and Coding System - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/87
		13.12.1995	30.6.1996	WT/L/121
Malawi	Recognition of Schedule - Extension of Time-Limit	15.11.1995	31.12.1995	WT/L/131
Senegal	Recognition of Schedule - Extension of Time-Limit	31.8.1995	31.12.1995	WT/L/85
		13.12.1995	30.6.1996	WT/L/122
Zambia	Recognition of Schedule - Extension of Time-Limit	13.12.1995	30.6.1996	WT/L/123

Decisions and Reports

<i>Country</i>	<i>Type</i>	<i>Decision of</i>	<i>Expiry</i>	<i>Document</i>
Argentina, Brazil, Brunei Darussalam, Canada, Colombia, Cuba, Cyprus, Czech Republic, European Communities, Hungary, Iceland, India, Indonesia, Israel, Malaysia, Mexico, Norway, Paraguay, Philip- pines, Poland, Singa- pore, Slovak Repub- lic, Slovenia, South Africa, Sri Lanka, Switzerland, Thai- land, Tunisia, Tur- key, United States, Uruguay, Venezuela, Zimbabwe	Introduction of Harmonized System changes into WTO Schedules of Tariff Conces- sions on 1 January 1996	13.12.1995	30.6.1996	WT/L/124 + Corr.1
United States	Caribbean Basin Economic Recovery Act Renewal of waiver	15.11.1995	31.12.2005	WT/L/104

***PLURILATERAL AGREEMENTS***

***INTERNATIONAL DAIRY COUNCIL***

*Suspension of the Application of the Annex on Certain Milk  
Products and the Functioning of the Committee  
on Certain Milk Products*

*Decision of the International Dairy Council on  
17 October 1995  
(IDA/3)*

1. At its meeting on 17 October 1995, the International Dairy Council (the "Council") reviewed the functioning of the International Dairy Agreement (the "Agreement") pursuant to Article IV:1(b) of the Agreement.
2. The Council recalled that the Parties to the Agreement were subject to the minimum export prices as specified in the Annex on Certain Milk Products. However, given the limited membership of the Agreement the Council considered that adherence to minimum export prices was untenable.
3. In light of these considerations, the Council decided to suspend the application of the Annex on Certain Milk Products and the functioning of the Committee on Certain Milk Products until 31 December 1997. This Decision will take effect on 18 October 1995.
4. The Council agreed to review the market situation for dairy products at its regular meetings. For this purpose Parties would submit the information requested in Questionnaires 1-4 in advance of each Council meeting.
5. The Council agreed to review the functioning of the Agreement at its first regular meeting in 1996.

## **GOVERNMENT PROCUREMENT**

### *Report of the Interim Committee on Government Procurement to the Committee on Government Procurement to be Established under the New Agreement on Government Procurement (GPA/IC/9)*

1. The Interim Committee on Government Procurement was established by a decision of the Informal Working Group on Government Procurement at its meeting on 10 March 1994. Its terms of reference are reproduced in Annex 1.
2. This report is intended to communicate the results of the work of the Interim Committee on Government Procurement to the Committee on Government Procurement, to be established under the Agreement on Government Procurement (1994).

#### **A. COMPOSITION OF THE INTERIM COMMITTEE**

##### *Members*

3. The membership of the Committee consisted of all governments which had signed the Agreement on Government Procurement on 15 April 1994. The following were members of the Committee: Canada, the fifteen Member States of the European Communities and the European Commission, Israel, Japan, Korea, Norway, Switzerland and the United States.

##### *Observers*

4. The Interim Committee adopted the following decision on observer status in the Interim Committee:

"Observer status may be granted to any government which notifies the Interim Committee of its interest to acquaint itself with the new Agreement on Government Procurement and its activities with a view to considering possible accession to the Agreement. The Interim Committee would take a decision on each request. Requests for observership from international organizations would be considered on a case-by-case basis." (GPA/IC/M/1, dated 10 August 1994, paragraph 4)

5. The following governments were given observer status: Chinese Taipei, the Kingdom of the Netherlands with respect to Aruba, Liechtenstein, Colombia, Argentina, Turkey, Panama, Singapore, Romania and Iceland.

*Officers*

*Chairman:* Mr. Harald Ernst (Switzerland)  
*Vice-Chairman:* Mr. Peter Young (United Kingdom)

*B. MEETINGS OF THE INTERIM COMMITTEE*

6. The Interim Committee held six meetings: on 29 June and 15 November 1994 and on 4 April, 19-20 June, 25 October and 7 December 1995.

*C. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT PRIOR TO ITS ENTRY INTO FORCE*

7. The Interim Committee adopted a decision on the Administration of Rectifications of a Purely Formal Nature to Appendices I to IV Prior to the Entry into Force of the Agreement (Decision of 29 June 1994, contained in document GPA/IC/M/1, Annex 2). Pursuant to this decision, the United States notified the Interim Committee of a rectification to its Appendix II regarding State Publications, with effect as of 23 December 1994 (GPA/IC/W/10, dated 23 November 1994). In accordance with the terms of this notification, the United States submitted a list of State Publications. Norway notified the Interim Committee of a rectification to its Appendix I, Annex 1, with effect as of 15 December 1994 (GPA/IC/W/8, dated 15 November 1994).

8. The Interim Committee adopted a decision on the Administration of Modifications to the Appendices to the Agreement on Government Procurement (1994) Prior to its Entry into Force, Other Than Rectifications of a Purely Formal Nature or Those Resulting From Negotiations Aimed at Expanding Coverage (Decision of 15 November 1994, contained in document GPA/IC/M/2, Annex 2, dated 26 January 1995). No action has been taken by the Interim Committee pursuant to this Decision.

9. The Interim Committee also took action on the basis of the Decision of 17 January 1994 of the Informal Working Group on Negotiations, entitled "Modifications of the Annexes to Appendix I to the Agreement on Government Procurement Before Its Entry Into Force on 1 January 1996". (GPA/IC/3, dated 28 October 1994, reproduces this decision.) In the light of the notification to the Interim Committee of the bilateral agreement which was reached between the European Communities and the United States in April of 1994 in a document entitled "Bilateral Agreement between the EC and the US: Modifications to Appendix I", dated 15 June 1994 and the time available for its consideration, the Interim Committee accepted at its meeting of 7 December 1995 that the European Communities and the United States had met the procedural requirements necessary for the incorporation of modifications to the United States and the European Communities' lists in Appendix I, resulting from this bilateral agreement.

*D. ACCESSION NEGOTIATIONS PRIOR TO THE ENTRY INTO FORCE OF THE AGREEMENT*

10. The Interim Committee adopted a Decision on Accession Negotiations Prior to the Entry into Force of the Agreement (GPA/IC/M/1, Annex 1).

11. The action taken by the Interim Committee pursuant to this decision is described below.

- *Application for Accession by Chinese Taipei*

12. The Government of Chinese Taipei applied for accession to the Agreement on Government Procurement (1994) in a communication dated 24 June 1994. Its draft initial offer was circulated in document GPA/IC/SPEC/1, dated 17 March 1995. A report on these negotiations will be communicated to the Committee on Government Procurement under the new Agreement in document GPA/IC/5.

- *Application for Accession by Liechtenstein*

13. At the Interim Committee's April meeting, Liechtenstein applied for accession to the Agreement on Government Procurement (1994) in a communication reproduced in document GPA/IC/W/13, dated 11 January 1995, which also contains its offer. A report on these negotiations will be communicated to the Committee on Government Procurement under the new Agreement in document GPA/IC/6.

- *Application for Accession by the Kingdom of the Netherlands with Respect to Aruba*

14. The Kingdom of the Netherlands with respect to Aruba applied for accession to the Agreement on Government Procurement in a communication reproduced in document GPA/IC/W/14, dated 8 February 1995, which also contains a draft offer. A report on these negotiations will be communicated to the Committee on Government Procurement under the new Agreement in document GPA/IC/7.

- *Application for Accession by Singapore*

15. Singapore applied for accession to the new Agreement on Government Procurement in a communication reproduced in document GPA/IC/W/33, dated 15 November 1995. The Government of Singapore submitted an initial offer on 6 December 1995, which has been circulated in document GPA/IC/SPEC/2. The

Members of the Interim Committee recommend that the Committee under the new Agreement carry forward the accession process.

*E. RECOMMENDATIONS FOR PROCEDURAL DECISIONS BY THE COMMITTEE TO BE ESTABLISHED UNDER THE AGREEMENT ON GOVERNMENT PROCUREMENT*

16. The Interim Committee has adopted the following recommendations for procedural decisions under the new Agreement (GPA/IC/W/31, dated 30 October 1995):

- Participation of Observers in the Committee on Government Procurement
- Accession to the Agreement on Government Procurement
- Modalities for Notifying Threshold Figures in National Currencies

17. Discussions on procedures for notifying national implementing legislation were discussed at the December 1995 meeting of the Interim Committee and it is recommended that this discussion be pursued by the Committee. The Interim Committee has not recommended any decision on procedures for the derestriction and circulation of documents since it considered that account should be taken of the outcome of the general consideration of this matter in the WTO framework, which has not yet been completed.

*F. ESTABLISHMENT OF A PRACTICAL GUIDE TO THE NEW AGREEMENT*

18. In preparation for the implementation of the future responsibilities of the Committee on Government Procurement, the members of the Interim Committee exchanged views on the desirability and the structure and presentation of a practical guide to the new Agreement on Government Procurement. The record of this discussion is contained in the Minutes of the Interim Committee (GPA/IC/M/1, paragraphs 43-46; GPA/IC/M/2, paragraphs 39-51; GPA/IC/M/3, paragraphs 58-61; GPA/IC/M/4, paragraphs 35-36; GPA/IC/M/5, paragraphs 59-65; GPA/IC/M/6. Delegations were of the view that, for the moment, it was appropriate to postpone active consideration of the establishment of a practical guide in the true sense of the word in view of its linkages with various other outstanding issues, such as the procedures for notifying national implementing legislation and information technology. Distinct from the issue of the establishment of a true practical guide, delegations decided that there was merit in exploring possibilities of establishing a loose-leaf system to periodically update the Schedules in the Agreement. The Secretariat has been asked to prepare for the first meeting of the Committee a note outlining how such a loose-leaf system might work.

### *G. INFORMATION TECHNOLOGY*

19. In preparation for the implementation of the future responsibilities of the Committee on Government Procurement in regard to the provisions in the Agreement on information technology, the Interim Committee gathered information about the use of information technology in government procurement in the various Signatories, both by way of discussions and papers as well as through a practical demonstration. This information can be found in documents GPA/IC/W/7 and Addenda 1 through 10, which contain the information received from delegations in reply to a questionnaire, (document GPA/IC/W/4/Rev.1 contains this questionnaire), as well as in the Minutes of the Interim Committee meetings (GPA/IC/M/1, paragraphs 38-41; GPA/IC/M/2, paragraphs 31-38; GPA/IC/M/3, paragraphs 40-57; GPA/IC/M/4, paragraphs 37-57; GPA/IC/M/5, paragraphs 66-80; GPA/IC/M/6. Moreover, at a practical demonstration organized by the Interim Committee, delegations circulated various documents containing information on their systems, using information technology. A number of policy issues have been raised concerning, on the one hand, issues both of access to procurement opportunities and electronic tendering and, on the other hand, questions both of cooperation between and coordination of national systems and of possible modifications to the Agreement itself. A first list of these issues was produced in document GPA/IC/W/18. At the December 1995 meeting of the Interim Committee, the United States circulated a proposal on electronic commerce (GPA/IC/W/36) suggesting that the Parties to the Agreement undertake a review of the Agreement in the light of recent technological advances in electronic commerce and identifying a number of areas in the Agreement as appropriate for closer examination.

### *H. STATISTICAL REPORTING*

20. In preparation for the implementation of the future responsibilities of the Committee on Government Procurement in regard to the provisions in the Agreement on statistical reporting (Article XIX:5), the Interim Committee established a Working Group on Statistical Reporting with the following terms of reference:

- to propose to the Interim Committee guidelines for meeting the statistical reporting requirements of Article XIX:5, in particular in respect of the adoption of uniform classification systems and methods to be used for providing statistics on the country of origin of products and services.
- the Working Group was open to all interested members of the Interim Committee.

21. The Working Group communicated its report to the Interim Committee in document GPA/IC/8.

**ANNEX 1****TERMS OF REFERENCE FOR THE INTERIM COMMITTEE  
ON GOVERNMENT PROCUREMENT***Informal Working Group on Negotiations on  
Government Procurement**Decision of 10 March 1994*

1. An Interim Committee shall be established, with effect from 15 April 1994, to undertake all necessary tasks to prepare for the entry into force of the Agreement on Government Procurement to be done on that date in Marrakesh. These tasks shall, in particular, include:
  - (a) to carry out functions necessary to implement the Decision of the Informal Working Group on Negotiations on Government Procurement of 17 January 1994 on Modifications of the Annexes to Appendix I to the Agreement on Government Procurement Before its Entry into Force on 1 January 1996;
  - (b) the adoption of, and performance of functions required by, procedures enabling negotiations to take place on accession to the Agreement prior to its entry into force, taking into account those adopted in similar circumstances at the end of the Tokyo Round (L/4912) as well as of the Decision on Accession to the Agreement on Government Procurement to be taken by Ministers in Marrakesh on 15 April 1994;
  - (c) the adoption, and performance of functions required by, procedures to administer rectifications of a purely formal nature to Appendices I to IV prior to entry into force of the Agreement;
  - (d) the preparation of the first meeting of the Committee on Government Procurement, including the preparation of decisions on procedural matters required under the Agreement for consideration at that meeting;
  - (e) to fulfil any requirements stemming from the inclusion of the Agreement in Annex 4 of the WTO Agreement.
2. The Committee shall be serviced by the GATT Secretariat until the entry into force of the WTO Agreement, and thereafter shall be serviced by the WTO Secretariat.
3. The membership of the Committee shall consist of all governments which sign the Agreement on 15 April 1994 as well as of those Governments which have concluded accession negotiations with the members of the Committee.
4. The Committee shall cease to exist upon entry into force of the Agreement.

## **SELECTED DOCUMENTS IN RELATION WITH THE URUGUAY ROUND NEGOTIATIONS**

### **PREPARATORY COMMITTEE FOR THE WORLD TRADE ORGANIZATION**

#### **REPORT TO THE WTO**

*Adopted by the General Council on 31 January 1995  
(PC/R and Corr.1)*

1. This report of the Preparatory Committee for the World Trade Organization (WTO) to the WTO has been prepared in pursuance of paragraph 8(b)(iv) of the Marrakesh Ministerial Decision Establishing the Preparatory Committee (MTN/TNC/45(MIN), Annex IV).

2. In carrying out its task, the Preparatory Committee held 11 meetings during the period 29 April to 21 December 1994. The minutes of these meetings and those of the Sub-Committees, contained in documents PC/M/1-11, PC/BFA/M/1-2, PC/IPL/M/1-11, PC/SCS/M/1-6 and PC/SCTE/M/1-5, will remain the record of the Committee's work after the entry into force of the WTO Agreement.<sup>1</sup> Adoption of this report, which sets out the action taken by the Committee under its Ministerial mandate as outlined in paragraph 8 of the Marrakesh Ministerial Decision Establishing the Preparatory Committee and matters referred to the WTO for further action, constitutes approval by the Members of that action taken and of that referral.

#### *A. Introduction*

##### *(a) Establishment of the Preparatory Committee and its subsidiary bodies*

###### *(i) Preparatory Committee*

3. The Preparatory Committee for the World Trade Organization (WTO) was established on 14 April 1994 by the Marrakesh Ministerial Decision Establishing the Preparatory Committee for the World Trade Organization (MTN/TNC/45(MIN), Annex IV).

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<sup>1</sup> The documents of the Preparatory Committee and its subsidiary bodies are listed in PC/R/Add.1.

4. In accordance with paragraph 4 of the Ministerial Decision, the Committee took decisions by consensus.

(ii) *Subsidiary Bodies*

5. The Ministerial Decision Establishing the Preparatory Committee provided for the establishment of Sub-Committees on Services (paragraphs 3 and 8(c)(ii)) and on Budget, Finance and Administration (paragraphs 3 and 8(a)(i)). At its first meeting, the Preparatory Committee established a Sub-Committee on Institutional, Procedural and Legal Matters (PC/M/1, paragraph 2).

6. The Ministerial Decision on Trade and Environment separately provided for a Sub-Committee on Trade and Environment to be set up under the Preparatory Committee "pending the first meeting of the General Council of the WTO" (MTN/TNC/45(MIN), Annex II).

7. In organizing their work, further ad hoc decisions were taken by the Sub-Committees mentioned below:

- The Sub-Committee on Services established an Interim Group on Financial Services (PC/SCS/M/2, paragraph 13) and monitored the activities of the Negotiating Groups on Maritime Transport, Basic Telecommunications and Movement of Natural Persons, which had been established under the relevant Ministerial Decisions adopted by the Trade Negotiations Committee on 15 December 1993 and contained in the Final Act embodying the results of the Uruguay Round Negotiations.

- The Sub-Committee on Institutional, Procedural and Legal Matters established four informal open-ended contact groups on Agriculture, TRIPS including TRIMs, Anti-Dumping and Subsidies, also charged with the question of Safeguards, and Textiles.

- The Sub-Committee on Budget, Finance and Administration established working groups to deal with specific parts of its mandate.

(b) *Membership and Observers*

(i) *Membership*

8. In keeping with paragraph 2 of the Decision Establishing the Preparatory Committee, membership of the Committee was open to all Signatories of the Final Act of the Uruguay Round of Multilateral Trade Negotiations and to any contracting party to the GATT 1947 eligible to become an original member of the WTO in accordance with Article XI of the WTO Agreement. In terms of paragraph 3 of the same Decision, membership of the Sub-Committees was open to all members of the Committee.

(ii) *Observers*

9. The Preparatory Committee decided (PC/M/1, paragraphs 14 and 15) to follow the practice adopted by the Uruguay Round Trade Negotiations Committee and to invite as observers the representatives of the so-called associated governments, i.e., States or separate customs territories that were currently negotiating accession to the GATT 1947, and representatives of the United Nations, UNCTAD, IMF and the World Bank.

10. The Sub-Committees were left free to decide on the question of observer-ship. The Sub-Committee on Budget, Finance and Administration decided not to invite observers. The Sub-Committees on Services and on Institutional, Procedural and Legal Matters followed the practice of the Preparatory Committee. The Sub-Committee on Trade and Environment invited the following organizations in addition to the four organizations mentioned in paragraph 10 above: EFTA, FAO, ITC, OECD, UN Commission on Sustainable Development, UNDP, and UNEP.

11. Certain international organizations were associated on an *ad hoc* basis with the work of the bodies established under Sub-Committees. The Contact Group on Agriculture established by the Sub-Committee on Institutional, Procedural and Legal Matters invited the FAO, the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention. The Contact Group on TRIPS invited the WIPO, and the Contact Group on Textiles invited the ITCB.

(c) *Chairmanship of the Preparatory Committee and its subsidiary bodies*

(i) *Preparatory Committee: Mr. Peter D. Sutherland*

(ii) *Subsidiary Bodies:*

- Budget, Finance and Administration:  
Mr. A. Szepesi (Hungary)  
Mr. Szepesi was assisted in his task by Mr. P. Gosselin (Canada), Chairman of the GATT 1947 Committee on Budget, Finance and Administration
- Services: Mr. C. Manhusen (Sweden)
- Institutional, Procedural and Legal Matters:  
Mr. K. Kesavapany (Singapore)
- Trade and Environment: Mr. L. Lampreia (Brazil)

*(d) Derestiction of Documents of the Preparatory Committee and its Subsidiary Bodies*

12. The Preparatory Committee adopted the Decision in document PC/4 providing for the future derestiction of documents pertaining to the Committee and its subsidiary bodies.

*B. Report on the Individual Items of the Mandate of the Preparatory Committee (Paragraph 8 of the Decision Establishing the Preparatory Committee<sup>2</sup>)*

*(a) Administrative, Budgetary and Financial Matters<sup>3</sup>*

*(i) the Headquarters Agreement provided for in Article VIII:5 of the WTO Agreement*

13. On 22 July, the Preparatory Committee approved Geneva, Switzerland, as the seat of the WTO (PC/M/4, Annex 1) subject to a satisfactory conclusion of the negotiation of a Headquarters Agreement with the Swiss Authorities.

14. Negotiations on a Headquarters Agreement with the Swiss authorities started in September 1994 and were carried out by a team composed of ten members - the Chairman of the Sub-Committee on Budget, Finance and Administration, the Chairman of the GATT Committee on Budget, Finance and Administration, Argentina, France, Indonesia, Japan, Morocco, Pakistan, Trinidad and Tobago, Zambia and four representatives of the Secretariat. The negotiations covered three areas: the physical facilities for the WTO (donation of the Centre William Rappard, the new conference room, car parks); the accommodation for the LLDCs; and the privileges and immunities for both the WTO and the Missions and their respective staff.

15. At its meeting on 21 December, the Committee agreed to the recommendations by the Sub-Committee on Budget, Finance and Administration that the mandate of the team negotiating on behalf of the WTO be extended, that a progress report be presented to the first meeting of the WTO's General Council, and that the overall results of the negotiations be transmitted for approval to a subsequent meeting thereof.

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<sup>2</sup> Paragraph 8 reads: "The Committee shall perform such functions as may be necessary to ensure the efficient operation of the WTO immediately as of the date of its establishment, including the functions set out below".

<sup>3</sup> The introductory paragraph 8(a) reads: "To prepare recommendations for the consideration of the competent body of the WTO, or, to the extent necessary, take decisions or, as appropriate, provisional decisions in advance of the establishment of the WTO, with respect to the recommendations submitted to it by the Chairman of the Sub-Committee on Budget, Finance and Administration referred to in paragraph 3 above, in cooperation with the Chairman of the GATT Committee on Budget, Finance and Administration, assisted by proposals from the Secretariat on:"

*(ii) financial regulations, including guidelines for the assessment of WTO Members' budget contributions, in accordance with the criteria set out in Article VII of the WTO Agreement*

16. As stipulated in Article VII:2 of the WTO Agreement "the financial regulations [of the WTO] shall be based, as far as practicable, on the regulations and practices of GATT 1947" which, in accordance with decisions of the CONTRACTING PARTIES to GATT 1947, are based on the Financial Regulations and Rules of the United Nations. The Preparatory Committee approved the recommendation of the Sub-Committee on Budget, Finance and Administration that the Secretariat be entrusted with the task of preparing draft Financial Rules and Regulations according to the above-mentioned principle so that they can be submitted for approval to the General Council early in 1995 and that pending this approval, the present GATT practice be maintained.

17. With regard to guidelines for budget contributions by Members of the WTO, the Committee agreed (PC/BFA/M/1) that, in principle, the assessment should reflect shares in international trade in goods, services and intellectual property, but that, pending further study, the calculation of assessments for the 1995 budget of the WTO should follow existing practice under the GATT 1947. Changes to reflect the above-mentioned decision in principle would be introduced no later than one year after the creation of the WTO.

*(iii) the budget estimates for the first year of operation of the WTO*

18. On 8 December, the Implementation Conference approved the Budget Estimates for 1995. The relevant decisions that were approved by the Preparatory Committee and the Sixth Special Session of the CONTRACTING PARTIES to the GATT 1947, meeting on the occasion of the Implementation Conference, are contained in paragraph 15 on page 4, paragraph 6 on page 12 and paragraph 21 on page 13 of document PC/6, L/7577. These decisions concern the budget and its financing, the procedures for the WTO and the GATT 1947 Committees on Budget, Finance and Administration during the period in which the WTO Agreement is open for acceptance, and the contribution to the International Trade Centre, respectively.

19. Paragraph 6 of the transfer agreement (see (iv) below) also approved on 8 December stipulates that "there shall be a common budget for the GATT 1947 and the WTO from the date of entry into force of the WTO Agreement until the date as of which the legal instruments through which the contracting parties apply the GATT 1947 are terminated. During that period, the basis for assessment of the contracting parties to the GATT 1947, of the Members of the WTO and of contracting parties that are also Members of the WTO shall be the same, and a single payment to the WTO shall be due by all contracting parties to the GATT 1947 and Members of the WTO".

(iv) *the transfer of the property, including financial assets, of the ICITO/GATT to the WTO*

20. On 8 December, the Preparatory Committee and the Sixth Special Session of the CONTRACTING PARTIES to the GATT 1947, meeting on the occasion of the Implementation Conference, approved a transfer agreement between the Preparatory Committee, the Interim Commission of the International Trade Organization (ICITO) and the GATT CONTRACTING PARTIES to transfer all assets and liabilities other than staff contracts, from ICITO and the GATT CONTRACTING PARTIES to the WTO. The relevant decisions that were approved are contained in paragraphs 1, 4, 5, and 8 of document PC/9, L/7580.

21. The Committee also recommended that for the sake of legal certainty, the decisions it had adopted also be endorsed by the WTO's General Council, as stated in paragraph 8 of PC/9, L/7580.

(v) *the transfer and the terms and conditions of the transfer of the GATT staff to the WTO Secretariat*

22. The ICITO/GATT 1947 CONTRACTING PARTIES/WTO transfer agreement in document PC/9, L/7580 stipulates (paragraphs 2, 3 and 7) that, with effect from the entry into force of the WTO Agreement, as a transitional arrangement, the staff of ICITO shall perform the duties of the Secretariat of the WTO until the appointment of the staff of the Secretariat of the WTO and that the staff of the ICITO shall continue to perform the duties of the GATT 1947 Secretariat and those of the Secretariat of the bodies established under the Tokyo Round Agreements until the appointment of the staff of the Secretariat of the WTO; thereafter these duties shall be performed by the Secretariat of the WTO. It was understood that this would be effected on a reimbursable basis (PC/BFA/W/4, paragraph 14(b)). Accordingly, the Preparatory Committee decided in this respect that pending agreement by the WTO's General Council on the rules and regulations for the WTO staff, existing ICITO terms and conditions of service for staff shall apply.

(vi) *the relationship between the International Trade Centre and the WTO*

23. The future relationship between the International Trade Centre and the WTO was examined by a Working Group established under the Sub-Committee on Budget, Finance and Administration and the GATT 1947 Committee on Budget, Finance and Administration. The Working Group concluded that the matter should be further discussed early in 1995. The Preparatory Committee therefore forwarded this matter to the WTO for further consideration and action as appropriate.

(vii) *other budgetary, financial or administrative matters*

24. At its meeting on 22 July, the Preparatory Committee mandated the Sub-Committee on Budget, Finance and Administration to decide on matters relating to the organizational structure, including a management review. The creation of twenty-one additional posts for 1994 was decided (PC/BFA/M/1, paragraph 8) and a Management Review (paragraph 6) was entrusted to the Management Consulting firm Deloitte and Touche, which submitted its report on 19 December 1994. At its meeting on 21 December, the Committee agreed, in accordance with the recommendations by the Sub-Committee on Budget, Finance and Administration, to take note that the report prepared by the consultants had been presented and to forward the report to the competent bodies of the WTO for consideration and action as appropriate.

25. On 8 December, the Committee, meeting on the occasion of the Implementation Conference, approved the recommendations in paragraphs 7(a), (b), (d) and (e) and 8 of document PC/7, L/7578 concerning administrative measures to be applied to Members with three years or more of unpaid contributions. The Committee agreed that the financial implication referred to in paragraphs 7(c) and (f) of the same document should be considered by the relevant WTO bodies in 1995.

26. On the same occasion, the Committee approved the recommendations in document PC/8, L/7579 concerning the financial obligations of States or separate customs territories which will be observers to the WTO. The introductory paragraph to the Decision stipulates that these financial obligations will not apply to States or separate customs territories which are GATT 1947 contracting parties, in the process of ratification of the WTO Agreement, but have not yet become Members. Paragraph 4 provides that "The General Council of the WTO shall take a decision under Guideline 8(b) of Annex 2 to the Rules of Procedure for Meetings of the General Council (PC/IPL/9) in respect of the extension of observer status only if the financial obligations as an observer have been fully discharged; and the Ministerial Conference shall take a decision under Article XII:2 of the WTO Agreement in respect of accession only if the financial obligations as an observer have been fully discharged".

27. The Committee forwarded to the WTO the question of the choice of a logo for the WTO for further consideration and action.

(b) *Institutional, Procedural and Legal Matters*

(i) *examination of and approval of the schedules submitted to it in accordance with the "Decision on Acceptance of and Accession to the Agreement Establishing the World Trade Organization" and proposals regarding terms of accession in accordance with paragraph 2 of that Decision*

(1) *Work on Market Access Schedules*

28. The Preparatory Committee established a process (PC/M/2, paragraphs 17 to 24) to implement its mandate under this sub-paragraph. As agreed by the Committee, the Chairman informed the GATT 1947 Council of Representatives and the existing Working Parties on Accession to GATT 1947, including the Working Party on China's status as a contracting party, of the details of the process, requesting them to take action as appropriate.

29. Pursuant to this process and as concerns the market access schedules on goods:

- the seven schedules provisionally annexed to the Marrakesh Protocol subject to verification, namely, those of Bangladesh, Benin, Congo, Mauritania, Niger, Tanzania, and Uganda, were verified;
- twelve schedules, including the French version of the Canadian schedule, were received after Marrakesh<sup>4</sup>. Of these, those of Burkina Faso, Mali and Slovenia, as well as the French version of the Canadian schedule, were also verified; and
- Cameroon, Côte d'Ivoire, Gabon and Senegal, whose schedules had been verified and annexed to the Marrakesh Protocol, were given until 15 April 1995 to complete missing information on "Other Duties and Charges".

30. Pursuant to this process and as concerns the market access schedules on services, the Committee noted the oral report of the Chairman of the Sub-Committee on Services that the schedules of Ecuador and Slovenia had been verified, and that those of Angola, Burundi, Mali, Qatar, St. Kitts and Nevis, and the United Arab Emirates were still subject to bilateral negotiations to be resumed in the new year.

31. The Committee noted that a number of governments, including Angola, Grenada, Mali, Qatar, St. Kitts and Nevis, and the United Arab Emirates had not concluded the verification of their schedules either on goods or services or both<sup>4</sup>. In this regard, the Committee, at its meeting on 21 December, invited the General Council to adopt the Decision Concerning the Finalization of Negotiations on Schedules on Goods and Services contained in document PC/17.<sup>5</sup>

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<sup>4</sup> Papua New Guinea, which became contracting party to the GATT 1947 on 16 December 1994, subsequently submitted market access schedules on goods and services on 30 December.

<sup>5</sup> Burundi and Mozambique have until 15 April 1995 to complete the verification of their market

(2) *Working Parties on Accession to the WTO Agreement*

32. The Preparatory Committee noted that the Working Party for Slovenia having completed its work, Slovenia was in a position to become original member under Article XI of the WTO. The Committee took note of Croatia's request to accede to the WTO Agreement under Article XII thereof and in keeping with Croatia's request, instructed the Working Party previously established to examine Croatia's request for accession to the GATT 1947 to conduct the necessary work and report to the Committee (PC/M/4, paragraph 40). The Committee further noted that as of 21 December 1994 Ecuador, the Russian Federation and Ukraine were pursuing accession to the WTO under Article XII in the context of the working parties which had been originally established to examine their requests for accession to the GATT 1947 in accordance with the process referred to in paragraph 29 above.

33. At its meeting on 21 December, the Committee noted that the existing working parties for Bulgaria, Estonia, Latvia, Mongolia, Panama and Chinese Taipei had also conducted work on aspects of foreign trade regimes in respect of those governments who had expressed interest in seeking WTO membership.

34. Also at its meeting on 21 December, the Committee recommended that the WTO's General Council agree that, as and when requests for WTO accession under Article XII were made by States or separate customs territories for whom a GATT 1947 working party already existed, the existing working parties should continue their work as WTO accession working parties, with standard terms of reference and their respective current chairpersons.

35. The Committee took note of requests from the Kingdom of Cambodia (PC/W/19), the former Yugoslav Republic of Macedonia (PC/W/18), Sudan (PC/W/4) and the Republic of Uzbekistan (PC/W/20) to accede to the WTO Agreement under Article XII and agreed to establish working parties to examine these requests (see PC/M/6, paragraph 33, for Sudan, and PC/M/11, Section C, for the other three).

36. With regard to accession under Article XII:2 of the WTO Agreement, attention is drawn to paragraph 4 of the decision on financial obligations in document PC/8, L/7579 mentioned in paragraph 27 above.

37. The Committee took note of a statement by the Chairman of the Council of Representatives of the GATT 1947 on the "Management of Accession Negotiations" in document PC/2, and forwarded it to the WTO.

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access schedules in accordance with paragraph 1 of the Decision on Measures in Favour of Least Developed Countries.

(ii) *proposals concerning terms of reference for the bodies of the WTO, in particular those established in Article IV of the WTO Agreement, and the rules of procedure which they are called upon to establish for themselves, bearing in mind paragraph 1 of Article XVI*

(1) *Terms of Reference*

38. Following an examination by the Sub-Committee on Institutional, Procedural and Legal Matters, the Preparatory Committee decided that no particular work was needed in respect of bodies whose mandates were sufficiently well defined by the respective WTO Agreements.

39. The terms of reference for certain WTO bodies, i.e., the Committees on Agriculture, on Budget, Finance and Administration (the terms of reference in this case are accompanied by a provision on membership), on Balance-of-Payments Restrictions (BOP) and on Trade and Development (CTD), and on Market Access resulting from the merging of the GATT 1947 Committee on Tariff Concessions and Technical Group on Quantitative Restrictions and Other Non-Tariff Barriers incorporated into GATT 1994, were agreed by the Committee and are contained in documents PC/IPL/1, 2, 3, 4 and 5, respectively. These terms of reference, along with the statement or understanding read out by the Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters also agreed for some of these Committees at the time of the adoption of their terms of reference and which are reproduced in the minutes of the relevant meetings (Agriculture - PC/IPL/M/6, paragraphs 23 and 24; BOP - PC/IPL/M/7, paragraph 2; and CTD - PC/IPL/M/9, paragraphs 2, 3 and 4), were forwarded to the WTO.

(2) *Rules of Procedure*

40. As approved by the Preparatory Committee, the rules of procedure for the Ministerial Conference, the General Council, the Trade Policy Review Body and the Dispute Settlement Body, including guidelines for observer status for governments of States or separate customs territories, are contained in document PC/IPL/9. These were forwarded to the WTO for further action, as appropriate.

41. With regard to the appointment of officers to WTO bodies (Rule 12 of the Rules of Procedure for the Ministerial Conference, Rule 12 of those for the General Council, Rule 3 of those for the Dispute Settlement Body and Rule 5 of those for the Trade Policy Review Body), attention is drawn to the Guidelines for Appointment of Officers to WTO Bodies submitted by the Chairman of the GATT 1947 CONTRACTING PARTIES contained in document PC/IPL/14 and mentioned in paragraph 51 below.

42. With regard to observer status for governments, attention is drawn to paragraph 4 of the Decision on financial obligations in document PC/8, L/7579 mentioned in paragraph 27 above.

43. On 8 December, the Committee, meeting on the occasion of the Implementation Conference, adopted the Decision in document PC/10, L/7581 on the participation in meetings of WTO bodies of certain signatories of the Final Act eligible to become original members of the WTO (see also paragraph 85 below).

(3) *Notification Formats and Procedures*

44. Additional working procedures concerning notification formats and requirements were developed in informal, open-ended Contact Groups established to deal with particular aspects of WTO Agreements which required attention to ensure that the WTO became fully operational from the entry into force of the WTO or as soon as possible thereafter, and by the GATT 1947 Committee on Technical Barriers to Trade. The Preparatory Committee approved the reports and the recommendations emanating from these groups, as contained in the following documents for:

- Agriculture, PC/IPL/12, attachment to the report.
- Sanitary and Phytosanitary Measures, PC/IPL/6, paragraphs 1, 2, 3 and 4.
- Anti-Dumping, PC/IPL/11, Annexes and 7.
- Subsidies, PC/IPL/11, Annexes 1 to 7.
- TRIPS, PC/IPL/7, paragraph 9.
- TRIMs, PC/IPL/8, paragraphs 2, 4 and 5.
- Technical Barriers to Trade, PC/IPL/10 (Rev.1 for English only).

45. The Committee forwarded these recommendations, which have also to be seen in conjunction with the transitional arrangements, adopted on 8 December by the Committee meeting on the occasion of the Implementation Conference, relating to the avoidance of procedural and institutional duplication (PC/11, L/7582 referred to in paragraph 85 below), to the WTO to be noted and implemented, as appropriate.

46. At its meeting on 21 December, the Committee took note of the work done on procedures for arbitration under Article 8.5 of the Agreement on Subsidies and Countervailing measures (non-paper 3247) by the Informal Group on Anti-Dumping, Subsidies and Safeguards. It further agreed to forward this work to the WTO as a basis for further deliberation on this matter.

47. Also on 21 December, the Committee forwarded to the WTO, for appropriate action, the question of continued application under the WTO Customs Valuation Agreement of the invocation of provisions for developing countries relating to delayed application and reservations under the Tokyo Round Agreement on the Implementation of Article VII of the GATT 1947.

(4) *Standing Appellate Body*

48. The Preparatory Committee approved the recommendations on the establishment of the Appellate Body in document PC/IPL/13 and agreed to forward the same to the WTO for further action, as appropriate.

(5) *Ethical Code of Conduct*

49. The Preparatory Committee forwarded the work done on draft rules of conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, as resulting from informal consultations held on this matter, to the WTO as a possible basis for further work.

(6) *Appointment of Officers to WTO Bodies*

50. The Preparatory Committee approved the proposed guidelines for appointment of Officers to WTO Bodies submitted by the Chairman of the GATT 1947 CONTRACTING PARTIES and contained in document PC/IPL/14 and agreed to forward them to the WTO for further action, as appropriate.

*(iii) recommendations to the General Council of the WTO on appropriate arrangements with respect to relations with other organizations referred to in Article V of the WTO Agreement*

51. On the issue of observer status for international intergovernmental organizations, the draft guidelines in document PC/IPL/W/14 were forwarded to the WTO as a possible basis for future work. On the recommendation of the Sub-Committee on Institutional, Procedural and Legal Matters (PC/IPL/M/11, paragraphs 31 and 32), the Preparatory Committee recommended to the WTO's General Council that pending adoption of agreed guidelines by the WTO, representatives of the four international organizations which had been observers to the Committee, namely, the United Nations, UNCTAD, IMF and the World Bank, be invited as observers to the first meeting of the General Council.

52. The Committee took note of formal requests for observer status in the WTO received by the Chairman of the Committee from the following organizations: ACP, EBRD, EFTA, FAO, Gulf States Cooperation Council (GCC), OECD, ITCB, SELA, UNIDO and the World Tourism Organization, and agreed to forward these requests to the WTO.

53. As regards appropriate arrangements with respect to relations with other international intergovernmental and non-governmental organizations referred to in Article V of the WTO Agreement, the Sub-Committee on Institutional, Procedural and Legal Matters agreed on the need to focus first on organizations having functional links with the WTO arising specifically from their mention in various WTO Agreements. Those were identified as the following: the IMF, World Bank,

WIPO, Customs Cooperation Council (since renamed World Customs Organization (WCO)), the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention; and one non-governmental organization, namely the ISO. The Preparatory Committee saw no grounds for formal institutional links between the WTO and the United Nations, although the need for the establishment of cooperative ties between the two organizations was underscored; this latter aspect could be taken up by the WTO. The Committee felt that the WTO should establish arrangements with UNCTAD for effective cooperation at an early stage.

54. A work programme aimed at establishing close cooperation and mutually supportive relations between the WTO and the WIPO was initiated (PC/IPL/7, paragraphs 5, 6 and 7). The Committee approved the recommendation by the Sub-Committee on Institutional, Procedural and Legal Matters that, during 1995, pending the conclusion of these arrangements, WIPO be invited to attend meetings of the WTO's TRIPS Council in an observer capacity (PC/IPL/7, paragraph 8).

55. The Committee took note of the interest of the OECD, SELA and the World Tourism Organization to conclude formal cooperation arrangements with the WTO and agreed to transmit this matter to the WTO.

56. A number of non-governmental organizations (NGOs) have expressed their interest in following the WTO's work in specific areas, among which the International Chamber of Commerce (ICC). The Committee suggested that the approach to this question could take into account, *inter alia*, the deliberations that had been taking place in the Sub-Committee on Trade and Environment as described in paragraphs 73 and 74.

57. Discussions were held on the questions of (a) formalizing, in writing, the understanding that the International Chamber of Commerce (ICC) and the International Federation of Inspection Agencies (IFIA) will, for the time being, be the organizations which are to constitute jointly the independent entity under Article 4 of the Agreement on Preshipment Inspection, and (b) clarifying the status of that independent entity to enable Article 4 of the PSI Agreement to be implemented. Proposals in this respect will be prepared by the Secretariat, in consultation with interested delegations and with the IFIA and the ICC. The Committee recommended that the matter be considered and acted upon by the appropriate WTO forum at the earliest possible date with a view to ensuring that the PSI Agreement is fully operational within two months of the entry into force of the WTO Agreement (PC/IPL/M/6 and PC/IPL/M/10).

58. The Committee forwarded the whole matter of appropriate arrangements with respect to relations with other international intergovernmental and non-governmental organizations referred to in Article V of the WTO Agreement, as well as all the work done so far, to the WTO for further consideration and action as appropriate. On a specific and more immediate matter, the Committee agreed that pending the establishment of a more formal agreement with the IMF, the letter it had approved (PC/IPL/M/10, paragraph 23) be sent by the Chairman of

the GATT 1947 Committee on Balance-of-Payments Restrictions to the relevant authority of the IMF with a view to ensuring that the arrangements in place between GATT 1947 and the IMF would continue in 1995, and that these arrangements be extended to balance-of-payments matters in the area of services .

(c) *Matters Related to the Entry Into Force of the WTO Agreement and to the Activities of the WTO Within the Committee's Scope and Functions*

(i) *convening and preparing the Implementation Conference*

59. On 22 July, the Preparatory Committee set 6 to 15 December 1994 as the target period for the Implementation Conference. It also agreed that the Conference would be composed of a meeting of the Committee at Senior Officials level to be followed immediately thereafter by the CONTRACTING PARTIES to GATT 1947 meeting in Special Session (PC/M/4, paragraphs 43-45)

60. On 25 October, the Committee set the date of 8 December 1994 for holding the Implementation Conference. The Committee also agreed to the provisional agenda for the Conference proposed by the Chairman (PC/M/6, paragraph 6), later issued as PC/AIR/40, GATT/AIR/3652.

61. On 8 December, the Committee, meeting on the occasion of the Implementation Conference:

- confirmed 1 January 1995 as the date of entry into force of the WTO Agreement. The Committee's understanding in so doing is recorded in the Minutes of the meeting contained in document PC/M/10, paragraph 4;
- adopted the WTO's Budget for 1995 (PC/6, L/7577) and two other budget-related Decisions on unpaid contributions (PC/7, L/7578) and on observers' financial obligations (PC/8, L/7579);
- adopted the ICITO/GATT/WTO Transfer Agreement (PC/9, L/7580), which was also adopted by the Executive Committee of the ICITO which met later the same day;
- adopted transitional arrangements for the coexistence of:
  - GATT 1947 and the WTO Agreement on the one hand (PC/12, L/7583); and
  - the Tokyo Round Agreements on anti-dumping (PC/13, L/7584 and PC/14, L/7585) and on subsidies (PC/15, L/7586 and PC/16, L/7587) and the WTO Agreement on the other. These last four Decisions were subsequently adopted the same day by the respective Code Committees and issued as documents ADP/131 and 132 and SCM/186 and 187, respectively;
- adopted two Decisions on the Participation in meetings of WTO bodies by certain signatories (PC/10, L/7581) and on avoidance of procedural and institutional duplication (PC/11, L/7582).

62. All the above-mentioned Decisions were also adopted or noted by the CONTRACTING PARTIES either at their Sixth Special Session (6SS/SR/1) or their Fiftieth Session (SR.50/2).

*(ii) initiating the work programme arising from the Uruguay Round results as set out in the Final Act, such as overseeing, in the Sub-Committee on Services referred to in paragraph 3 of the Decision Establishing the Preparatory Committee, negotiations in specific services sectors, and also undertaking work resulting from Decisions of the Marrakesh meeting*

*(1) Services*

63. The Preparatory Committee's mandate in the area on trade in services was conducted by the Sub-Committee on Services. The Sub-Committee on Services held six meetings during the period 19 May 1994 to 16 December 1994 and addressed the following matters:

*I. Overseeing On-Going Negotiations*

64. The Negotiating Group on Basic Telecommunications held four meetings in 1994. The Group approved a questionnaire on regulatory issues and market structure (TS/NGBT/W/3). The majority of governments participating in the negotiations have communicated their responses to the questionnaire for further discussion and examination. Discussions, based on a Note prepared by the Secretariat (TS/NGBT/W/2) are also under way on technical and conceptual issues related to the conduct of negotiations and the scheduling of commitments on basic telecommunications. The participants have been urged to put forward initial offers by March or April 1995.

65. The Negotiating Group on Maritime Transport Services held three meetings in 1994. The Group approved a questionnaire on maritime transport services (S/NGMTS/W/2). 15 January 1995 was agreed as the deadline for the submission of responses to the questionnaire. Discussions in the Group on a draft schedule on maritime transport services have confirmed the general view that would be a useful way of approaching the scheduling of commitments in this sector.

66. The Negotiating Group on Movement of Natural Persons held three meetings in 1994. Preliminary multilateral discussions were held on horizontal commitments in this area. To facilitate work, the Secretariat prepared an informal note dated 15 September 1994 which analyzed the nature of the various possible types of horizontal commitments. The Group heard preliminary reports from certain delegations on bilateral consultations aimed at improving the level of commitments in this area.

67. The Interim Group on Financial Services established by the Sub-Committee on Services on 15 July 1994 (PC/SCS/M/2, paragraph 13) was man-

dated to monitor progress in the negotiations under paragraph 1 of the Decision on Financial Services adopted at Marrakesh until the entry into force of the WTO Agreement and the establishment of the Committee on Trade in Financial Services. The Interim Group has, so far, held two meetings. Participants stressed their commitment to achieving a broad, MFN-based package of liberalization commitments and reported on preliminary bilateral consultations and negotiations.

## *II. Issues Relating to the Scope of the GATS*

68. To deal with certain unresolved issues raised during the final stages of the Uruguay Round negotiations, the then Chairman of the Uruguay Round Group on Negotiations in Services had provided participants with an additional period up to 15 December 1994 to consult on such matters and report the results to the Council for Trade in Services under the WTO for appropriate action (Chairman's statement dated 14 December 1993 (MTN.GNS/W/260)). The Sub-Committee on Services agreed that it would provide the forum for such discussions. At its meeting on 21 December, the Preparatory Committee took note of the intention of the Chairman of the Sub-Committee to report on this matter on his own responsibility to the WTO's Council for Trade in Services. The Committee also took note of the statements made from the floor in this connection.

## *III. Guidelines for Notifications under the GATS*

69. As requested by Members, the Secretariat prepared draft guidelines for notifications required under different provisions of the GATS. The guidelines were revised on the basis of discussions in the Sub-Committee. The guidelines, as agreed, are set out in document PC/SCS/W/8 for transmission to the Council for Trade in Services for consideration and action as appropriate.

## *IV. Working Party on Professional Services*

70. The Secretariat was asked by Members of the Sub-Committee to establish contacts with the relevant specialized international bodies in preparation for the commencement of work by the Working Party on Professional Services upon the entry into force of the GATS. The Ministerial Decision on Professional Services establishing the Working Party identifies the accountancy sector as an area of priority. Accordingly the Secretariat initiated contacts with a view to developing relations with the International Federation of Accountants (IFAC). A report by the Secretariat on these and other contacts is contained in paragraph 22 of document PC/SCS/M/3.

71. The Preparatory Committee took note of the work done in the area of services and agreed to transmit it to the WTO for information and action, as appropriate.

(2) *Trade and Environment*

72. The Sub-Committee on Trade and Environment held five formal meetings. In addition, the Chairman has held informal consultations on: the order in which the future Committee on Trade and Environment's work programme should be taken up; how best to address the seventh item of the work programme pertaining to the issue of exports of domestically prohibited goods; and observer status for intergovernmental and non-governmental organizations. Consultations on the latter issue have been carried out in the context of the Ministerial Decision to invite the Sub-Committee, and the WTO Committee on Trade and Environment when it is established, to provide input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO.

73. With regard to appropriate arrangements for relations with non-governmental organizations the Preparatory Committee took note of a background note by the Secretariat in document PC/SCTE/W/2 on "Arrangements for relations with non-governmental organizations in the United Nations, its related bodies and selected other intergovernmental organizations". It also took note of a submission by a delegation in document PC/SCTE/W/6 on "NGO observation of the work of Committee on Trade and Environment". The Committee has agreed to transmit these two notes to the General Council for information. Informal consultations conducted by the Chairman of the Sub-Committee have led to a certain amount of progress on this issue. The Committee has agreed that informal consultations will need to be continued in the context of WTO Committee on Trade and Environment.

74. Following a general exchange of views on the work programme, Members agreed to focus initially on the first, third and sixth items of the work programme, building where possible on the work of the Group on Environmental Measures and International Trade (EMIT) under the GATT 1947. It was also agreed that delegations would be free to address other items of the work programme with a view to ensuring that work should progress flexibly and constructively. The Secretariat prepared several background papers, at the request of Members, to assist discussions.

75. Under the first item of its work programme - the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements - the Sub-Committee focused on the use of trade measures for environmental purposes, particularly those applied in the context of multilateral environmental agreements and those applied specifically to non-parties to those agreements. Delegations began reviewing the potential advantages and disadvantages of *ex ante* and *ex post* approaches to establishing the relationship of these measures to the provisions of the multilateral trading system, and are looking forward to Secretariat papers on the issue including one requested from the Secretariat on the effectiveness and necessity of using trade measures in this context.

76. Under the third item of the work programme - the relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes; (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling - delegations began reviewing the use of environmental taxes in particular in the context of GATT disciplines on border tax adjustment, and extended further their examination of environmental regulations and standards, notably those related to eco-labelling, on the basis of the extensive work that had already been undertaken on this subject by the EMIT Group.

77. Under the sixth item of the work programme - the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among the, and environmental benefits or removing trade restrictions and distortions - delegations highlighted for further examination issues such as the effects of tariff escalation, non-tariff barriers and trade distorting subsidies on the environment, export diversification and its relationship to environmental protection, market opportunities for environmentally friendly products particularly from developing countries, and the importance of technology transfer and technical and financial assistance in pursuit of sustainable development. Many noted this is a cross-cutting issue related to other items of the work programme, including transparency and charges, taxes and product requirements which serve environmental purposes.

78. Informal consultations led to agreement in the Sub-Committee on two other issues:

(a) work on the issue of exports of domestically prohibited goods should be taken up early in 1995, and will be assisted by a background paper being prepared by the Secretariat.

(b) the list of intergovernmental organizations invited to observe the work of the Sub-Committee was extended to include UNEP, FAO, ITC, UNDP, the UN Commission on Sustainable Development, OECD and EFTA. It was agreed that further requests for observer status from such organizations should be taken up on a case-by-case basis, taking into account the general criteria and conditions for observership for intergovernmental organizations to be approved by the Sub-Committee on Institutional, Procedural and Legal Matters.

79. The Committee took note of the work done as well as the programme set out for the future, and agreed to transmit it to the WTO for information and action, as appropriate.

80. The Committee recalled the Ministerial Decision on Trade and Environment (MTN.TNC/45(MIN), Annex II), which invites the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment, open to all members of the WTO, with the terms of reference and programme of work as contained in that Ministerial Decision, and transmitted to the WTO's Committee the working documents and reports of the Sub-Committee on Trade and Environment.

*(iii) discussing suggestions for the inclusion of additional items on the agenda of the WTO's work programme*

81. Suggestions for the inclusion of additional items on the agenda of the WTO's work programme were made by delegations at the Ministerial Meeting of the Uruguay Round Trade Negotiations Committee at Marrakesh from 12 to 14 April 1994. The Chairman, Mr. Sergio Abreu Bonilla (Uruguay), listed these suggestions in his concluding remarks on 15 April 1994 (MTN.TNC/45(MIN), page 12, sixth paragraph). The Preparatory Committee took up this matter at its first meeting on 29 April (PC/M/1, paragraph 8). The Committee forwarded this matter to the WTO's General Council for further consideration and action as appropriate.

*(iv) making proposals concerning the composition of the Textiles Monitoring Body in accordance with the criteria set out in Article 8 of the Agreement on Textiles and Clothing*

82. At its meeting on 21 December, the Preparatory Committee took note of the oral report by the Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters and agreed with his recommendation that the matter be forwarded to the WTO for appropriate action. The Committee also took note of the statements made from the floor in this connection.

*(v) convening the first meeting of the Ministerial Conference or the General Council of the WTO, whichever meets first, and preparing the provisional agenda thereof*

83. At its meeting on 21 December, the Preparatory Committee decided to convene the first meeting of the General Council of the WTO on 31 January 1995. It further agreed that the meeting should be devoted entirely to the most immediate "housekeeping" tasks.

*C. Transitional Arrangements*

84. On 8 December, the Preparatory Committee, meeting on the occasion of the Implementation Conference, adopted several decisions on transitional arrangements. The recommendations contained in the Decision concerning the transitional co-existence of the GATT 1947 and the WTO Agreement (PC/12, L/7583) and the avoidance of procedural and institutional duplication (PC/11, L/7582) were forwarded to the Sixth Special Session of the GATT 1947 CONTRACTING PARTIES for approval and action. The Decision on the participation in meetings of WTO bodies of certain signatories of the Final Act eligible to become original members of the WTO (PC/10, L/7581) was forwarded

to the Sixth Special Session to be noted and to the WTO for information and implementation, as appropriate.

85. On the same occasion, the Committee adopted four other Decisions on transitional arrangements concerning the co-existence of both the Tokyo Round and WTO Agreements on Anti-Dumping (PC/13/, L/7584 and PC/14/, L/7585), and Subsidies (PC/16/, L/7586 and PC/17/, L/7587), which it forwarded to the CONTRACTING PARTIES and to the respective Parties/Signatories for action. These Decisions were subsequently adopted by the respective Code Committees, which met the same day, and re-issued as documents ADP/131 and 132 in the case of anti-dumping and SCM/186 and 187 in that of subsidies.

86. Also on the same occasion, the Committee adopted the Agreement providing for the transfer of all assets and liabilities, other than staff contracts, from the ICITO/GATT to the WTO in document PC/9, L/7580 and forwarded it to the Sixth Special Session of GATT 1947 CONTRACTING PARTIES for adoption and to the Executive Committee of the ICITO for approval and action. The ICITO's Executive Committee also met on 8 December to approve the Agreement which was then re-issued, duly signed, as document ICITO/1/39.

87. Attention is drawn to paragraph 6 of Annex 1 to document PC/6, L/7577, concerning rules for the WTO and the GATT 1947 Committees on Budget, Finance and Administration during the period in which the WTO Agreement is open for acceptance (see also paragraph 19 above), which is relevant for transitional arrangements.

## ANNEX

*Original Members as at Entry into Force of the WTO Agreement*

Antigua and Barbuda	Greece	Norway
Argentina	Guyana	Pakistan
Australia	Honduras	Paraguay
Austria	Hong Kong	Peru
Bahrain	Hungary	Philippines
Bangladesh	Iceland	Portugal
Barbados	India	Romania
Belgium	Indonesia	Saint Lucia
Belize	Ireland	Saint Vincent & the Grenadines
Brazil	Italy	Senegal
Brunei Darussalam	Japan	Singapore
Canada	Kenya	Slovak Republic
Chili	Korea	South Africa
Colombia	Kuwait	Spain
Costa Rica	Luxembourg	Sri Lanka
Côte d' Ivoire	Macau	Suriname
Czech Republic	Malaysia	Swaziland
Denmark	Malta	Sweden
Dominica	Mauritania	Tanzania
European Communities	Mauritius	Thailand
Finland	Mexico	Uganda
France	Morocco	United Kingdom
Gabon	Myanmar	United States
Germany	Namibia	Uruguay
Ghana	Netherlands	Venezuela
	New Zealand	Zambia
	Nigeria	

**DOCUMENTS RELEVANT TO THE APPLICATION OF CERTAIN  
PROVISIONS OF THE GENERAL AGREEMENT ON TRADE IN  
SERVICES**

The following documents have been acknowledged by the Group of Negotiations on Services as part of the outcome of the Negotiations on Trade in Services

**SCHEDULING OF INITIAL COMMITMENTS IN TRADE IN SERVICES:**

*Explanatory Note*<sup>1</sup>  
(MTN.GNS/W/164)

*Introduction*

1. This note is intended to assist in the preparation of offers, requests and national schedules of initial commitments. Its objective is to explain, in a concise manner, how commitments should be set out in schedules in order to achieve precision and clarity. It is based on the view that a common format for schedules as well as standardization of the terms used in schedules are necessary to ensure comparable and unambiguous commitments. The note cannot answer every question that might occur to persons responsible for scheduling commitments; it does attempt to answer those questions which are most likely to arise. The answers should not be considered as an authoritative legal interpretation of the GATS.

2. The GATS contains two sorts of provisions. The first are general obligations, some of which apply to all service sectors (e.g. m.f.n., transparency) and some only to scheduled commitments (e.g. Article XI: Payments and Transfers). The second are specific commitments which are negotiated undertakings particular to each GATS signatory. Specific commitments, upon the conclusion of negotiations, are to be recorded in national schedules which will be attached to, and form an integral part of, the GATS. By virtue of Article XXVIII:1,<sup>2</sup> every signatory must attach to the GATS its national schedule. This note addresses two main questions: *what* items should be entered on a schedule, and *how* should they be entered.

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<sup>1</sup> This note is circulated by the Secretariat in response to requests by participants. It is a revised version of a draft entitled *Scheduling of Commitments in Trade in Services: Explanatory Note*, 22 December 1992. References to the General Agreement on Trade in Services (GATS) are based on the text contained in MTN.TNC/W/FA of 20 December 1991, as adjusted by the Legal Drafting Group and distributed as an Informal Note by the Secretariat (*Review of Individual Texts in the Draft Final Act*, No. 1161, 25 June 1992).

<sup>2</sup> This article has subsequently been renumbered in the final text of the GATS as Article XX:1.

## *PART I*

### *WHAT ITEMS SHOULD BE SCHEDULED?*

3. A schedule contains the following main types of information: a clear description of the sector or sub-sector committed, limitations<sup>3</sup> to market access, limitations to national treatment, and additional commitments other than market access and national treatment. If a Member undertakes a commitment in a sector then it must indicate for each mode of supply that it binds in that sector:

- what limitations, if any, it maintains on market access;
- what limitations, if any, it maintains on national treatment; and
- what additional commitments, relating to measures affecting trade in services not subject to scheduling under Articles XVI and XVII, it may decide to undertake under Article XVIII.

#### *A. Limitations on Market Access (Article XVI)*

4. A Member grants full market access in a given sector and mode of supply when it does not maintain in that sector and mode any of the types of measures listed in Article XVI. The measures listed comprise four types of quantitative restrictions (sub-paragraphs a-d), as well as limitations on forms of legal entity (sub-paragraph e) and on foreign equity participation (sub-paragraph f). The list is exhaustive and includes measures which may also be discriminatory according to the national treatment standard (Article XVII). The quantitative restrictions can be expressed numerically, or through the criteria specified in sub-paragraphs (a) to (d); these criteria do not relate to the quality of the service supplied, or to the ability of the supplier to supply the service (i.e. technical standards or qualification of the supplier).

5. It should be noted that the quantitative restrictions specified in sub-paragraphs (a) to (d) refer to maximum limitations. Minimum requirements such as those common to licensing criteria (e.g. minimum capital requirements for the establishment of a corporate entity) do not fall within the scope of Article XVI. If such a measure is discriminatory within the meaning of Article XVII and, if it cannot be justified as an exception, it should be scheduled as a limitation on national treatment. If such a measure is non-discriminatory, it is subject to the disciplines of Article VI:5. Where such a measure does not conform to these disciplines, and if it cannot be justified as an exception, it must be brought into conformity with Article VI:5 and cannot be scheduled.

6. The following are examples of limitations on market access drawn from the conditional offers. In this regard, paragraph 21 on the scheduling of limitations is also relevant.

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<sup>3</sup> The term "limitations" will be used throughout this note to refer to the "terms", "conditions", "limitations", and "qualifications" used in Articles XVI and XVII of the GATS.

- (a) Limitations on the number of service suppliers:
  - License for a new restaurant based on an economic needs test.
  - Annually established quotas for foreign medical practitioners.
  - Government or privately owned monopoly for labour exchange agency services.
  - Nationality requirements for suppliers of services (equivalent to zero quota).
- (b) Limitations on the total value of transactions or assets:
  - Foreign bank subsidiaries limited to x percent of total domestic assets of all banks.
- (c) Limitations on the total number of service operations or quantity of service output:
  - Restrictions on broadcasting time available for foreign films.
- (d) Limitations on the total number of natural persons:
  - Foreign labour should not exceed x percent and/or wages xy percent of total.
- (e) Restrictions or requirements regarding type of legal entity or joint venture:
  - Commercial presence excludes representative offices.
  - Foreign companies required to establish subsidiaries.
  - In sector x, commercial presence must take the form of a partnership.
- (f) Limitations on the participation of foreign capital:
  - Foreign equity ceiling of x percent for a particular form of commercial presence.

*B. Limitations on National Treatment (Article XVII)*

7. A Member grants full national treatment in a given sector and mode of supply when it accords in that sector and mode conditions of competition no less favourable to services or service suppliers of other Members than those accorded to its own like services and service suppliers. The national treatment standard does not require formally identical treatment of domestic and foreign suppliers: formally different measures can result in effective equality of treatment; conversely, formally identical measures can in some cases result in less favourable treatment of foreign suppliers (*de facto* discrimination). Thus, it should be borne in mind that limitations on national treatment cover cases of both *de facto* and *de jure* discrimination as shown in the following examples.

*Examples of Limitations on National Treatment*

- (a) Domestic suppliers of audiovisual services are given preference in the allocation of frequencies for transmission within the national territory. (Such a measure discriminates explicitly on the basis of the origin of the service supplier and thus constitutes formal or *de jure* denial of national treatment.)

(b) A measure stipulates that prior residency is required for the issuing of a licence to supply a service.

(Although the measure does not formally distinguish service suppliers on the basis of national origin, it *de facto* offers less favourable treatment to foreign service suppliers because they are less likely to be able to meet a prior residency requirement than like service suppliers of national origin.)

It is useful to keep in mind that, unlike Article XVI, Article XVII does not contain an exhaustive listing of the types of measure which would constitute limitations on national treatment.

8. Regarding the need to schedule residency requirements, it should be decided on a case-by-case basis, and in relation to the activity concerned, which requirements (e.g. the need to live in the country as opposed to having a mailing address in the country) constitute a *de facto* national treatment restriction and therefore must be scheduled under Article XVII unless justifiable as an exception. If the residency requirement is not discriminatory, it would be subject to the disciplines of Article VI:5. If it is not consistent with these disciplines and if it cannot be justified as an exception, it must be brought into conformity with Article VI:5.

9. Article XVII applies to subsidy-type measures in the same way that it applies to all other measures. Article XV (Subsidies) merely obliges Members to "enter into negotiations with a view to developing the necessary multilateral disciplines" to counter the distortive effects caused by subsidies. Therefore, any subsidy which is a discriminatory measure within the meaning of Article XVII would have to be either scheduled as a limitation on national treatment or brought into conformity with that Article. Subsidy-type measures are also not excluded from the scope of Article II (M.f.n.). An exclusion of such measures would require a legal definition of subsidies which is currently not provided for under the GATS.

10. There is no obligation in the GATS which requires a Member to take measures outside its territorial jurisdiction. It therefore follows that the national treatment obligation in Article XVII does not require a Member to extend such treatment to a service supplier located in the territory of another Member.

11. A Member may wish to maintain measures which are inconsistent with *both* Articles XVI and XVII. Article XX:2 stipulates that such measures shall be inscribed in the column relating to Article XVI on market access. Thus, while there may be no limitation entered in the national treatment column, there may exist a discriminatory measure inconsistent with national treatment inscribed in the market access column. However, in accordance with the footnotes to Article XVI:2 and Article XX:2, any discriminatory measure scheduled in the market access column is also to be regarded as scheduled under Article XVII and subject to the provisions of that Article.

C. *Additional Commitments (Article XVIII)*

12. A Member may, in a given sector, make commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI and XVII. Such commitments can include, but are not limited to, undertakings with respect to qualifications, technical standards, licensing requirements or procedures, and other domestic regulations that are consistent with Article VI. Additional commitments are expressed in the form of undertakings, not limitations. In the schedule, the Additional Commitments column would only include entries where specific commitments are being undertaken, and need not include those modes of supply where there are no commitments undertaken or any entries at all where no Article XVIII undertakings are made.

D. *Exceptions*

13. All measures falling under Article XIV (General Exceptions) are excepted from all obligations and commitments under the Agreement, and therefore need not be scheduled. Clearly, such exceptions cannot be negotiated under Part III of the Agreement. Likewise, any prudential measure justifiable under paragraph 2:1 of the Annex on Financial Services constitutes an exception to the Agreement and should not be scheduled. The prudential measure exception applies only to financial services as listed in the Annex, and not to other service sectors. Measures falling under Article XII (Restrictions to Safeguard the Balance of Payments) are also exceptions and should not be scheduled. Article XII provides for separate disciplines for such measures, including notification and consultation.

E. *Specific Commitments and M.F.N. Exemptions*

14. A Member taking a national treatment or a market access commitment in a sector must accord the stated *minimum* standard of treatment specified in its schedule to all other Members. The m.f.n. obligation requires that the most favourable treatment *actually* accorded in all sectors, whether the subject of a commitment or not, must also be accorded to all other Members. Where an m.f.n. exemption has been granted for a measure, a Member is free to deviate from its Article II obligations, but not from its Article XVI and Article XVII commitments. Therefore, in such cases, a Member may accord treatment in that sector more favourable than the minimum standard to some Members, as long as all other Members receive at least that minimum standard of market access and national treatment appearing in its schedule. In such cases, it is not possible for a Member to accord less favourable treatment to certain Members than that specified in its schedule (for example, on grounds of reciprocity or the lack of it).

## PART II

### HOW SHOULD ITEMS BE SCHEDULED?

15. Schedules record, for each sector, the legally enforceable commitments of each Member. It is therefore vital that schedules be clear, precise and based on a common format and terminology. This section describes how commitments should be entered in schedules. The main steps involved are:

- A. How to describe committed sectors and sub-sectors;
- B. How to treat the modes of supply;
- C. How to record commitments:
  - (i) Horizontal commitments;
  - (ii) Sector-specific commitments;
  - (iii) Levels of commitment.

#### A. *How to Describe Committed Sectors and Sub-Sectors*

16. The legal nature of a schedule as well as the need to evaluate commitments, require the greatest possible degree of clarity in the description of each sector or sub-sector scheduled. In general the classification of sectors and sub-sectors should be based on the Secretariat's revised *Services Sectoral Classification List*.<sup>4</sup> Each sector contained in the Secretariat list is identified by the corresponding Central Product Classification (CPC) number. Where it is necessary to refine further a sectoral classification, this should be done on the basis of the CPC or other internationally recognized classification (e.g. Financial Services Annex). The most recent breakdown of the CPC, including explanatory notes for each sub-sector, is contained in the UN *Provisional Central Product Classification*.<sup>5</sup>

17. *Example:* A Member wishes to indicate an offer or commitment in the sub-sector of map-making services. In the Secretariat list, this service would fall under the general heading "Other Business Services" under "Related scientific and technical consulting services" (see item I.F.m). By consulting the CPC, map-making can be found under the corresponding CPC classification number 86754. In its offer/schedule, the Member would then enter the sub-sector under the "Other Business Services" section of its schedule as follows:

#### *Map-Making Services (86754)*

18. If a Member wishes to use its own sub-sectoral classification or definitions it should provide concordance with the CPC in the manner indicated in the

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<sup>4</sup> Document MTN.GNS/W/120, dated 10 July 1991.

<sup>5</sup> *Statistical Papers Series M No. 77, Provisional Central Product Classification*, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

above example. If this is not possible, it should give a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment.

19. It is understood that market access and national treatment commitments apply only to the sectors or sub-sectors inscribed in the schedule. They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service.

*B. How to Treat the Modes of Supply*

20. The four modes of supply listed in the schedules correspond to the scope of the GATS as set out in Article I:2. The modes are essentially defined on the basis of the *origin* of the service supplier and consumer, and the degree and type of *territorial presence* which they have at the moment the service is delivered.

**MODES OF SUPPLY**

<b>Supplier Presence</b>	<b>Other Criteria</b>	<b>Mode</b>
Service supplier <i>not present</i> within the territory of the Member	Service delivered <i>within</i> the territory of the Member, from the territory of another Member	CROSS-BORDER SUPPLY
	Service delivered <i>outside</i> the territory of the Member, in the territory of another Member, to a service consumer of the Member	CONSUMPTION ABROAD
Service supplier <i>present</i> within the territory of the Member	Service delivered within the territory of the Member, through the commercial presence of the supplier	COMMERCIAL PRESENCE
	Service delivered within the territory of the Member, with supplier present as a <i>natural</i> person	PRESENCE OF NATURAL PERSON

21. It is important to have a common understanding of what each mode covers. To this end, further examples and explanations are given below.

*(a) Cross-Border Supply*

22. International transport, the supply of a service through telecommunications or mail, and services embodied in exported goods (e.g. a computer diskette, or drawings) are all examples of cross-border supply, since the service supplier is not present within the territory of the Member where the service is delivered.

*(b) Consumption Abroad*

23. This mode of supply is often referred to as "movement of the consumer". The essential feature of this mode is that the service is delivered outside the territory of the Member making the commitment. Often the actual movement of the

consumer is necessary as in tourism services. However, activities such as ship repair abroad, where only the *property* of the consumer "moves", or is situated abroad, are also covered.

24. Whatever the mode of supply, obligations and commitments under the Agreement relate directly to the treatment of services and service *suppliers*. They only relate to service *consumers* insofar as services or service suppliers of other Members are affected. It should be noted that a Member may only be able to impose restrictive measures affecting its *own* consumers, not those of other Members, on activities taking place outside its jurisdiction.

(c) *Commercial Presence*

25. This mode covers not only the presence of juridical persons in the strict legal sense, but also that of legal entities which share some of the same characteristics. It thus includes, inter alia, corporations, joint ventures, partnerships, representative offices and branches (see Definitions: Article XXXIV).<sup>6</sup>

(d) *Presence of Natural Persons*

26. This mode covers natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers.

(e) *Relationship Between Modes of Supply*

27. Where a service transaction requires in practical terms the use of more than one mode of supply, coverage of the transaction is only ensured when there are commitments in each relevant mode of supply.

28. *Example:* A Member has made a commitment in the cross-border supply of architectural services (e.g. by telecommunications or by mail). This commitment alone does *not* extend to the presence of natural persons (e.g. visits by architects). A separate commitment would have to be taken under "Presence of natural persons" to cover this case.

C. *How to Record Commitments*

i) *Horizontal Commitments*

29. A horizontal commitment applies to trade in services in a number of service sectors. It is in effect a binding, either of a measure which constitutes a limitation on market access or national treatment or of a situation in which there

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<sup>6</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII.

are no such limitations. Where measures constituting limitations are referred to, the commitment should describe the measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII. In order to avoid repetition, it is desirable to enter these commitments in a separate section at the beginning of the schedule according to the four modes of supply. Such a section could be entitled: "Horizontal commitments applicable to sectors listed in the sectoral part of the schedule". Some horizontal measures may be specific to only one mode of supply:

30. *Example:* Legislation may refer to foreign investment, formation of corporate structures or land acquisition regulations. Such measures affect above all *commercial presence*.

31. *Example:* Legislation may stipulate requirements regarding entry, temporary stay and right to work of natural persons; the categories of natural persons covered by a particular offer may also be specified. Such measures affect above all the *presence of natural persons*.

32. Other horizontal measures may affect more than one mode of supply:

*Example:* Legislation may provide for tax measures which are contrary to national treatment and not covered by Article XIV(d). Such measures would normally affect the supply of services in several modes.

#### *ii) Sector-Specific Commitments*

33. A sector-specific commitment applies to trade in services in a particular sector. If in the context of such a commitment, a measure is maintained which is contrary to Articles XVI or XVII, it must be entered as a limitation in the appropriate column (either market access or national treatment) for the relevant sector and modes of supply; the entry should describe the measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII.

34. Given the legal nature of a schedule, it should contain only descriptions of bound commitments. Any additional information for transparency purposes should not be entered in the schedule. A reference to the legal basis of a scheduled measure (i.e. the relevant law or regulation) may be entered if thought necessary. In any event, such information will be subject to the obligations of Article III.

#### *iii) Levels of Commitment*

35. Since the terms used in a Member's schedule create legally binding commitments, it is important that those expressing presence or absence of limitations to market access and national treatment be uniform and precise. Depending on the extent to which a Member has limited market access and national treatment, for each commitment with respect to each mode of supply, four cases can be foreseen:

(a) *Full Commitment*

36. In this case the Member does not seek in any way to limit market access or national treatment in a given sector and mode of supply through measures inconsistent with Articles XVI and XVII. The Member in this situation should mark in the appropriate column: NONE. However, any relevant limitations listed in the horizontal section of the schedule will still apply.

(b) *Commitment With Limitations*

37. Where market access or national treatment limitations are inscribed, two main possibilities can be envisaged in this case. The first is the binding of an existing regulatory situation ("standstill"). The second is the binding of a more liberal situation where some, but not all, of the measures inconsistent with Articles XVI or XVII will be removed ("rollback"). In either case the Member must describe in the appropriate column the measures maintained which are inconsistent with Articles XVI or XVII. The entry should describe each measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII. It would *not* be correct merely to enter in a column words such as "bound", "freeze" or "standstill".

38. In some cases a Member may choose to partially bind measures affecting a given category of suppliers. For example, a Member may bind measures affecting the entry and temporary stay only of some categories of natural persons while leaving all other categories unbound. This may be achieved through an indication in the horizontal section of a schedule such as "Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories ...". In such cases, the corresponding sectoral entry under the fourth mode of supply should be "Unbound except as indicated in the horizontal section".

(c) *No Commitment*

39. In this case, the Member remains free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment. In this situation, the Member must record in the appropriate column the word: UNBOUND. This case is only relevant where a commitment has been made in a sector with respect to at least one mode of supply. Where all modes of supply are "unbound", and no additional commitments have been undertaken in the sector, the sector should not appear on the schedule.

(d) *No Commitment Technically Feasible*

40. In some situations, a particular mode of supply may not be technically feasible. An example might be the cross-border supply of hair-dressing services.

In these cases the term UNBOUND\* should be used. The asterisk should refer to a footnote which states "Unbound due to lack of technical feasibility". Where the mode of supply thought to be inapplicable is in fact applicable, or becomes so in the future, the entry means "unbound".

SCHEDULING OF INITIAL COMMITMENTS IN TRADE IN SERVICES:  
EXPLANATORY NOTE

*Addendum*  
(MTN.GNS/W/164/Add.1)

1. At the informal GNS meeting on 29 October 1993, the Chairman invited delegations to submit to the secretariat questions identifying common scheduling problems which, in their view, affect the clarity and legal certainty of commitments. This secretariat note, which has been prepared at the request of delegations, provides answers to the questions which were received by 15 November and which were discussed at the informal GNS meeting of 18 November 1993. References in this addendum to the scheduling guide are based on the latest version of the text entitled *Scheduling of Initial Commitments in Trade in Services: Explanatory Note* contained in document MTN.GNS/W/164 (scheduling guide).

*I. Is it necessary to schedule approval procedures or licensing requirements which have to be met in order to supply a service?*

2. The requirement to obtain an approval or a licence is not in itself a trade restriction and therefore does not need to be scheduled. However, if the criteria for granting licenses or approval contain a market access restriction (e.g. economic needs test) or discriminatory treatment, the relevant measures would need to be scheduled if a Member wishes to maintain them as limitations under Article XVI or XVII. It has been pointed out that in some offers the granting of licences is subject to review, meaning they are granted on a discretionary basis. In such a case the right to supply the service is unbound.

*II. With respect to national treatment, does a "no limitations" entry in the National Treatment column refer to the whole mode of supply or only to what may be bound in the Market Access column?*

3. When a Member undertakes a commitment in a sector or sub-sector then it must indicate for each mode of supply that it binds in that sector what limitations, if any, it maintains on market access, and what limitations, if any, it maintains on national treatment. Regardless of what is inscribed in the market access column, a "no limitations" entry in the National Treatment column (expressed as "None") would mean that national treatment is bound for the entire mode; it is not limited to what may be bound in a market access commitment with limitations. Thus, if a

Member makes a commitment under Article XVI in a sector, where commercial presence is limited to partnerships, an entry "None" or any other entry in the national treatment column would refer to the whole mode of supply and not only to partnerships. (See also paragraphs 3 and 7 of the scheduling guide.) Measures which are inconsistent with both Articles XVI and XVII should be inscribed, according to Article XX:2, in the market access column; in such cases the entry will be considered to provide a national treatment limitation as well.

*III. With regard to market access limitations, such as numerical ceilings or economic needs tests, how detailed should the entries in schedules be?*

4. The entry should describe each measure concisely indicating the elements which make it inconsistent with Article XVI. Numerical ceilings should be expressed in defined quantities in either absolute numbers or percentages; regarding economic needs tests the entry should indicate the main criteria on which the test is based, e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely.

*IV. What are the implications if a schedule, in the horizontal entry relating to the presence of natural persons, does not specify the duration of that presence?*

5. With respect to the fourth mode of supply, many participants have chosen to inscribe their bound commitments in the form of undertakings rather than in the form of market access limitations. In such cases the bound measures affecting the entry and temporary stay of natural persons are explicitly stated. Thus, in the absence of a reference to a specific duration for the temporary stay of a foreign service supplier, no binding is being undertaken in this respect. However, in such cases a Member's regulatory measures would still be subject to the general requirement, in paragraph 4 of the Annex on the Movement of Natural Persons, that they do not nullify or impair the benefits accruing to any other Member under the terms of a specific commitment.

*V. Is it necessary in a schedule to describe the geographical scope of limitations to market access and national treatment where they exist at regional or sub-federal level?*

6. In a committed sector if a Member wishes to maintain a measure which is inconsistent with Article XVI or XVII, it must be entered as a limitation in the appropriate column. As measures, for the purpose of this Agreement according to Article I:3(a)(i), include measures taken by central, regional or local government, the entry should describe the geographical scope of measures where they do not cover the entire national territory.

VI. *Is it necessary to reserve the right to impose customs duties and regulations on the movement of goods in relation to the supply of a service?*

7. There is no requirement in the GATS to schedule a limitation to the effect that the cross-border movement of goods associated with the provision of a service may be subject to customs duties or other administrative charges. Such measures are subject to the disciplines of the GATT.

VII. *How relevant is a reservation for a residence requirement, nationality condition or commercial presence requirement under cross-border trade: does that not rather imply that cross-border trade is not allowed and therefore the correct entry should be "unbound"?*

8. It is correct to use the term "unbound" for a mode of supply in a given sector where a Member wishes to remain free to introduce or maintain measures inconsistent with market access or national treatment. However, it has been pointed out by participants that in some cases there is advantage in inscribing a particular limitation (e.g. a residency requirement or a commercial presence requirement) instead of the term "unbound" in that trading partners have the certainty that there are no other limitations with respect to the cross-border mode. (See also paragraph 8 of the scheduling guide on residency requirements, and paragraph 6 on nationality requirements.)

VIII. *What is the meaning in the "all sectors" part of the offers of indications that the commitments are subject to different laws of general application such as the constitution, investment regimes/laws, company laws and labour laws?*

9. As is stated in paragraph 20 of the scheduling guide, a commitment in the "all sectors" or horizontal part of the schedule is a binding of the presence or absence of limitations to market access or national treatment. To the extent that domestic laws of general application contain measures which constitute limitations, and if the Member wishes to maintain them, the commitment should describe the measures concisely. According to the agreed scheduling procedures, schedules should not contain general references to laws and regulations as it is understood that such references would not have legal implications under the GATS.

IX. *Should foreign exchange control restrictions be scheduled?*

10. Exchange control restrictions are subject to the general disciplines of Articles XI (Payments and Transfers) and XII (Restrictions to Safeguard the Balance of Payments) of the GATS. Foreign exchange control restrictions which fall under Article XII are exceptions from the obligations and commitments of the

GATS and therefore should *not* be scheduled. As explained in paragraph 13 of the guide, Article XII provides for separate disciplines for such measures including notification and consultation procedures.

X. *Where a national schedule refers to foreign companies and national companies, is it necessary that the schedule also defines what is to be understood by a national or foreign company?*

11. It is necessary to offer a definition for those cases where a Member uses terms which are not covered by the common definitions contained in Article XXXIV<sup>1</sup> of the GATS.

XI. *Are limitations on purchase, lease or use of real estate, connected with the supply of a service inscribed in a schedule, a restriction on trade in services? If such restrictions do constitute barriers to trade in services, are they restrictions on market access or national treatment?*

12. Restrictions on the purchase, lease or use of real estate, connected with the supply of a service inscribed in a schedule, are national treatment limitations to the extent that different conditions apply to foreign service suppliers which alter the conditions of competition in favour of service suppliers of the Member compared to like service suppliers of any other Member.

XII. *How should situations where a particular mode of supply is technically not feasible be addressed in schedules?*

13. In cases where a particular mode of supply is technically not feasible e.g. the cross-border supply of construction services, as explained in paragraph 28 of the scheduling guide, the term UNBOUND\* should be inscribed under the mode where the supply of the service is technically not feasible. The term may not be used as an entry in the national treatment column for modes 1 and 2 when, for the same service, there is a market access commitment.

XIII. *What types of measures should be entered in schedules under mode 2, consumption abroad?*

14. According to paragraphs 18 and 19 of the scheduling guide, limitations in the schedule of a Member - if any - with respect to mode 2 on market access and/or on national treatment should only relate to measures affecting the consum-

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<sup>1</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII.

ers of that Member, and not to measures affecting consumers of another Member, in the territory of that Member.

## ARTICLE XXXIV

### STATUS OF BRANCHES AS SERVICES SUPPLIERS

*Note by the Secretariat  
(MTN.GNS/W/176)*

1. The question has been raised whether branches and representative offices are covered by the definition of service suppliers in Article XXXIV and, if they are not, what implications this may have for the supply of a service through commercial presence in the form of a branch or representative office.
2. The perceived problem is that while the provisions of the GATS are drafted in terms of the treatment to be accorded to "services and service suppliers", the definition of "service supplier" in Article XXXIV(g)<sup>1</sup> is confined to persons (i.e. natural or juridical persons). This excludes branches and representative offices since they are not juridical persons. The implication is that branches and representative offices of foreign service suppliers would not be entitled to treatment as service suppliers, e.g. to national treatment in such matters as access to and use of basic telecoms services. However, branches and representative offices are recognized in XXXIV(d)<sup>2</sup> as forms of "commercial presence" through which the supply of services can take place.
3. The relevant provisions in Article XXXIV<sup>3</sup> are the following:
  - (d) "commercial presence" means any type of business or professional establishment, including through
    - (i) the constitution, acquisition or maintenance of a juridical person, or
    - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service.
  - (g) "service supplier" means any person that supplies a service;
  - (l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and

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<sup>1</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII(g).

<sup>2</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII(d).

<sup>3</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII.

whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.

4. If the consequence of the definitions in Article XXXIV<sup>4</sup> would be to deny GATS treatment to branches and representative offices, that was not the intention of the negotiators. The essential question to be decided is whether in fact the current drafting of the Agreement has that effect.

5. Article I:2(c) defines trade in services as the supply of a service:

(a) ...

(b) ...

(c) by a service supplier of one Member, through commercial presence in the territory of any other Member

(d) ...

6. According to Article XXXIV(g)<sup>5</sup>, service suppliers are "persons" in the legal sense, capable of assuming rights and incurring liabilities. In many countries branches or representative offices are not considered juridical persons in the legal sense. However, according to Article I:2(c) one of the modes through which services can be supplied is commercial presence, and commercial presence is defined in Article XXXIV(d)<sup>6</sup> as including branches and representative offices. Therefore, although such a branch may not be a juridical person, it can be argued that the juridical person which the branch or the representative office represents would still be entitled to receive the treatment provided for service suppliers, through its commercial presence in the territory where the service is being supplied. Since Article I recognizes commercial presence (in forms other than juridical persons) as a mode through which a person may supply a service, it would seem anomalous to interpret the reference to "service suppliers" in Article I:2(c) to mean only those suppliers fully present as juridical persons in the territory where the service is being supplied: service suppliers meeting the criteria for GATS treatment are entitled to choose to supply the service through a branch or representative office and still to receive the benefits of the Agreement. The branch or representative office would be treated as part of the service supplier. In such a case, of course, the service supplier would receive GATS treatment only to the extent that it has commercial presence in the territory where the service is being supplied; the right to such treatment would not extend to other parts of that juridical person which exist outside the jurisdiction of the country hosting the branch or representative office. Furthermore, the treatment accorded to a service supplier which maintains commercial presence in the form of a branch or a representative office would not be the same as that accorded to other suppliers which are present in the form of juridical persons: since branches are not capable of assuming all the legal obligations of a juridical person it may be justified to apply

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<sup>4</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII.

<sup>5</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII(g).

<sup>6</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII(d).

special requirements to them, such as the requirement to put down a financial deposit. The basic obligation is that they should be given the same treatment as that given to "like" suppliers in similar situations.

7. If this interpretation is accepted there would be no need to introduce any changes to the text of the Agreement. However, participants may feel that it is desirable to provide greater security within the text for the GATS treatment of branches and representative offices. This could be achieved by adding an interpretative note to paragraph (g) of Article XXXIV<sup>7</sup> making it clear that branches and representative offices of foreign service suppliers are for the purposes of this Agreement part of that supplier and are entitled to GATS treatment on that basis. Such an interpretative note could be along the following lines:

Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. However, such treatment shall only be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

#### ISSUES RELATING TO THE SCOPE OF THE GENERAL AGREEMENT ON TRADE IN SERVICES

*Note by the Secretariat*  
(MTN.GNS/W/177/Rev.1/Add.1)

1. It is agreed by participants that the provisions of Article II (Most-Favoured National Treatment) do not apply to measures relating to judicial and administrative assistance. In the light of this agreement, the former footnote to Article II has been deleted.

#### TAXATION ISSUES RELATED TO ARTICLE XIV(D)

*Note by the Secretariat*  
(MTN.GNS/W/178 and Add. 1)

1. Negotiators have requested the Secretariat to provide a clarification of certain provisions of the draft GATS on the treatment of taxation measures. The questions raised were as follows:

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<sup>7</sup> This article has subsequently been renumbered in the final text of the GATS as Article XXVIII(g).

- I. *The imposition of a tax on a person is a measure applied to that person. However, is the denial of a tax benefit to a person also a measure that is "applied" to that person?*
  
2. Any treatment accorded to a category of persons can also be expressed in terms of treatment not accorded to persons outside that category. More favourable treatment to some is equivalent to less favourable treatment to others. Therefore, while the extension of a tax benefit to a category of persons would be considered a measure applied to such persons, the denial of such a benefit to persons outside that category would also be considered a measure applied to those persons.
  
- II. *How would the question of whether a person is a "resident" or a "non-resident" be determined?*
  
3. The interpretative footnote to Article XIV(d) refers to "measures taken by a Member under its taxation system ...". That reference is understood to mean that the determination of whether a person is to be considered a "resident" or a "non-resident" would be in accordance with each Member's relevant tax legislation.
  
- III. *Is the footnote to Article XIV(d) an exhaustive listing of categories of measures that may be considered "equitable or effective"? If so, what is the legal effect of such a list?*
  
4. In the absence of a term specifically indicating that the list is indicative, such as "including", the footnote to Article XIV(d) constitutes an exhaustive list of categories of measures that are considered equitable or effective. Because the categories are so widely drawn, any measure intended to be covered by Article XIV(d) will normally fit within the terms of the footnote. However, in the rare case where there may be doubt as to whether or not the measure is within the terms of the footnote, it is necessary to consider how the provision will be interpreted. Since the list is exhaustive, it is clear that new categories cannot be added to embrace measures that cannot be fitted into existing categories. The interpretative question then becomes: does the measure fall within the boundaries of one of the listed categories? In determining these boundaries, rules of international treaty interpretation<sup>1</sup> direct that one take into account the ordinary meaning of the terms in their context, and in the light of the object and purpose of the treaty. In this case therefore, one is entitled to examine the context of a particular listed category in the footnote to Article XIV(d), including its relationship with the other listed categories, and in light of the object and purpose of the GATS. Con-

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<sup>1</sup> Vienna Convention on the Law of Treaties, Art. 31.

sequently, even though the footnote to Article XIV(d) constitutes an exhaustive list, the interpretative process introduces some flexibility through examination of the text with reference to its context, and to the object and purpose of the GATS.

*IV. Do taxation measures applying to resident service suppliers with affiliates in low-tax jurisdictions raise problems of consistency with Article II (MFN) of the GATS?*

5. Article II of the GATS prohibits a Member from treating one foreign service supplier less favourably than another foreign service supplier, on the basis of their respective countries of origin. Some tax authorities may accord less favourable treatment to a service supplier based not on its country of origin, but on the country where its affiliate is located, in order to counteract the tax advantages derived from the deferral possibilities offered by the use of low-taxed subsidiaries abroad. Such tax measures would not infringe the MFN obligation since the distinctions drawn are based not on the country of origin of the service supplier but on the location of its affiliates.

6. Furthermore, where a list is maintained either of "qualifying" or "excluded" countries, with respect to the application of certain measures, the maintenance of such a list would not in itself be inconsistent with Article II of the GATS as long as it is drawn on the basis of objective criteria designed to counter tax avoidance and not on the basis of nationality distinctions.

*V. Is the tax terminology used in Article XIV(d) and its Note to be defined with reference to the laws of the country taking the measure at issue?*

7. The point has been made that in its note of 10 November (MTN.GNS/W/178) the Secretariat had made clear that the question whether a person is a resident or a non-resident for tax purposes would be determined in accordance with the tax legislation of the country taking the measure in question, and that this might create the *a contrario* implication that the interpretation of other terms or concepts in Article XIV or its footnotes would not be so determined.

8. The first footnote to Article XIV(d) (footnote 8) refers to "measures taken by a Member under its taxation system". The phrase "under its taxation system" was intended to make it clear that the tax terminology used in the Article and its footnotes was to be defined with reference to the laws and regulations of the country taking the measure. The Secretariat Note of 10 November explained this point with reference to the determination of resident and non-resident status because that was the specific question which had been raised. But the point is valid with reference to the definition of other tax terminology in the Articles and the footnotes, such as "source". These terms also would be determined in accordance with the law and regulations of the country taking the measure.

## THE APPLICABILITY OF THE GENERAL AGREEMENT ON TRADE IN SERVICES TO TAX MEASURES

*Note by the Secretariat  
(MTN.GNS/W/210)*

1. Tax measures affecting service suppliers require no justification under Article XIV (General Exceptions) unless they violate an obligation or commitment under the Agreement. The two relevant provisions in this respect are Article XVII (National Treatment) and Article II (MFN).
2. Under Article XVII, at least three conditions must be met before a tax (or any other) measure constitutes a violation of national treatment: the service suppliers must be "like"; the distinct treatment must be based on the national origin of the service or service supplier; and the treatment must be less favourable. To the extent that service suppliers in different jurisdictions are not "like", a tax measure which distinguishes between these two suppliers on the basis of residency would not violate national treatment. Further, distinctions without a link to national origin would not normally violate national treatment provisions, such as distinctions based on objective criteria like the level of distribution of profits. Finally, any formally different treatment accorded would have to result in less favourable conditions of competition. Measures designed to ensure the neutrality or integrity of the taxation system can be viewed as ensuring that service suppliers, in the structuring of their transactions, do not benefit from conditions of competition more favourable than others in similar circumstances. In Article II (MFN) these considerations also apply: for a violation to occur, there must be likeness between service suppliers, a distinction based on national origin of the service supplier (and not simply of an affiliated person) and less favourable conditions of competition.
3. In summary, it would appear that relatively few tax measures affecting service suppliers would even require justification under Article XIV (General Exceptions). Most tax measures providing distinct treatment to different categories of service supplier appear to deal with unlike service suppliers, to be based on objective considerations, or not in fact to accord less favourable conditions of competition.

## ISSUES RELATED TO THE SCOPE OF THE GENERAL AGREEMENT ON TRADE IN SERVICES

*Statement by the Chairman of the Group of Negotiations on Services  
(MTN.GNS/W/260)*

1. A number of delegations have raised concerns about the extent to which the categories of measures contained in the Secretariat's note entitled *Issues Re-*

lating to the Scope of the General Agreement on Trade in Services (MTN.GNS/W/177 Rev 1) fall within the scope of the GATS. Accordingly, participants will be given an additional period up to 15 December 1994 to consult with a view to reaching a better common understanding of the ways in which measures of this kind may affect trade in services. The result of the consultation shall be reported to the Council for Trade in Services for appropriate decision.

STATEMENT BY THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS  
ON SERVICES

*at an informal GNS meeting on 10 December 1993  
(MTN.GNS/49)*

1. The main purpose of this meeting is to inform you of the progress made in my consultations on taxation, basic telecommunication services, and other matters, some of which have implications for text of the GATS.

*Taxation Issues*

2. During the consultations which led to the finalization of the provisions relating to taxation in Article XIV and Article XXII:3 it was suggested that it would be helpful to consolidate in one place the various notes on taxation issues which have been issued by the Secretariat and which form part of the understanding on which delegations have been working in the drafting of the relevant provisions. These appear essentially in document MTN.GNS/W/178 and its addendum and in W/210.

3. First, it should be noted that tax measures affecting service suppliers require no justification under Article XIV (General Exceptions) unless they violate an obligation or commitment under the Agreement. The two relevant provisions in this respect are Article XVII (National Treatment) and Article II (MFN). The imposition of a tax on a person, or the denial of a tax benefit, is a measure applied to that person.

4. Under Article XVII, at least three conditions must be met before a tax (or any other) measure constitutes a violation of national treatment: the service suppliers must be "like"; the distinct treatment must relate to the national origin of the service supplier; and the treatment must be less favourable. To the extent that service suppliers in different jurisdictions are not "like", a tax measure which distinguishes between these two suppliers on the basis of residency would not violate national treatment. Further, distinctions without a link to national origin and based on objective criteria would not normally violate the national treatment provisions. Distinctions based on objective criteria would include, for example, the level of distribution of profits or other assets, whether deductible payments can be used to erode the Member's tax base, or whether an incentive such as a research and development credit is allowable on the basis of the location of the

activity. Similar rules also apply to measures affecting trade in services taken by sub-central governments and authorities.

5. Finally, any formally different treatment accorded would have to result in less favourable conditions of competition. Measures designed to ensure the neutrality or integrity of the taxation system can be viewed as ensuring that service suppliers, in the structuring of their transactions, do not benefit from conditions of competition more favourable than others in similar circumstances.

6. In Article II (MFN) these considerations also apply: for a violation to occur, there must be likeness between service suppliers, a distinction related to national origin of the service supplier and less favourable conditions of competition. Article II prohibits a Member from treating one foreign service supplier less favourably than another on the basis of their respective countries of origin. To the extent that services suppliers in different jurisdictions are not in "like" circumstances, a tax measure which distinguishes between a foreign service supplier located in a lower-tax jurisdiction and another foreign service supplier would not violate the MFN obligation. Measures of this kind include the imposition of withholding taxes on residents of lower-tax jurisdictions but not on other non-residents, taxation measures applicable in the absence of exchange of information arrangements with another jurisdiction, and different methods providing for relief from double taxation. Some tax authorities may accord less favourable treatment to a service supplier on the basis not of its country of origin but of the country where its affiliate is located, in order to counteract the tax advantages derived from the deferral possibilities offered by the use of lower-tax regimes for items of income and by related persons abroad. Such tax measures would not in themselves be inconsistent with the MFN obligation since the distinctions drawn are based not on the country of origin of the service supplier but on the location of its affiliates.

7. Furthermore, where a list is maintained either of "qualifying" or "excluded" countries, with respect to application of certain measures, the maintenance of such a list would not in itself be inconsistent with Article II of the GATS as long as it is drawn up on the basis of objective criteria designed to safeguard the Member's tax base or counter tax evasion or avoidance and not on the basis of nationality distinctions.

8. In summary, it would appear that very few tax measures affecting service suppliers would ever require justification under Article XIV (General Exceptions). Most tax measures providing distinct treatment to different categories of service supplier appear to deal with unlike service suppliers, to be based on objective considerations, or not in fact to accord less favourable conditions of competition.

9. Turning now to textual issues, the latest version of the GATS, that of 6 December, incorporated provisions related to direct taxation, in Articles XIV and XXII, which appeared to have the support of all participants, save the United States. There have been very intensive consultations on these matters which have resulted in proposals to amend the texts in question.

10. I am very pleased to say that regarding the footnote to Article XIV(d) I am in a position to propose a text for inclusion in the final version of the GATS which enjoys the support of all participants. This text is now available in the room and it is the text that will replace the footnote in the 6 December version of the GATS. Regarding Article XXII:3, there is a proposal to add a footnote to paragraph 3 which would say "with respect to agreements on the avoidance of double taxation which exist at the time of entry into force of the Agreement Establishing the MTO, such a matter may be brought before the Council for Trade in Services only with the consent of both parties to the agreement." There was a reservation regarding this proposal on the part of certain participants who have now, as I understand it, removed their reservation. This being confirmed, we shall now include this footnote in the final text of the GATS.

11. In the consultations leading to the final version of the first footnote to Article XIV(d), a number of points were made which I have felt it appropriate to put on record as a contribution to the understanding of this text. First, the listing in the footnote of types of measures which governments may find it necessary to take is without prejudice as to whether any of them would necessarily be inconsistent with Article XVII. Secondly, it was noted with reference to the first tiret in the footnote that it would cover cases in which a tax measure would be applied not directly to a service supplier, because he is outside the jurisdiction, but rather through a consumer acting as a withholding agent. Thirdly, it was noted that measures found to be justified under the footnote would normally be expected also to meet the requirement in the chapeau to Article XIV that they should not constitute a disguised restriction on trade. Fourthly, it was confirmed that nothing in the footnote or this statement would or was intended to affect or influence any question concerning taxation at issue between Members in the context of bilateral tax treaties.

12. During these discussions a large number of specific tax measures were mentioned as illustrations of the kind of action which might be taken by governments to meet the objectives mentioned in the footnote: for example, the imposition of withholding taxes or the denial of personal reliefs and reductions; the non-granting of dividend tax credits to non-residents; reporting, record-keeping and collection systems for cross-border transactions; measures that reduce the tax burden on persons subject to tax on their world-wide income; thin capitalization measures and measures that tax resident persons on all or part of the income, profits or gains earned by a non-resident. The number of possible examples is almost infinite, and there is no suggestion that the examples I have cited have any greater claim to consistency with Article XIV than any others: but they may help to illustrate the thinking behind this complex provision.

#### *Basic Telecommunications*

13. As I noted yesterday, two new texts have emerged from consultations on this subject which will permit negotiations aimed at liberalizing trade in basic telecommunications services to extend beyond the completion of the Uruguay

Round. The first of these texts was circulated yesterday as a Ministerial Declaration on Negotiations on Basic Telecommunications. This text addresses the mandate of the negotiations, institutional aspects such as the establishment of a negotiating group and guidelines such as a provision on standstill, some times referred to as a peace clause. In the version that will appear in the final text, the Ministerial Declaration has been renamed the Ministerial Decision, and has been reformatted slightly, solely for the sake of bringing it into consistency with the other Ministerial Decisions.

14. With regard to the standstill provision contained in paragraph 7 of the Ministerial Decision on Negotiations on Basic Telecommunications, it is my understanding that measures to improve a participant's negotiating position and leverage could include any category of actions, not excluding MFN inconsistent measures. It is also my understanding that the standstill contained in this decision is intended to serve a purpose and convey a level of commitment similar to that of the Substantive Guidelines for the Negotiations of Initial Commitments in the Uruguay Round, in particular the standstill provision contained in paragraph 3 of those guidelines. This provision said that "For the duration of the negotiations, each participant agrees not to take any measures in such a manner as to improve its negotiating position and leverage".

15. Regarding the timeframe, the date of 30 April 1996 for completion of these negotiations, contained in paragraph 5 of the Ministerial Decision, is an arbitrated date on which some delegations continue to have reservations. It is, however a date that represents a compromise between earlier dates sought by some delegations and later dates sought by others.

16. In relation to the final status of these two texts, I note that there is a certain expectation with respect to MFN Exemption requests that are on the table regarding basic telecommunications. That expectation is that the agreement to enter into these negotiations will make it possible to withdraw such requests.

17. Finally, regarding participation in the negotiations on basic telecommunications, paragraph 4 of the Ministerial Decision contains a list of the governments that have informed the Secretariat of their intention to participate. Participants have made it clear that their inclusion on the list is dependent on whether this list will represent a critical mass, meaning that countries with major markets for these services should be on it. The list currently contains eight names. I would like to point out that it will be possible for participants to add their names to the list up to 15 December. It is my hope that additional participants will be able to so identify themselves, following resolution in the HOD forum of any issues which may be preventing participants from doing so today. I would also like to note that the list is open-ended. Any other government that decides at a later date to participate will be admitted to the negotiations by submitting a notification of its intention to do so.

18. The second document is the Annex on Negotiations on Basic Telecommunications, which was also distributed yesterday, and which will be attached to the GATS itself, along with the other Annexes to the Agreement. As I noted yes-

terday, the Annex will permit delayed implementation of MFN-related provisions of the GATS with respect to Basic Telecommunications Services. The delayed implementation will be in effect for the duration of the negotiations and will apply to all Members for all basic telecommunication services except those which are already inscribed in a Member's schedule of commitments. I also want to point out that in the version that will appear in the final text of the GATS, paragraph 2 of the Annex has been amended to refer to "specific commitments on Basic Telecommunications" instead of "Basic Telecommunications Services" since the word "Services" does not appear elsewhere in this text.

#### *Audiovisual Services*

19. Today, there was a proposal by the European Community to insert language into certain provisions of the GATS regarding the cultural specificity of the audiovisual sector. The proposal relates to Article XIX (Progressive Liberalization), Article XV (Subsidies), and the Annex on Article II (Exemptions). While there was considerable support for the EC proposals there were also a number of participants who registered reservations. In view of this situation, consultations on this proposal will continue among the participants concerned.

#### *The Scope of the GATS*

20. In my statement on 29 October I reported on consultations which had been taking place on the question whether certain categories of governmental measures, such as measures relating to social security, fall within the scope of the GATS. This obviously has relevance for the scheduling of such measures and for the question of MFN exemptions. I wish to re-emphasize, perhaps more strongly than in my earlier statement, that pending further clarification of this and other questions relating to the scope of the Agreement, that it is assumed that participants would refrain from taking issues arising in this area to dispute settlement but would try to settle them through bilateral consultations. However, participants must assume their own responsibilities in deciding whether any measures of this sort which they maintain should be scheduled or made the subject of MFN exemptions - though in this respect also it is hoped that restraint will be shown.

#### *Professional Services*

21. During today's consultations a proposal was put forward that a Ministerial Decision providing for a programme of work under Article VI, paragraph 4 concerning professional services should be added to the other decisions to be taken by Ministers in the field of services. Copies of the draft decision which was tabled are available in the room. In discussion there was a wide measure of support for this proposal but some participants had reservations, in part related to the late

submission of the idea. Consultations among interested participants will be pursued.

*Maritime Services*

22. Regarding my consultations on the scheduling of commitments on access to and use of port services, it is clear that countries willing to commit themselves in this area should so indicate in the additional commitments column of their schedule. This should be done by listing all port services which a Member intends to ensure access to and use of, irrespective of whether or not all or any of such services are covered by the former Article XXXIV(c)(ii), (now Article XXVIII). Such a listing could be preceded by a chapeau along the following lines:

"when the following services are not otherwise covered by the obligation resulting from Article XXVIII(c)(ii), they will be made available to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions."

23. A full reference can be found in the informal Secretariat Note of 2 December, copies of which are available in the room.

STATEMENT BY THE CHAIRMAN OF THE GROUP OF NEGOTIATIONS  
IN SERVICES

*Scheduling of Subsidies and Taxes at the Sub-Central Level*  
(MTN.GNS/50)

1. Certain delegations have raised a concern that they will be unable to complete the process of scheduling an exhaustive list of their measures relating to subsidies and taxes, at the sub-central level, which are inconsistent with Article XVII (National Treatment) by 15 December 1993. Accordingly, participants will be given an additional period of time, until 15 June 1994, during which they can complete the scheduling of such measures. It is understood that this process will not result in any alteration in the negotiated balance of rights and obligations. For a period of thirty days starting on 16 June 1994, if any participant considers that such balance has been altered as a result of scheduling additional measures, it may consult with the participant or participants concerned with a view to reaching a satisfactory adjustment.

## DECISIONS AND REPORTS NOT INCLUDED

### *General Council*

Report 1995	WT/GC/5 and Corr.1
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### *Dispute Settlement Body*

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### *Trade Policy Review Body*

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- Mauritius	WT/TPR/M/5, A and C
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*Committee on Import Licensing*

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*Working Party on State Trading Enterprises*

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- Philippines	WT/BOP/R/9
- Slovak Republic	WT/BOP/R/4
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