REPORT OF THE GENERAL COUNCIL
TO THE 1996 MINISTERIAL CONFERENCE

VOLUME I

96-4996

WORLD TRADE ORGANIZATION

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MINISTERIAL CONFERENCE
Singapore, 9-13 December 1996

REPORT OF THE GENERAL COUNCIL TO THE 1996 MINISTERIAL CONFERENCE

VOLUME I

The annual reports for 1996 of the General Council, Dispute Settlement Body, Trade Policy Review Body, Sectoral Councils, Committees on Trade and Environment, Trade and Development, Regional Trade Agreements, Balance-of-Payments Restrictions, and Budget, Finance and Administration, and the Committees and Councils under the Plurilateral Trade Agreements, are reproduced hereunder. Each report is reproduced as a separate section with its own page numbering.

[1]The report of the General Council also covers the preparatory work for the 1996 Ministerial Conference undertaken in the Heads-of-Delegations process under the Chairmanship of Mr. Renato Ruggiero, Director-General.

[2]The reports of the subsidiary bodies of the Council for Trade in Goods are contained in Volume II of this document.

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SECTION I

GENERAL COUNCIL

WORLD TRADE ORGANIZATION

WT/GC/7
20 November 1996

(96-4946)

GENERAL COUNCIL

GENERAL COUNCIL

Annual Report (1996)

The present report has been prepared in pursuance of the Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO (WT/L/105), and sets out the actions taken by the General Council since the previous overview of WTO activities held in December 1995.[1]

In carrying out its tasks, the General Council has held seven meetings since December 1995. The minutes of these meetings, which remain the record of the General Council's work, are contained in documents WT/GC/M/10-WT/GC/M/16.

The following subjects are included in the report:

[1]The annual report of the General Council for 1995 is contained in WT/GC/5 and Corr.1.

1. 1996 Ministerial Conference

(a) Preparations for the Ministerial Conference

(i) Reports by the Director-General (WT/GC/M/11, 12, 13, 14, 15, 16)

At the General Council meeting on 16 April 1996, the Chairman recalled that at an informal meeting of the General Council on 5 March, it had been agreed that preparations for the Singapore Ministerial Conference would be undertaken in the following manner:

1. The General Council, meeting informally on that day, would invite the Director-General, Mr. Renato Ruggiero, in his personal capacity, to chair informal meetings open to participation of all Members, in principle at the Head of Delegation level. The purpose of these meetings would be to enable Members to exchange views on the preparation of the Singapore Ministerial Conference, with regard to both substantive and organizational matters.

2. In so doing, the Director-General would act in close cooperation and coordination with the Chairman of the General Council.

3. In all matters relating to the organization of the Ministerial Conference, the Director-General would work closely with the Head of the Delegation of the host country of the Ministerial Conference.

4. The Director-General would submit progress reports on this work at the meetings of the General Council.

5. The General Council would act upon these reports of the Director-General as necessary. In particular, it would consider any proposals addressed to it and take any decisions it deemed appropriate for the further preparation of the Singapore Ministerial Conference.

It was understood that the different WTO bodies would carry out the tasks assigned to them under the texts agreed in the Uruguay Round for the purposes of the first Ministerial Conference.

In accordance with paragraph 4 of the above procedures, the Director-General then reported on the process that had been undertaken thus far.

The Chairman proposed that the General Council take note of the Director-General's statement and agree that the Singapore Ministerial Conference take place from 9-13 December 1996, that the agenda for the Conference be divided between general discussion and specific business items, and that a decision on the specific agenda items and the exact time to be allocated to the general discussion and the specific items be taken at a later date.

The General Council so agreed.

At the General Council meetings on 26 June, 18 July, 2 October, and 14 October 1996, the Director-General reported on the process that had been undertaken until then.

At the General Council meeting on 7, 8 and 13 November 1996 the Director-General recalled that the Heads-of-Delegations process had been formally put into place at the General Council meeting on 16 April. At that meeting, the Chairman had outlined the arrangements agreed at an informal meeting of the General Council on 5 March. Under these arrangements, he had already reported to the General Council on 16 April, 26 June, 18 July, 2 October and 14 October. Eight informal HOD meetings had been held in 1996: on 18 March, 15 April, 15 May, 17 June, 16 September, 7 and 22 October, and 2 November. In addition, a series of six informal consultations on specific issues, open to all interested delegations and focusing mainly on what might constitute the work programme of the WTO, had been held in the latter part of June. Intensive informal bilateral and plurilateral consultations had also been held in the period from July through early November on the elements of a ministerial declaration and on specific issues. At each of these meetings, both implementation questions and the future work programme of the WTO had been discussed. With regard to implementation, delegations had been given the possibility to address problems or new ideas concerning the implementation programme which could emerge in certain areas and which were not provided for in the WTO Agreements themselves or the programme they envisaged. In April, delegations had agreed on the structure of the Singapore Conference. The structure divided, in an illustrative manner only, the available time between general statements and specific agenda items. The exact division would be made at a later date depending on the likely number of general statements and the specific agenda items, for which several delegations had already made useful suggestions. That structure had been formally approved by the General Council on 16 April.

Throughout the process, delegations had introduced non-papers on various subjects. The issues concerned were the following: built-in agenda; competition policy; government procurement; implementation of Uruguay Round Agreements; industrial tariff negotiations; investment; labour standards; regionalism; rules of origin; services; state-trading; technical barriers to trade; textiles and clothing; trade liberalization initiatives; TRIPS; trade facilitation; WTO rules in a globalizing economy; and World Trade Summit in 1998. The Secretariat had also circulated non-papers in the course of October and early November. These were: Outline of the Draft Ministerial Declaration, Draft Ministerial Declaration - Part I, and the full text of the Draft Ministerial Declaration. Of the non-papers submitted by delegations, only the non-papers concerning competition, investment, government procurement, WTO rules, and labour standards had been retained for consideration in the HOD process. At an early stage he had submitted a list of questions with respect to the action that might be required at Singapore in each case, suggesting that Members consider whether the proposals called for specific decisions to be agreed by the Ministers or required a political statement, such as in a ministerial declaration. The other issues raised in the non-papers had all been referred to the relevant WTO bodies for consideration therein. The issue of the World Trade Summit had been left for consideration at an appropriate later stage, and there had been no subsequent discussion of this issue in the HOD process.

Consultations held in July and September had led to the circulation of an outline of a draft ministerial declaration, based on these consultations, which had been discussed at an informal HOD meeting on 7 October. Following this discussion, all WTO Members had been provided with the draft of a political statement which would constitute the introductory part of the ministerial declaration. This draft text had been discussed at the informal HOD meeting held on 22 October. Intensive bilateral and plurilateral consultations had been held throughout the latter part of October on the remaining parts of the draft declaration, as well as on other specific outstanding issues in the HOD process. As a result of these consultations, he had circulated a draft of the full text of the draft declaration, which attempted to reflect the points made by delegations in the course of the consultations. This text had been discussed

at the informal HOD meeting held on 2 November. He added that work on the Declaration and on the outstanding HOD issues was still continuing.

(ii) Schedule of meetings of WTO bodies (WT/GC/M/11)

At the General Council meeting on 16 April 1996, the Chairman drew attention to the schedule of end-of-year meeting for various WTO bodies for the purpose of adoption of their respective reports to the Ministerial Conference (WT/GC/W/32/Rev.1), and to the revised Programme of Meetings of WTO bodies for 1996 (WT/GC/4/Rev.1).

With regard to reporting procedures for the Ministerial Conference, he said that his informal consultations had resulted in agreement on the following text of a statement to be read by him:

"1. Subsidiary bodies of the General Council are invited to prepare their reports on the basis of the Procedures for an annual overview of the WTO activities and for reporting under the WTO laid down by the General Council on 15 November 1995 (WT/L/105). These reports should be submitted in accordance with the schedule of meetings circulated in document WT/GC/W/32/Rev.1 in order to enable the General Council to adopt its own report to the Ministerial Conference on 7 November 1996.

2. Given the different mandates of Standing Bodies of the WTO it is difficult to establish a common format for reports of these bodies. In some instances, for example, efforts to include in reports an assessment or an identification of problems and issues could lead to undue difficulties. Each Body must therefore ultimately decide on the format of report which it deems most appropriate for consideration of relevant issues by the superior Body.

3. While taking the above into account, I suggest that these reports include at least the following elements:

(a) a section on implementation of the relevant Agreements;

(b) progress concerning work under the Built-in Agenda;

(c) an indication as appropriate of issues and problems which have been identified and recommendations if any."

The General Council took note of the Chairman's statement on reporting procedures for the Ministerial Conference (WT/L/145), also took note that the Chairman would consult with Pakistan on its concerns regarding the second sentence of paragraph 2 of the statement, and further took note that Pakistan would have the possibility to revert to this matter at the next meeting.

The Chairman then invited the chairpersons of subsidiary bodies to undertake the necessary arrangements for the preparation of their respective reports along the lines of his statement.

(iii) Progress of preparatory work in subsidiary bodies of the General Council (WT/GC/M/13, 14, 15)

At its meeting on 18 July 1996, the General Council heard reports on the progress of preparatory work in their respective bodies, made under their own responsibility, by the Chairpersons of the Dispute Settlement Body, the Trade Policy Review Body, the Council for Trade in Services, the Council for

Trade in Goods, the Committee on Trade and Development, the Committee on Trade and Environment and the Committee on Regional Trade Agreements, and by the Chairman on behalf of the Chairman of the Council for TRIPS. The General Council also heard that the Chairmen of the Budget and Balance-of-Payments Committees had nothing to report at this stage with regard to preparatory work for the Ministerial Conference in their respective Committees.

At its meeting on 2 October 1996, the General Council heard brief reports on the preparatory work in their respective bodies, made under their own responsibility, by the Chairpersons of the Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS. The General Council also heard that the Chairman of the Committee on Trade and Development had nothing to report at this stage.

At its meeting on 14 October 1996, the General Council heard reports on the preparatory work in their respective bodies, made under their own responsibility, by the Chairpersons of the Trade Policy Review Body, the Council for Trade in Goods, the Council for Trade in Services, the Council for TRIPS, the Dispute Settlement Body, the Committee on Trade and Development, the Committee on Regional Trade Agreements and the Committee on Trade and Environment. The General Council also heard that the Chairmen of the Budget and Balance-of-Payments Committees had nothing to report at this stage with regard to preparatory work for the Ministerial Conference in their respective Committees.

(iv) Reports of:

(a) Dispute Settlement Body and Trade Policy Review Body (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council considered the annual reports of the Dispute Settlement Body (WT/DSB/8) and the Trade Policy Review Body (WT/TPR/27). The General Council took note of the two reports.

(b) Councils for Trade in Goods, Trade in Services, and TRIPS (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council considered the annual reports of the Councils for Trade in Goods (G/L/134), Trade in Services (S/C/3), and TRIPS (IP/C/8). The General Council took note of the three reports and approved the recommendations contained therein. It agreed to revert at a future meeting to the recommendations of the Council for Trade in Goods regarding notification obligations and procedures, and took separate action at the meeting on the recommendation regarding Preshipment Inspection.[2]

(c) Committee on Trade and Environment (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council considered the report of the Committee on Trade and Environment (WT/CTE/W/40[3]). The General Council took note of the report, approved the recommendations contained therein, and agreed to forward it to the Ministerial Conference for consideration.

[2]See point 8 - "Agreement on Preshipment Inspection…".

[3]The report was subsequently reissued as WT/CTE/1.

(d) Committees on Trade and Development, Regional Trade Agreements, Balance-of-Payments Restrictions, and Budget, Finance and Administration (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council considered the annual reports of the Committees on Trade and Development (WT/COMTD/9), Regional Trade Agreements (WT/REG/2), Balance-of-Payments Restrictions (WT/BOP/R/19), and Budget, Finance and Administration (WT/BFA/29).

The General Council adopted the report of the Committee on Trade and Development, approved the draft plan of Action for the Least-Developed Countries in WT/COMTD/W/20,[4] and agreed to submit it to the Ministerial Conference for adoption.

The General Council then took note of the reports of the Committees on Regional Trade Agreements, Balance-of-Payments Restrictions, and Budget, Finance and Administration.

(e) Committees and Councils under the Plurilateral Trade Agreements (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council considered and took note of the annual reports of the four Committees and Councils under the Plurilateral Trade Agreements (Committee on Government Procurement (WT/L/190); Committee on Trade in Civil Aircraft (WT/L/193); International Dairy Council (WT/L/178); International Meat Council (WT/L/179)).

(v) Election of officers of the Ministerial Conference (WT/GC/M/14, 16)

At the General Council meeting on 2 October 1996, the Chairman recalled that the Rules of Procedure for Sessions of the Ministerial Conference (WT/L/161) provided for the election of a Chairperson and three Vice-Chairpersons who would hold office from the end of one session until the end of the next regular session. Since the Singapore Ministerial Conference was the first Ministerial Conference, and there was no elected Chairperson, he proposed that the General Council act on behalf of the Ministerial Conference and elect a Chairperson and three Vice-Chairpersons at its meeting on 7 November 1996. If this proposal were acceptable, he would consult with Members so that the election of the Chairperson and the three Vice-Chairpersons could take place at the General Council meeting on 7 November.

The General Council so agreed.

At its meeting on 7, 8 and 13 November 1996, the General Council, acting on behalf of the Ministerial Conference, elected the following as officers of the 1996 Ministerial Conference by acclamation:

Chairperson:	H.E. Mr. Yeo Cheo Tong Minister for Trade and Industry of Singapore
Vice-Chairpersons:	H.E. Mr. Enda Kenny Minister for Tourism and Trade of Ireland

[4]Subsequently reissued as WT/MIN(96)/W/2.

H.E. Mr. Alvaro Ramos
Minister of Foreign Affairs of Uruguay

H.E. Mr. Mondher Zenaïdi
Minister of Trade of Tunisia

(vi) Organizational matters (WT/GC/M/14, 16)

At the General Council meeting on 2 October 1996, the Chairman addressed the following organizational matters pertaining to the Ministerial Conference:

1. Opening Session of the Conference

(a) In accordance with the usual practice at Ministerial meetings, a brief inaugural ceremony would be held at the opening session to welcome the Prime Minister of Singapore.
(b) The elected Chairperson of the Ministerial Conference would invite the Prime Minister of Singapore to address the Conference.
(c) At the end of his address to the Conference, the Prime Minister of Singapore would declare the first Ministerial Conference of the WTO formally opened.
(d) After the departure of the Prime Minister of Singapore, the Chairperson would take up the following business on the morning of Monday, 9 December as follows:
  (i) Adoption of the Agenda.
  (ii) Agreement on the Order of Business.
  (iii) Introduction of the Report of the General Council by the Chairman of the General Council.
  (iv) Introduction of the Report on an overview of developments in international trade and the trading system by the Director-General.
  (v) Statements by Ministers.

2. List of Speakers

Members wishing to speak at the Ministerial Conference should contact the Secretariat and make reservations not later than 1 November 1996. Statements should be limited to a maximum of five minutes. If a delegation so wished, a longer text would be circulated in document form to the Conference.

Requests for reservations made after 1 November would be accommodated in accordance with the availability of time. The purpose of this procedure was to enable the Secretariat to organize in advance the sequence of plenary sessions of the Ministerial Conference.

At the General Council meeting on 7, 8 and 13 November 1996, the Chairman informed delegations, following consultations with the Secretariat and with the authorities of the host government, that the business of the Ministerial Conference was being planned on the following basis: (a) Opening Ceremony: The opening ceremony would be held on Monday, 9 December as previously indicated by him on 2 October; (b) Plenary sessions: Plenary sessions would be held on Monday morning and afternoon, and thereafter on Tuesday, Wednesday, Thursday and Friday mornings; (c) Special meetings among Ministers: The afternoons of Tuesday and Wednesday, 10 and 11 December, would be left open for special meetings among Ministers to discuss specific issues of interest to them. Thursday afternoon, 12 December, would be reserved for any meetings that might be necessary in accordance with the advancement of the Conference; and (d) Closure of the Ministerial Conference: The closing

ceremony would take place on Friday, 13 December. Immediately before the closing ceremony at the plenary of the Conference, Ministers would adopt the Ministerial Declaration and take any other actions that they deemed relevant under item 2 of the Provisional Agenda of the Conference. On that occasion, they would also take note of the General Council report and endorse all recommendations therein. With regard to the special meetings among Ministers planned to take place on Tuesday and Wednesday afternoons, it was proposed that they be organized in the following manner: (a) These meetings would be open to participation by all Ministers and their advisers; (b) Although the meetings would be informal in nature and would take no decisions or actions, records of the discussions could be kept by the Secretariat if so desired; and (c) In order to ensure an orderly discussion, Ministers would be invited to address the following general topics: (i) implementation (on Tuesday afternoon); (ii) future work of the WTO; and (iii) any other matters which Ministers might wish to raise (Wednesday, afternoon). The purpose of the special meetings among Ministers would be to provide the opportunity for an exchange of views among Ministers on matters relating to the WTO and the multilateral trading system, in an open and informal atmosphere.

(b) Attendance of observers at the Ministerial Conference

(i) Governments (WT/GC/M/14, 16)

At the General Council meeting on 2 October 1996, the Chairman recalled the procedures for the attendance of governments as observers at meetings of the Ministerial Conference as set out in Annex 2 of the Rules of Procedure for Sessions of the Ministerial Conference (WT/L/161). Under these procedures, governments that were presently accorded observer status in the General Council and its subsidiary bodies would be invited to attend sessions of the Ministerial Conference as observers. Other governments that wished to have observer status at the Ministerial Conference, and did not at present have such status in the General Council and its subsidiary bodies, would have to make a formal request in accordance with the provisions of paragraph 1 of the above procedures. Any such requests would be examined in accordance with the procedures set out. Furthermore, observer governments that wished to speak at the Ministerial Conference would be invited to do so after Members had spoken, as provided for in the procedures.

At its meeting on 7, 8 and 13 November 1996, the General Council considered requests for observer status by Iran (WT/L/191) and Laos (WT/L/192).[5] The General Council agreed to grant the request by Laos, and further agreed that the Chairman should inform Iran that there was no consensus regarding the latter's request.

(ii) International intergovernmental organizations (WT/GC/M/13, 14, 15, 16)

At the General Council meeting on 18 July 1996, the Chairman said that, as he had indicated to delegations at an informal meeting on 12 July, he intended to start consultations on the international intergovernmental organizations to be invited as observers to the Ministerial Conference on the basis of the following guidelines:

(a) organizations that were observers to the General Council would be automatically invited;

(b) organizations that were observers to subsidiary bodies of the WTO would be invited if they requested to attend the Conference;

[5]Carried in General Council Minutes under "Iran - Request for observer status at the 1996 Ministerial Conference", and "Laos - Request for observer status at the 1996 Ministerial Conference".

(c) consultations would be carried out to determine which other international intergovernmental organizations that were not observers to the WTO and that requested attendance at the Conference should also be invited.

He hoped that at its meeting scheduled for October, the General Council would be in a position to take a decision on the international intergovernmental organizations to be invited as observers to the Ministerial Conference.

The General Council agreed with the Chairman's proposed approach.

At its meeting on 2 October 1996, the Chairman informed the General Council that the following organizations which were not observers to the WTO had requested attendance at the 1996 Ministerial Conference: the Common Market for Eastern and Southern Africa (COMESA), the Central American Bank for Economic Integration, the Common Fund for Commodities and the Islamic Development Bank. He proposed that the General Council accept these requests and invite these organizations as observers to the Ministerial Conference.

The General Council so agreed.

At its meeting on 14 October 1996, the Chairman informed the General Council that the United Nations Economic and Social Commission for Western Asia (ESCWA), which was not an observer to the WTO had requested attendance at the 1996 Ministerial Conference. He proposed that the General Council accept this request and invite this organization as an observer to the Ministerial Conference.

The General Council so agreed.

At its meeting on 7, 8 and 13 November 1996, the Chairman informed the General Council that the following organizations which were not observers to the WTO had requested attendance at the 1996 Ministerial Conference: ASEAN, Asian Development Bank, Organization for African Unity (OAU), Organization of the Islamic Conference, and the Southern African Development Community (SADC). He proposed that all organizations of a regional or sub-regional nature that had expressed a wish to attend the Ministerial Conference as observers be invited thereto.

The General Council so agreed.

(iii) Non-governmental organizations (WT/GC/M/13, 14, 15)

At the General Council meeting on 18 July 1996, the Chairman said he believed it was necessary to determine urgently how to proceed with requests from non-governmental organizations to attend the Ministerial Conference in an observer capacity and, on the basis of consultations he had held, proposed the following method for proceeding:

(i) NGOs would be allowed to attend the Plenary Sessions of the Conference;

(ii) applications from NGOs to be registered would be accepted on the basis of Article V of the WTO Agreement, i.e. those NGOs "concerned with matters related to those of the WTO"; and

(iii) a deadline would be established for the registration of NGOs that wished to attend the Conference. A list of the NGOs that had applied for attendance would be circulated subsequently for the information of the General Council. Attendance at plenary sessions by NGOs would also depend upon the availability of space.

The General Council agreed to the Chairman's proposed procedure.

At the General Council meeting on 2 October 1996, the Chairman drew attention to an informal document recently circulated by the Secretariat which listed those NGOs which had complied with the requirements for attendance at the Singapore Ministerial Conference that had been agreed in July.

The General Council agreed that the Secretariat would prepare a paper outlining the agreed modalities for the attendance of NGOs at the Ministerial Conference and that the deadline for registration of NGOs be extended to 15 October.

At the General Council meeting on 14 October 1996, the Chairman said that since the General Council would not meet again before 7 November, and in order not to delay unnecessarily the process of registration for NGOs, agreement had been reached in informal consultations on a way to move the process forward, as follows: (a) the Secretariat would establish for 16 October, as an addendum to the list distributed on 2 October, a list of those additional NGOs which had presented requests for registration and which had received registration forms since 2 October, and would circulate on 22 October a final list of those NGOs to whom confirmation would be sent; and (b) the facilities provided for NGOs at the Singapore Ministerial Conference might be reviewed by the General Council in the light of the experience gained from this first Ministerial Conference.

The General Council agreed to the Chairman's proposed procedure.

2. Finalization of negotiations on schedules on goods and services

- Decision on the accession of, and approval of protocol of accession for, the United Arab Emirates (WT/GC/M/10)

In December 1995, the General Council had approved the goods and services schedules of the United Arab Emirates.

At its meeting on 6 February 1996, the General Council approved the text of the Protocol of Accession for the United Arab Emirates (WT/L/129) and, in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the Decision on the Accession of the UAE (WT/L/128).

3. Composition of the Textiles Monitoring Body (WT/GC/M/10)

In January 1995, the General Council had adopted a Decision on the composition of the Textiles Monitoring Body until the end of 1997 (WT/L/26). With regard to the China/Pakistan constituency, a footnote to the Decision stipulated that in the event that China did 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 date as China becomes a WTO Member".

At its meeting on 6 February 1996, the General Council considered a communication from the ITCB (WT/GC/W/28) proposing that Macau be included in the China/Pakistan constituency until such time as China became a Member of the WTO, or until 31 December 1997, whichever came first.

The General Council took note of the proposed nomination to the TMB (WT/L/26/Add.1).

4. Committee on Balance-of-Payments Restrictions

(a) Consultations (WT/GC/M/10, 13, 16)

At its meeting on 6 February 1996, the General Council considered and adopted the Committee's report on its consultation with India (WT/BOP/R/11 - BOP/R/234).

At its meeting on 18 July 1996, the General Council considered and adopted the Committee's reports on its consultations with Nigeria (WT/BOP/R/13), Tunisia (WT/BOP/R/14) and Slovakia (WT/BOP/R/15).

At its meeting on 7, 8 and 13 November 1996, the General Council considered and adopted the Committee's reports on its consultations with Hungary (WT/BOP/R/17) and Nigeria (WT/BOP/R/18).

(b) Disinvocation of the balance-of-payments provisions of the GATT 1994 by Turkey and Poland (WT/GC/M/13)

At its meeting on 18 July 1996, the Chairman of the Committee informed the General Council that Turkey and Poland had recently communicated to the Committee their intention to disinvoke the balance-of-payments provisions of GATT 1994 as of 1 January 1997 (WT/BOP/N/7 and WT/BOP/N/8).

(c) Notifications by the Philippines and India (WT/GC/M/13)

At its meeting on 18 July 1996, the General Council took note that the Committee had received a notification from the Philippines concerning the lifting of restrictions on agricultural products (WT/BOP/N/9), and a recent submission from India containing a list of all quantitative restrictions including those maintained for BOP purposes (WT/BOP/N/11).

(d) Notes on meetings (WT/GC/M/10, 13)

At its meeting on 6 February 1996, the General Council took note of the Committee's discussion of its ongoing business reported in WT/BOP/R/12 - BOP/R/235.

At its meeting on 18 July 1996, the General Council took note of the Committee's discussion of its ongoing business reported in WT/BOP/R/16.

(e) Ad hoc observer status for international intergovernmental organizations (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council took note that at its meeting on 23, 24 and 25 September 1996, the Committee had recognized the ad hoc observer status of the following international intergovernmental organizations: the ACP Secretariat, EBRD, EFTA, OECD, World Bank and UNCTAD.

5. Committee on Budget, Finance and Administration

- Reports (WT/GC/M/10, 11, 12, 13)

At its meeting on 6 February 1996, the General Council considered the Committee's reports in WT/BFA/16 - L/7660 and WT/BFA/18 - L/7662, and adopted the two reports.

At its meeting on 16 April 1996, the General Council considered the Committee's reports in WT/BFA/20, WT/BFA/21 and WT/BFA/22. The General Council approved the Committee's specific

recommendations in paragraphs 12 and 14 of its report in WT/BFA/20, and adopted the report. The General Council then approved the Committee's specific recommendations in paragraph 8 of its report in WT/BFA/21, and adopted the report. The General Council then approved the Committee's specific recommendations in paragraphs 5 to 11 of its report in WT/BFA/22, and adopted the report.

At its meeting on 26 June 1996, the General Council considered the Committee's report in WT/BFA/24. The General Council approved the Committee's specific recommendation in paragraph 11 of its report in WT/BFA/24, and adopted the report.

At its meeting on 18 July 1996, the General Council considered the Committee's report in WT/BFA/26. The General Council approved the Committee's specific recommendations in paragraphs 6 and 8 of its report in WT/BFA/26, and adopted the report.

6. Committee on Regional Trade Agreements

(a) Establishment of the Committee and adoption of its terms of reference (WT/GC/M/10)

In December 1995, the General Council had agreed in principle to establish a committee on regional trade agreements and that the Chairman would hold consultations on the terms of reference and other related matters concerning the committee.

At the General Council meeting on 6 February 1996, Mr. Weekes (Canada) reported on the consultations he had held on behalf and at the request of the Chairman, and proposed that a draft decision that had been circulated to delegations on this matter be adopted with an amendment.

The General Council adopted the Decision establishing the Committee on Regional Trade Agreements with the terms of reference set out therein (WT/L/127).

(b) Presiding officers of the Committee (WT/GC/M/11)

At its meeting on 16 April 1996, the Chairman informed the General Council that Mr. Weekes (Canada) had agreed to serve as Chairman of the Committee, and Mr. Berthet (Uruguay) Mr. Harbinson (Hong Kong), Mr. Ravaloson (Madagascar) and Mr. Willems (Belgium) had agreed to serve as Vice-Chairmen.

7. Approval of rules of procedure for subsidiary bodies
- Committee on Regional Trade Agreements (WT/GC/M/14)

At its meeting on 2 October 1996, the General Council approved the rules of procedure for meetings of the Committee on Regional Trade Agreements in WT/REG/1, which had been adopted by that Committee on 2 July.

8. Agreement on Preshipment Inspection - Review under Article 6 of the Agreement
- Establishment of a working party (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council, on the basis of a recommendation by the Council for Trade in Goods,[6] agreed to establish a working party under the Council for Trade in Goods with the following terms of reference: "To conduct the review provided for under Article 6 of the Agreement on Preshipment Inspection and to report to the General Council through the Council for Trade in Goods in December 1997" (WT/L/196).

9. Waivers under Article IX of the WTO Agreement

(a) Harmonized System
- Bangladesh, Bolivia, Guatemala, Jamaica, Morocco, Nicaragua and Sri Lanka (WT/GC/M/13)

At its meeting on 18 July 1996, the General Council considered requests by Bangladesh (G/L/77), Bolivia (G/L/78), Guatemala (G/L/86), Jamaica (G/L/79), Morocco (G/L/80), Nicaragua (G/L/81) and Sri Lanka (G/L/83) for extensions of waivers previously granted in connection with their implementation of the Harmonized System, and the related draft decisions.

The Chairman of the Council for Trade in Goods reported on the Council's consideration of these requests.

The General Council adopted the Decisions on the extensions of the waivers (WT/L/164 - Bangladesh; WT/L/165 - Bolivia; WT/L/172 - Guatemala; WT/L/166 - Jamaica; WT/L/167 - Morocco; WT/L/168 - Nicaragua; and WT/L/170 - Sri Lanka) in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93).

(b) Renegotiations of Schedules

(i) Malawi - Renegotiation of Schedule LVIII (WT/GC/M/10)

At its meeting on 6 February 1996, the General Council considered a request by Malawi (G/L/51) for an extension of a waiver previously granted in connection with its renegotiation of its schedule, and a draft decision to this effect (G/C/W/31).

The Chairman of the Council for Trade in Goods reported on the Council's consideration of this request.

The General Council adopted the Decision on the extension of the waiver (WT/L/131) in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93).

(ii) Senegal - Renegotiation of Schedule XLIX (WT/GC/M/13)

At its meeting on 18 July 1996, the General Council considered a request by Senegal (G/L/82) for an extension of a waiver previously granted in connection with its renegotiation of its schedule, and the related draft decision (G/C/W/45).

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[6]See WT/GC/W/41.

The Chairman of the Council for Trade in Goods reported on the Council's consideration of this request.

The General Council adopted the Decision on the extension of the waiver (WT/L/169) in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93).

(iii) Zambia - Renegotiation of Schedule LXXVIII (WT/GC/M/13)

At its meeting on 18 July 1996, the General Council considered a request by Zambia (G/L/84) for an extension of a waiver previously granted in connection with its renegotiation of its schedule, and the related draft decision (G/C/W/47).

The Chairman of the Council for Trade in Goods reported on the Council's consideration of this request.

The General Council adopted the Decision on the extension of the waiver (WT/L/171) in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93).

(c) Decision on the introduction of Harmonized System changes into WTO schedules of tariff concessions on 1 January 1996
- Extension of time-limit (WT/GC/M/13)

At its meeting on 18 July 1996, the General Council considered a draft decision extending the time-limit of the Decision on the introduction of Harmonized System changes into WTO schedules of tariff concessions on 1 January 1996 (G/MA/W/6).

The Chairman of the Council for Trade in Goods reported on the Council's consideration of this extension of the time-limit.

The General Council adopted the Decision extending the time-limit (WT/L/173) in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93).

(d) Extension of waivers pursuant to paragraph 2 of the Understanding in respect of waivers of obligations under GATT 1994

(i)
- Canada - CARIBCAN
- Cuba - Article XV:6 of GATT 1994
- European Communities - Fourth ACP-EC Convention of Lomé
- France - Trading Arrangements with Morocco
- South Africa - Base dates under Article I:4
- United States - ANDEAN Trade Preference Act
- United States - Former Trust Territory of the Pacific Islands
- Zimbabwe - Base dates under Article I:4

(WT/GC/M/14, 15)

At its meeting on 2 October 1996, the General Council considered requests by Canada (G/L/100), Cuba (G/L/89), the European Communities (G/L/108, G/L/109), South Africa (G/L/104), the United States (G/L/101, G/L/102) and Zimbabwe (G/L/106) for extensions of waivers pursuant to paragraph 2

of the Understanding in respect of waivers of obligations under GATT 1994, and the related draft decisions.

The Chairman of the Council for Trade in Goods reported on the Council's consideration of these requests.

The General Council agreed to revert to this matter at its next meeting.

At its meeting on 14 October 1996, the General Council again considered these requests and adopted the Decisions on the extensions of the waivers (WT/L/185 - Canada; WT/L/182 - Cuba; WT/L/186 and WT/L/187 - European Communities; WT/L/188 - South Africa; WT/L/183 and WT/L/184 - United States; and WT/L/189 - Zimbabwe) in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93).

(ii) United States - Imports of automotive products (WT/GC/M/16)

At its meeting on 7, 8 and 13 November 1996, the General Council considered a request by the United States (G/L/103 and Corr. 1) for an extension of its waiver pursuant to paragraph 2 of the Understanding in respect of waivers of obligations under GATT 1994, and the related draft decision (GC/W/55).

The Chairman of the Council for Trade in Goods reported on the Council's consideration of this request.

The General Council adopted the Decision on the extension of the waiver (WT/L/198) in accordance with the Decision-making procedures under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93).

10. Status of waivers in effect on the date of entry into force of the WTO Agreement (WT/GC/M/13)

At its meeting on 18 July 1996, the General Council took note that in consultations held recently by the Chairman on the status of waivers in effect on the date of entry into force of the WTO Agreement, there appeared to be broad agreement that each Member that sought an extension of such a waiver, a list of which was provided in WT/L/153/Rev.1, should submit a request for its extension which should be dealt with under the provisions of Article IX:3 of the WTO Agreement and that, pursuant to those provisions, such requests should first be considered by the Council for Trade in Goods.

11. Accessions

(a) Bulgaria (WT/GC/M/14)

In November 1986 and February 1990, the GATT 1947 Council had established a working party to examine Bulgaria's request for accession to the General Agreement on Tariffs and Trade. Subsequently, in pursuance of the Decision regarding requests for WTO accession adopted by the General Council on 31 January 1995[7], the GATT 1947 Accession Working Party had been transformed into a WTO Accession Working Party.

[7]See WT/GC/M/1, Item 4(g).

At its meeting on 2 October 1996, the General Council considered the Working Party's report (WT/ACC/BGR/5 and Corr.1, Add.1 and Add.2).

The General Council approved the text of the Protocol of Accession (WT/ACC/BGR/7) and the text of the draft decision on the Accession of Bulgaria and, in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the Decision on the Accession of Bulgaria (WT/ACC/BGR/6). The General Council then adopted the report of the Working Party (WT/ACC/BGR/5 and Corr.1, Add.1 and Add.2).

(b) Georgia (WT/GC/M/13)

At its meeting on 18 July 1996, the General Council considered a communication from Georgia (WT/ACC/GEO/1) concerning its interest in acceding to the WTO Agreement pursuant to Article XII thereof.

The General Council agreed to establish a working party to examine Georgia's request, and authorized its Chairman to designate the Chairperson of the Working Party in consultation with representatives of Members and with the representative of Georgia.

(c) Kazakstan (WT/GC/M/10, 11)

At its meeting on 6 February 1996, the General Council considered a communication from Kazakstan (WT/ACC/KAZ/1) concerning its interest in acceding to the WTO Agreement pursuant to Article XII thereof.

The General Council agreed to establish a working party to examine Kazakstan's request, and authorized its Chairman to designate the Chairperson of the Working Party in consultation with representatives of Members and with the representative of Kazakstan.

The Chairman invited Kazakstan, on behalf of the General Council, to attend meetings of the General Council and, as appropriate, meetings of other WTO bodies as an observer during the period when the Working Party was carrying out its work.

At its meeting on 16 April 1996, the Chairman informed the General Council that Mr. Ekblom (Finland) had agreed to chair the Working Party.

(d) Kyrgyz Republic (WT/GC/M/11, 13)

At its meeting on 16 April 1996, the General Council considered a communication from the Kyrgyz Republic (WT/ACC/KGZ/1) concerning its interest in acceding to the WTO Agreement pursuant to Article XII thereof.

The General Council agreed to establish a working party to examine the request of the Kyrgyz Republic, and authorized its Chairman to designate the Chairperson of the Working Party in consultation with representatives of Members and with the representative of the Kyrgyz Republic.

The Chairman invited the Kyrgyz Republic, on behalf of the General Council, to attend meetings of the General Council and, as appropriate, meetings of other WTO bodies as an observer during the period when the Working Party was carrying out its work.

At its meeting on 18 July 1996, the Chairman informed the General Council that Mr. Metzger (France) had agreed to chair the Working Party.

(e) Mongolia (WT/GC/M/13)

In October 1991, the GATT 1947 Council had established a working party to examine Mongolia's request for accession to the General Agreement on Tariffs and Trade. Subsequently, in pursuance of the Decision regarding requests for WTO accession adopted by the General Council on 31 January 1995[8], the GATT 1947 Accession Working Party had been transformed into a WTO Accession Working Party.

At its meeting on 18 July 1996, the General Council considered the Working Party's report (WT/ACC/MNG/9 and Corr.1, Add.1, Add.1/Corr.1, and Add.2).

The General Council approved the text of the Protocol of Accession (WT/ACC/MNG/11) and the text of the draft decision on the Accession of Mongolia and, in accordance with the Decision-Making Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the Decision on the Accession of Mongolia (WT/ACC/MNG/10). The General Council then adopted the report of the Working Party (WT/ACC/MNG/9 and Corr.1, Add.1 and Add.1/Corr.1, and Add.2).

(f) Oman (WT/GC/M/12, 14)

At its meeting on 26 June 1996, the General Council considered a communication from Oman (WT/ACC/OMN/1) concerning its interest in acceding to the WTO Agreement pursuant to Article XII thereof.

The General Council agreed to establish a working party to examine Oman's request, and authorized its Chairman to designate the Chairperson of the Working Party in consultation with representatives of Members and with the representative of Oman.

The Chairman invited Oman, on behalf of the General Council, to attend meetings of the General Council and, as appropriate, meetings of other WTO bodies as an observer during the period when the Working Party was carrying out its work.

At its meeting on 2 October 1996, the Chairman informed the General Council that Mr. Akram (Pakistan) had agreed to chair the Working Party.

(g) Panama (WT/GC/M/14)

In October 1991, the GATT 1947 Council had established a working party to examine Panama's request for accession to the General Agreement on Tariffs and Trade. Subsequently, in pursuance of the Decision regarding requests for WTO accession adopted by the General Council on 31 January 1995[9], the GATT 1947 Accession Working Party had been transformed into a WTO Accession Working Party.

At its meeting on 2 October 1996, the General Council considered the Working Party's report (WT/ACC/PAN/19 and Corr.1, Add.1 and Add.2).

The General Council approved the text of the Protocol of Accession (WT/ACC/PAN/21) and the text of the draft decision on the Accession of Panama and, in accordance with the Decision-Making

[8]See WT/GC/M/1, Item 4(g).

[9]See WT/GC/M/1, Item 4(g).

Procedures Under Articles IX and XII of the WTO Agreement agreed in November 1995 (WT/L/93), adopted the Decision on the Accession of Panama (WT/ACC/PAN/20). The General Council then adopted the report of the Working Party (WT/ACC/PAN/19 and Corr.1, Add.1 and Add.2).

(h) Papua New Guinea (WT/GC/M/10, 11)

In November 1995, the General Council had adopted a Decision (WT/L/98) authorizing Papua New Guinea to accede to the WTO Agreement under terms set out in its Protocol of Accession (WT/L/99).

At its meeting on 6 February 1996, the General Council considered a communication from Papua New Guinea requesting that the time-limit for acceptance in paragraph 6 of its Protocol of Accession be changed to 13 May 1996 (WT/GC/W/30), and a draft decision to this effect in the Annex to that document.

The representative of Japan reiterated his Government's concern with regard to Papua New Guinea's applied tariff on canned mackerel that was in excess of the bound tariff.

The General Council adopted the Decision extending the time-limit (WT/L/130).

At its meeting on 16 April 1996, the General Council considered a communication from Papua New Guinea requesting that the time-limit in paragraph 6 of its Protocol of Accession be further extended to 13 August 1996 (WT/GC/W/33), and a draft decision to this effect in the Annex to that document.

The General Council adopted the Decision further extending the time-limit (WT/L/148).

(i) Saudi Arabia (WT/GC/M/10)

In July 1993, the GATT 1947 Council had established a working party to examine Saudi Arabia's request for accession to the GATT. Following the request by Saudi Arabia for accession to the WTO Agreement (WT/ACC/SAU/1), that working party had been transformed into a WTO Accession Working Party.

At its meeting on 6 February 1996, the Chairman informed the General Council that Mr. Weekes (Canada) had agreed to chair the Working Party.

(j) Seychelles (WT/GC/M/13)

In July 1995, the General Council had established a working party to examine Seychelles' request for accession to the WTO Agreement, and had authorized its Chairman to designate the Chairperson of the Working Party in consultation with representatives of Members and with the representative of Seychelles.

At its meeting on 18 July 1996, the Chairman informed the General Council that Mr. Ravaloson (Madagascar) had agreed to chair the Working Party.

(k) Tonga (WT/GC/M/10)

In November 1995, the General Council had established a working party to examine Tonga's request for accession to the WTO Agreement, and had authorized its Chairman to designate the Chairperson of the Working Party in consultation with representatives of Members and with the representative of Tonga.

At its meeting on 6 February 1996, the Chairman informed the General Council that Mr. Harbinson (Hong Kong) had agreed to chair the Working Party.

(l) Vanuatu (WT/GC/M/11)

In July 1995, the General Council had established a working party to examine Vanuatu's request for accession to the WTO Agreement, and had authorized its Chairman to designate the Chairperson of the Working Party in consultation with representatives of Members and with the representative of Vanuatu.

At its meeting on 16 April 1996, the Chairman informed the General Council that Mrs. Syahruddin (Indonesia) had agreed to chair the Working Party.

12. Brazil - Provisional safeguard measures concerning imports of toys (WT/GC/M/13)

At the General Council meeting on 18 July 1996, the representative of the European Communities expressed concern at Brazil's recent initiation of a safeguard investigation and the imposition of a provisional safeguard measure on imports of toys originating in all third countries.

13. Hungary - Invocation of Article 48 of the Vienna Convention on the Law of the Treaties (WT/GC/M/11)

At its meeting on 16 April 1996, the representative of Hungary informed the General Council of Hungary's invocation, on 9 April 1996, of Article 48 of the Vienna Convention on the Law of Treaties with respect to Section II of Part IV of Schedule LXXI, and expressed his Government's readiness to hold consultations with any Members on this matter.

14. United States - Cuban Liberty and Democratic Solidarity Act of 1996 (WT/GC/M/11)[10]

At the General Council meeting on 16 April 1996, the representative of Cuba expressed concern that the US Helms-Burton Act of 1996 was a violation of international trade rules and international law, as well as of undertakings entered into by the United States when signing the Final Act Embodying the Results of the Uruguay Round, and noted that his Government had recently circulated a communication on this matter (WT/L/142).

15. Compliance with the obligations of Articles 70.8 and 70.9 of the TRIPS Agreement (WT/GC/W/10)

At the General Council meeting on 6 February 1996, the representative of the United States expressed concern that a number of countries had not complied with the obligations of Articles 70.8 and 70.9 of the TRIPS Agreement and reserved his delegation's rights for future action in this regard.

[10]Carried in General Council Minutes as "Statement by Cuba on the United States' Helms-Burton Act of 1996."

16. Notification requirements (WT/GC/M/11)

At the General Council meeting on 16 April 1996, the Director-General noted that Members had recently been reminded of their unfulfilled notification requirements for 1995 and their notification requirements for 1996, and underlined the importance of fulfilling these obligations.

17. World Bank study on MERCOSUR (WT/GC/M/16)

At the General Council meeting on 7, 8 and 13 November 1996, the representative of Brazil expressed concern at a World Bank study on MERCOSUR, which he said raised a problem of World Bank action on a matter under WTO competence and not foreseen under the cooperation established by Article III:5 of the WTO Agreement.

18. WTO Press Release on Trade and Foreign Direct Investment (WT/GC/M/15)

At the General Council meeting on 14 October 1996, the representative of India expressed concern at the recent issuance by the Secretariat of a Press Release entitled "Trade and Foreign Direct Investment -New Report by the WTO", which raised the fundamental and important issue of the role of the Secretariat and its relationship with Members.

19. Procedures for the circulation and derestriction of WTO documents (WT/GC/M/10, 12, 13)

At its meeting on 6 February 1996, the Chairman informed the General Council that no further progress on this matter had been achieved since the meeting of the General Council in December 1995 and that he intended to refer to this matter in a statement he would make under a separate Agenda item.[11]

At its meeting on 26 June 1996, the Chairman informed the General Council that he was still not in a position to submit a draft decision on this matter for consideration by Members.

At the General Council meeting on 18 July 1996, the Chairman said that following extensive consultations held since the beginning of the year, agreement had now been reached on a compromise text that appeared to be agreeable to a majority of delegations. He proposed that the text of the draft decision on this matter, with paragraph (h) of the Appendix redrafted to reflect the compromise regarding panel reports, be adopted at the present meeting.

The General Council adopted the procedures for the circulation and derestriction of WTO documents (WT/L/160/Rev.1).

The Chairman then made the following statement: "In adopting these procedures on the circulation and derestriction of documents, the General Council takes note that Members attach particular importance to the restricted nature of documents so designated, and that individual governments should proceed accordingly in their handling of such documents."

[11]See under point 25 - "Election of Chairperson".

20. Status of ratification of the WTO Agreement by certain governments (WT/GC/M/16)

Under the provisions of Article XIV:1 of the WTO Agreement, contracting parties to the GATT 1947 that had otherwise completed the requirements to be original Members were allowed until the end of 1996 to complete their ratification of the Agreement.

At its meeting on 7, 8 and 13 November 1996, the Chairman informed the General Council that he would consult on the question of three governments covered by the provisions of Article XIV:1 of the WTO Agreement that had still not ratified the Agreement and would have to negotiate accession if they failed to ratify by the end of 1996.

21. Arrangements for effective cooperation with other intergovernmental organizations
- Relations between the WTO and the International Monetary Fund and the World Bank (WT/GC/M/13, 16)

At the General Council meeting on 18 July 1996, the Chairman said that informal consultations on draft arrangements for relations between the WTO and the IMF and the World Bank were currently under way, and proposed that the General Council revert to this item at its next meeting.

The General Council so agreed.

At its meeting on 7, 8 and 13 November 1996, the General Council considered draft Agreements on cooperation with the IMF and the World Bank contained in WT/GC/W/43, and a draft decision regarding the approval of these Agreements (WT/GC/W/42 and Addenda). The General Council adopted the draft Decision (WT/L/194 and Addenda) approving the Agreements with the IMF and the World Bank (WT/L/195).

22. Guidelines for arrangements on relations with non-governmental organizations pursuant to Article V:2 of the WTO Agreement (WT/GC/M/10, 12, 13)

At its meeting on 6 February 1996, the Chairman informed the General Council that no further progress on this matter had been achieved since the meeting of the General Council in December 1995 and that he intended to refer to this matter in a statement he would make under a separate Agenda item.[12]

At the General Council meeting on 26 June 1996, the Chairman recalled that approval of the proposed guidelines on this matter had been linked to agreement on derestriction procedures, on which he was still not in a position to submit a draft decision for consideration.

At the General Council meeting on 18 July 1996, the Chairman drew attention to the draft guidelines for arrangements on relations with non-governmental organizations which had been agreed in informal consultations held in 1995 and held in abeyance pending a decision on procedures for the circulation and derestriction of WTO documents. Since the latter had been adopted earlier at that meeting[13], he proposed that the guidelines on relations with non-governmental organizations also be adopted.

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[12]See under point 25 - "Election of Chairperson".

[13]See under point 19 - "Procedures for the circulation and derestriction of WTO documents".

The General Council so agreed (WT/L/162).

23. Administrative matters

(i) Offices of the Deputy Directors-General (WT/GC/M/11)

At the General Council meeting on 16 April 1996, the Director-General proposed that since preparations for the Ministerial Conference in December 1996 would require all the attention of Members, the contracts of the three Deputy Directors-General, Messrs. Hoda, Lavorel and Seade, which were due to expire on 31 July 1996, be extended for a period of one year, and that he initiate consultations on further renewals or new appointments early in 1997, well in advance of the date of expiration of their terms of office.

The General Council agreed to proceed as suggested by the Director-General if this matter were not raised again at its next meeting.

(ii) Staff-related matters (WT/GC/M/10)

At its meeting on 6 February 1996, the Director-General recalled the Decision of the General Council at its meeting on 30 October 1995 with regard to the review of the question of salaries, pensions and other conditions of service of WTO staff (WT/L/91), and outlined reasons for which it was urgent for the General Council to resume consideration of these questions in order to reach decisions as soon as possible. He proposed that informal consultations by the Chairman would be appropriate for this purpose.

The General Council agreed that its Chairman hold informal consultations on these matters.

(iii) Pensions and salaries of WTO staff (WT/GC/M/15)

At the General Council meeting on 14 October 1996, the Chairman said that in informal consultations held recently, no consensus had been possible on the text of a draft proposal on conditions of service for WTO staff that he had circulated, and that he would continue his consultations on this matter.

At its meeting on 7, 8 and 13 November 1996, the General Council adopted a Decision (WT/L/197) to continue its consideration of this matter with a view to reaching a conclusion thereto by 30 June 1997 at the latest. The Chairman said that he would consult shortly to establish a time-table to ensure that a conclusion to this matter was indeed reached by that date.

24. Observer status

(i) Governments
- Georgia (WT/GC/M/12)

At its meeting on 26 June 1996, the General Council granted observer status to Georgia.

(ii) International intergovernmental organizations (WT/GC/M/10, 11, 12, 13, 14, 15, 16)

At the General Council meeting on 6 February 1996, the Chairman said it was his understanding that pending agreement on guidelines for observer status for international organizations, the United

Nations, UNCTAD, IMF, World Bank, FAO, WIPO and OECD would be invited to the next meeting of the General Council, in accordance with the *ad hoc* arrangements approved on 16 March 1995.[14]

At the General Council meeting on 16 April 1996, the Chairman recalled his earlier understanding on this matter.

At the General Council meeting on 26 June 1996, the Chairman recalled his earlier understanding on this matter.

At the General Council meeting on 18 July 1996, the Chairman said it was his understanding that, pending agreement on the organizations to be accorded observer status in the General Council in accordance with the guidelines for such status agreed on 18 July[15], the United Nations, UNCTAD, IMF, World Bank, FAO, WIPO and OECD would be invited to the next meeting of the General Council.

At the General Council meeting on 2 October 1996, the Chairman recalled his previous understanding on this matter.

At the General Council meeting on 14 October 1996, the Chairman recalled his previous understanding on this matter.

At the General Council meeting on 7, 8 and 13 November 1996, the Chairman recalled his previous understanding on this matter.

(iii) Guidelines on observer status for international intergovernmental organizations (WT/GC/M/12, 13)

At the General Council meeting on 26 June 1996, the Chairman recalled that agreement on guidelines on observer status for international intergovernmental organizations had been awaiting agreement on the participation of organizations as observers in the Dispute Settlement Body and that an essential aspect of this would be the arrangements for cooperation between the WTO and the IMF and the World Bank that were presently under consideration. The guidelines therefore could not yet be finalized.

At the General Council meeting on 18 July 1996, the Chairman recalled that Members had thus far considered that guidelines on observer status for international organizations could not be adopted until agreement had been reached on arrangements for cooperation between the WTO and the IMF and World Bank. Pending the approval of those arrangements, he proposed that Members agree on the text as contained in PC/IPL/W/14, with an amendment to paragraph 3 thereof, which would not prejudge the outcome of the consultations on the above arrangements, but which would at the same time enable the General Council to adopt guidelines at the present time. This would allow the WTO to settle the question of the attendance of international intergovernmental organizations in WTO bodies in time for decisions to be taken regarding the participation of observer organizations at the Ministerial Conference in Singapore.

The General Council adopted the guidelines on observer status for international intergovernmental organizations proposed by the Chairman (WT/L/161, Annex 3).

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[14]See WT/GC/M/3, Item 3.

[15]See under sub-point 24(iii) below - "Guidelines on observer status for international intergovernmental organizations".

25. Election of Chairperson (WT/GC/M/10)

At the General Council meeting on 6 February 1996, as the outgoing presiding officer of the General Council, the Chairman made a statement on the work of the General Council in 1995 (WT/GC(96)/ST/1).

The General Council then unanimously elected Mr. Rossier (Switzerland) to the Chair.

SECTION II

DISPUTE SETTLEMENT BODY

WORLD TRADE ORGANIZATION

WT/DSB/8
28 October 1996

(96-4542)

DISPUTE SETTLEMENT BODY

DISPUTE SETTLEMENT BODY

Annual Report (1996)

The present report has been prepared in pursuance of the Procedures for an Annual Overview of WTO Activities and for Reporting under the WTO (WT/L/105), and sets out the actions taken by the Dispute Settlement Body (DSB) since the previous overview of WTO activities held in December 1995.[1]

In carrying out its task, the DSB has held 15 meetings since December 1995. The minutes of these meetings, which remain the record of the DSB's work, are contained in documents WT/DSB/M/10-WT/DSB/M/24.

The following subjects are included in the report:

[1]The 1995 Annual Report of the DSB is contained in WT/DSB/3.

1. DSB schedule of meetings (WT/DSB/M/10)

At the DSB meeting on 31 January 1996, the Chairman announced that the schedule of DSB meetings for 1996 had been circulated in WTO/AIR/237 on 12 December 1995.

The DSB took note of this information.

2. Election of Chairperson (WT/DSB/M/10)

At its meeting on 31 January 1996, the DSB elected Mr. Celso Lafer (Brazil) as Chairman by acclamation.

3. Working procedures of the Appellate Body (WT/DSB/M/10, 11)

At the DSB meeting on 31 January 1996, the Chairman said that the work on the procedures for the appellate review had been carried out by the Appellate Body members in January 1996. The views expressed by Members on this matter had been conveyed to the Appellate Body in accordance with paragraph 14 in WT/DSB/1. Any other views by Members on key issues were required to be conveyed to the Chairman the following day, as the Appellate Body was finalizing its procedures.

The DSB took note of this information.

At the DSB meeting on 21 February 1996, the Chairman drew attention to the working procedures of the Appellate Body contained in WT/AB/WP/1, which had been circulated on 15 February 1996 as an unrestricted document. He also drew attention to a covering letter from the Chairman of the Appellate Body which had addressed the issues of interest to Members, and had explained the reasons of the Appellate Body for its conclusions on certain key elements of the working procedures.

The representatives of Mexico, Egypt, India, the United States, Chile, Canada and the European Communities spoke.

The DSB took note of the statements.

4. Indicative list of governmental and non-governmental panelists (WT/DSB/M/10,14,20,21,22,24)

At the DSB meeting on 31 January 1996, the Chairman drew attention to document WT/DSB/W/17 containing names of candidates for inclusion on the indicative list, and proposed that the DSB approve the names contained therein.

The DSB so agreed.

At the DSB meeting on 17 April 1996, the Chairman drew attention to documents WT/DSB/W/21 and WT/DSB/W/24, containing names of candidates for inclusion on the indicative list, and proposed that the DSB approve the names contained therein.

The representative of the United States spoke.

The DSB took note of the statement and approved the names in WT/DSB/W/21 and WT/DSB/W/24.

At the DSB meeting on 5 July 1996, the Chairman drew attention to document WT/DSB/W/30 containing names of candidates for inclusion on the indicative list, and proposed that the DSB approve the names contained therein.

The DSB so agreed.

At the DSB meeting on 15 and 16 July 1996, the Chairman drew attention to document WT/DSB/W/33 containing names of candidates for inclusion on the indicative list, and proposed that the DSB approve the names contained therein.

The DSB so agreed.

At the DSB meeting on 27 September 1996, the Chairman drew attention to document WT/DSB/W/36 containing names of candidates for inclusion on the indicative list, and proposed that the DSB approve the names contained therein.

The DSB so agreed.

At the DSB meeting on 16 October 1996, the Chairman drew attention to document WT/DSB/W/40 containing names of candidates for inclusion on the indicative list, and proposed that the DSB approve the names contained therein.

The DSB so agreed.

5. Curricula vitae of representatives to the WTO (WT/DSB/M/20)

At the DSB meeting on 5 July 1996, the Chairman proposed that in order to facilitate the work of the Secretariat with regard to the composition of panels, Members were invited to submit the curricula vitae of their Geneva-based representatives which might be considered to serve on panels.

The DSB took note of the statement.

6. Mutually agreed solutions (WT/DSB/M/15, 24)

At the DSB meeting on 24 April 1996, the Chairman drew attention to the obligation under Article 3.6 of the DSU to notify mutually agreed solutions to matters formally raised under the dispute settlement provisions.

The representative of India spoke.

The DSB took note of the statement.

At the DSB meeting on 16 October 1996, the representative of India drew attention to document WT/DSB/W/35 prepared by the Secretariat in response to India's request made at the DSB meeting on 24 April 1996, with regard to the obligation under Article 3.6 of the DSU to notify mutually agreed solutions. He said that he would make a detailed statement explaning his views on this document at a later date.

The DSB took note of the statement.

7. Requests to be joined in consultations under the DSU (WT/DSB/M/13)

At the DSB meeting on 27 March 1996, the Chairman presented a proposal concerning communications containing requests to be joined in consultations pursuant to Article 4.11 of the DSU. The text of this proposal was subsequently circulated in WT/DSB/W/23.

The DSB agreed to revert to this matter at its next meeting.

8. Recourse to dispute settlement procedures

(a) Brazil

(i) Export financing programme for aircraft (WT/DSB/M/22)

At its meeting on 27 September 1996, the DSB considered a request by Canada for the establishment of a panel to examine its complaint regarding Brazil's export financing programme for aircraft (WT/DS46/2).

The representatives of Canada, Brazil and Jamaica spoke.

The DSB took note of the statements and agreed with Canada's decision that its request for a panel in WT/DS46/2 be withdrawn and that a new request for a panel on this matter be circulated and considered by the DSB at its next regular meeting.

(ii) Measures affecting desiccated coconut (WT/DSB/M/10, 11,12)

At the DSB meeting on 31 January 1996, the representative of the Philippines informed Members that consideration of the request for the establishment of a panel to examine the Philippines' complaint regarding Brazil's countervailing duties on imports of desiccated coconut would be postponed (WT/DS22/5).

The representative of Brazil spoke.

The DSB took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 21 February 1996, the DSB considered a request by the Philippines for the establishment of a panel to examine its complaint regarding Brazil's countervailing duties on imports of desiccated coconut (WT/DS22/5).

The representatives of the Philippines, Brazil, Indonesia on behalf of ASEAN countries, and Sri Lanka spoke.

The DSB took note of the statements and agreed, at the request of the Philippines, to convene its next meeting on 5 March in order to reconsider this matter.

At its meeting on 5 March 1996, the DSB again considered this matter.

The representatives of the Philippines and Brazil spoke.

The DSB took note of the statements, agreed to establish a panel to examine the Philippines' request, and authorized the Chairman of the DSB to draw up the terms of reference of the panel in consultation with the parties to the dispute in accordance with Article 7.3 of the DSU.

The representatives of Canada, the European Communities, Indonesia, Malaysia and the United States reserved their third-party rights to participate in the panel proceedings.[2]

(b) Canada

- Certain measures concerning periodicals (WT/DSB/M/18 and Corr.1, 19)

At its meeting on 6 June 1996, the DSB considered a request by the United States for the establishment of a panel to examine its complaint regarding Canada's measures concerning periodicals (WT/DS31/2).

The representatives of the United States and Canada spoke.

The DSB took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 19 June 1996, the DSB again considered this matter.

The representatives of the United States and Canada spoke.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.

(c) European Communities

(i) Implementation of the Uruguay Round commitments concerning rice (WT/DSB/M/10)

At the DSB meeting on 31 January 1996, the representative of Uruguay informed Members that his country had requested consultations under Article XXII:1 of GATT 1994 with the European Communities with respect to the implementation of the commitments on rice undertaken by the latter in the Uruguay Round (WT/DS25/1 and Corr.1).

The DSB took note of the statement.

(ii) Measures affecting livestock and meat (hormones) (WT/DSB/M/22, 24)

At its meeting on 27 September 1996, the DSB considered a request by Canada for the establishment of a panel to examine its complaint regarding European Communities' measures affecting livestock and meat (WT/DS48/5).

The representatives of Canada and the European Communities spoke.

The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

At its meeting on 16 October 1996, the DSB again considered this matter.

[2]After the meeting Sri Lanka also reserved its third-party rights.

The representatives of Canada, the European Communities and Argentina spoke.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.

The representatives of Australia, New Zealand, Norway and the United States reserved their third-party rights to participate in the panel proceedings.

(iii) Measures concerning meat and meat products (hormones) (WT/DSB/M/16,17)

At its meeting on 8 May 1996, the DSB considered a request by the United States for the establishment of a panel to examine its complaint regarding the European Communities' measures concerning meat and meat products (WT/DS26/6).

The representatives of the United States, the European Communities and Argentina spoke.

The DSB took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 20 May 1996, the DSB again considered this matter.

The representatives of the United States and the European Communities spoke.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.

The representatives of Australia, Canada, New Zealand and Norway reserved their third-party rights to participate in the panel proceedings.

(iv) Regime for the importation, sale and distribution of bananas (WT/DSB/M/15, 16, 19)

At its meeting on 24 April 1996, the DSB considered a request by Ecuador, Guatemala, Honduras, Mexico and the United States for the establishment of a panel to examine their complaint regarding the European Communities' regime for the importation, sale and distribution of bananas (WT/DS27/6).

The representatives of Guatemala, on behalf of Ecuador, Honduras, Mexico and the United States, the European Communities and Mexico, on behalf of Ecuador, Guatemala, Honduras and the United States spoke.

The DSB took note of the statements and agreed to revert to this matter at its next meeting.

At its meeting on 8 May 1996, the DSB again considered this matter.

The representative of Guatemala, on behalf of Ecuador, Honduras, Mexico and the United States, the representative of St. Lucia, on behalf of Belize, Dominica, Dominican Republic, Grenada and St. Vincent and the Grenadines, and the representatives of India, Côte d'Ivoire, Cameroon, Ghana, Jamaica, Dominican Republic, Costa Rica, Colombia, Nicaragua, Venezuela, Canada, the European Communities and the United States spoke.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.

The representatives of Belize, Cameroon, Colombia, Costa Rica, Côte d'Ivoire, Dominica, Dominican Republic, Ghana, Grenada, India, Jamaica, Japan, Nicaragua, the Philippines, St. Lucia, St. Vincent and the Grenadines, Senegal, Thailand and Venezuela reserved their third-party rights to participate in the panel proceedings.[3]

At the DSB meeting on 19 June 1996, the representative of Jamaica expressed her country's concerns with regard to the decision taken by the panel on the Communities régime for the importation, sale and distribution of bananas, to grant ACP countries observer status during the first substantive meeting of the panel. She requested the Chairman to initiate consultations on this matter.

The representatives of Cameroon, Côte d'Ivoire, the European Communities, the United States and the Chairman spoke.

The DSB took note of the statements.

(v) Trade description of scallops (WT/DSB/M/20)

At the DSB meeting on 5 July 1996, the representative of Canada, speaking on behalf of the European Communities, Chile and Peru, announced that mutually agreed solutions had been reached in both disputes regarding the French labelling regulation on scallops (WT/DS7, WT/DS12 and WT/DS14).

The Chairman spoke.

The DSB took note of the statements.

(d) Japan

- Measures affecting consumer photographic film and paper (WT/DSB/M/23,24)

At its meeting on 3 October 1996, the DSB considered a request by the United States for the establishment of a panel to examine its complaint regarding Japan's measures affecting consumer photographic film and paper (WT/DS44/2).

The representatives of the United States, Japan and the European Communities spoke.

The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

At its meeting on 16 October 1996, the DSB again considered this matter.

The representatives of the United States, Japan and the European Communities spoke.

[3]After the meeting Thailand informed the Secretariat that it would not participate as a third party in this dispute; Canada and Suriname reserved their third-party rights.

The DSB took note of the statements and agreed to establish a panel with the terms of reference to be drawn up by the parties to the dispute within 20 days in accordance with Article 7.1 of the DSU.

The representatives of the European Communities and Mexico reserved their third-party rights to participate in the panel proceedings.

(e) Korea

- Measures concerning bottled water (WT/DSB/M/15)

At the DSB meeting on 24 April 1996, the representative of Canada announced that Korea and Canada had reached a mutually agreed solution with regard to Korea's measures concerning bottled water (WT/DS20/6).

The representative of Korea spoke.

The DSB took note of the statement.

(f) Pakistan

- Patent protection for pharmaceutical and agricultural chemical products (WT/DSB/M/21)

At its meeting on 15 and 16 July 1996, the DSB considered a request by the United States for the establishment of a panel to examine its complaint regarding Pakistan's patent protection for pharmaceutical and agricultural chemical products (WT/DS36/3).

The representatives of the United States and Pakistan spoke.

The DSB took note of the statements and agreed to revert to this matter at a future meeting.

(g) Poland

- Import regime for automobiles (WT/DSB/M/21,22)

At the DSB meeting on 15 and 16 July 1996, the representative of India announced that the authorities of India and Poland had reached a mutually agreed solution with regard to Poland's import régime for automobiles (WT/DS19/1).

The representative of Poland spoke.

The DSB took note of this information.

At the DSB meeting on 27 September 1996, the representative of the United States sought further clarification with regard to the settlement reached between Poland and India on passenger cars (WT/DS19/2).

The representatives of the United States and Poland spoke.

The DSB took note of the statements.

(h) Portugal

- Patent protection under the Industrial Property Act (WT/DSB/M/24)

At the DSB meeting on 16 October 1996, the representative of the United States drew attention of Members that Portugal and the United States had reached a mutually satisfactory solution to the matter raised by the United States concerning the term of patent protection required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (WT/DS37/2 and Corr.1).

The DSB took note of the statement.

(i) Turkey

- Action on imports of textiles and clothing (WT/DSB/M/11, 13, 14, 15)

At the DSB meeting on 21 February 1996, the representative of Hong Kong informed Members that his Government had requested consultations with Turkey with regard to the implementation of the Customs Union between Turkey and the European Community (WT/DS29/1).

The representatives of the Philippines, on behalf of Malaysia and Thailand, India, Korea, Peru, Argentina, Colombia, Brazil, Pakistan, Turkey and the European Communities spoke.

The DSB took note of the statements.

At the DSB meeting on 27 March 1996, the representative of India informed Members that his Government had requested consultations with Turkey on quantitative restrictions imposed unilaterally on imports of a broad range of textile and clothing products from India (WT/DS34/1).

The representatives of Turkey, Hong Kong, the European Communities and Japan spoke.

The DSB took note of the statements.

At the DSB meeting on 27 March 1996, the representative of Hong Kong said that since the thirty-day period to enter into consultations pursuant to Article 4.3 of the DSU had expired, he requested Turkey to confirm its readiness to enter into consultations with Hong Kong (WT/DS29/1).

The representatives of Thailand, on behalf of Malaysia and the Philippines, and Turkey spoke.

The DSB took note of the statements.

At the DSB meeting on 17 April 1996, the representative of Hong Kong expressed his delegation' s position regarding the participation of the European Communities in consultations which Hong Kong had requested with Turkey (WT/DS29/1).

The representatives of Thailand, on behalf of Malaysia and the Philippines, India, Peru, Turkey, Brazil, the European Communities and Canada spoke.

The DSB took note of the statements.

At the DSB meeting on 24 April 1996, the representative of India expressed his delegation's position regarding the participation of the European Communities in consultations which India had requested with Turkey (WT/DS34/1).

The representatives of Turkey, the European Communities and Hong Kong spoke.

The DSB took note of the statements.

(j) United States

(i) Anti-dumping investigation regarding imports of fresh or chilled tomatoes from Mexico (WT/DSB/M/20)

At the DSB meeting on 5 July 1996, the representative of Mexico informed Members that his country had requested consultations with the United States with regard to the anti-dumping investigation on imports of fresh or chilled tomatoes from Mexico (WT/DS49/1)

The DSB took note of the statement.

(ii) Import prohibition of certain shrimp and shrimp products (WT/DSB/M/24)

At the DSB meeting on 16 October 1996, the representative of Thailand, on behalf of India, Malaysia and Pakistan, informed Members that they had requested consultations with the United States concerning its ban imposed on importation of shrimp and shrimp products from the above-mentioned countries (WT/DS58/1).

The DSB took note of the statement.

(iii) Increase in the rates of duty on certain products of the European Communities (Presidential Proclamation No 5759 of 24 December 1987) (WT/DSB/M/13)

At the DSB meeting on 27 March 1996, the representative of the European Communities drew attention to the unilateral measures taken by the United States under Presidential Proclamation No 5759 of 24 December 1987, in retaliation for the Communities' directive prohibiting the use of hormones and its ban on imports of beef from cattle raised with the use of hormones.

The representatives of Japan and Canada spoke.

The DSB took note of the statements.

(iv) Measures affecting imports of women's and girls' wool coats (WT/DSB/M/13,14)

At its meeting on 27 March 1996, the DSB considered a request by India for the establishment of a panel to examine its complaint regarding the United States' measures affecting imports of women's and girls' wool coats from India (WT/DS32/1).

The representatives of India and the United States spoke.

The DSB took note of the statements and agreed to convene a meeting on 17 April in order to revert to this matter.

At its meeting on 17 April 1996, the DSB again considered this matter.

The representatives of India and the United States spoke.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.

The representatives of Canada, Costa Rica, the European Communities, Norway, Pakistan and Turkey reserved their third-party rights to participate in the panel proceedings.[4]

(v) Measures affecting imports of woven wool shirts and blouses (WT/DSB/M/13,14)

At its meeting on 27 March 1996, the DSB considered a request by India for the establishment of a panel to examine its complaint regarding the United States' measures affecting imports of woven wool shirts and blouses from India (WT/DS33/1).

The representatives of India and the United States spoke.

The DSB took note of the statements and agreed to convene a meeting on 17 April in order to revert to this matter.

At its meeting on 17 April 1996, the DSB again considered this matter.

The representatives of India, the United States, Norway, the European Communities, Canada and Pakistan spoke.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.

The representatives of Canada, the European Communities, Norway, Pakistan and Turkey reserved their third-party rights to participate in the panel proceedings.

(vi) Restrictions on imports of cotton and man-made fibre underwear (WT/DSB/M/10, 11, 12)

At the DSB meeting on 31 January 1996, the representative of Costa Rica informed Members that his authorities had requested consultations with the United States under Article 4 of the DSU, Article XXIII of the GATT 1994, and the corresponding provisions of the Agreement on Textiles and Clothing with regard to the introduction and implementation of quantitative restrictions on imports of cotton and man-made fibre underwear (WT/DS24/1 and Corr.1).

The representatives of India and Hong Kong spoke.

The DSB took note of the statements.

At the DSB meeting on 21 February 1996, the representative of Costa Rica requested that a meeting of the DSB be convened within the next 15 days in order to consider Costa Rica's request for the establishment of a panel on this matter.

The DSB took note of the statement.

[4]In its communication dated 25 April 1996 and circulated in WT/DS32/2, India informed the DSB that its Government had decided to terminate the panel proceedings with regard to this dispute.

At its meeting on 5 March 1996, the DSB considered a request by Costa Rica for the establishment of a panel on this matter (WT/DS24/2).

The representatives of Costa Rica and the United States spoke.

The DSB took note of the statements and agreed to establish a panel with standard terms of reference in accordance with Article 6 of the DSU.[5]

(vii) Standards for reformulated and conventional gasoline (WT/DSB/M/11,17,19,20)

On 10 April 1995, the DSB had established a panel to examine this matter at the request of Venezuela. On 31 May 1995, the DSB had established a panel to examine this matter at the request of Brazil. At that meeting, pursuant to Article 9 of the DSU in respect of multiple complainants the DSB had decided, with the agreement of all parties, that this matter be examined by the panel already established at the request of Venezuela.

At its meeting on 21 February 1996, the DSB considered the panel report on the complaints by Venezuela and Brazil contained in WT/DS2/R. Mr. Harbinson (Hong Kong), on behalf of Mr. Wong, Chairman of the Panel, introduced the panel report.

The representatives of Venezuela, the United States and Brazil spoke.

The DSB took note of the statements and of the United States' decision to appeal the panel report in DS2/R.

At its meeting on 20 May 1996, the DSB considered the Appellate Body report in WT/DS2/AB/R and the Panel report in WT/DS2/R pertaining to the complaints by Venezuela and Brazil.

The representatives of Venezuela, Brazil, the United States, the European Communities and Japan spoke.

The DSB took note of the statements, adopted the Appellate Body report in WT/DS2/AB/R and the Panel report in WT/DS2/R as modified by the Appellate Body report, and agreed that in accordance with the procedures adopted by the GATT 1947 Council in May 1988 (BISD 35S/331), both reports be derestricted.

At the DSB meeting on 19 June 1996, the United States informed the DSB of its intentions in respect of implementation of the recommendations of the DSB at its meeting of 20 May (WT/DS2/9).

The representatives of Venezuela, Brazil and Norway spoke.

The DSB took note of the statements and of the information provided by the United States regarding its intentions to implement the recommendations of the DSB.

At the DSB meeting on 5 July 1996, the representative of Venezuela informed Members that parties to the dispute had decided to extend the 45-day period stipulated in Article 21.3 of the DSU with a view of reaching a mutually agreed time-period for the implementation of the DSB recommendations.

[5]After the meeting India reserved its third-party rights.

The representative of Brazil spoke.

The DSB took note of the statements.

(viii) Tariff increases on products from the European Communities (WT/DSB/M/19, 20, 21)

At the DSB meeting on 19 June 1996, the representative of the European Communities requested a special meeting of the DSB in order to consider the Communities' request for the establishment of a panel regarding tariff increases by the United States on certain export products from the European Communities (WT/DS39/2).

The DSB took note of the request.

At its meeting on 5 July 1996, the DSB considered a request by the European Communities for the establishment of a panel to examine their complaint regarding tariff increases by the United States on certain export products from the European Communities.

The representatives of the European Communities and the United States spoke.

The DSB took note of the statements and agreed to revert to this matter at its next meeting.

At the DSB meeting on 15 and 16 July 1996, the DSB again considered this matter.

The representatives of the European Communities and United States spoke.

The DSB took note of the statements.

(ix) The Cuban Liberty and Democratic Solidarity Act (WT/DSB/M/24)

At its meeting on 16 October 1996, the DSB considered a request by the European Communities and their Member States for the establishment of a panel to examine their complaint regarding the United States' legislation: i.e., the Cuban Liberty and Democratic Solidarity Act (WT/DS38/2 and Corr.1).

The representatives of Australia, Bolivia, on behalf of members of the "Rio Group"[6], Canada, Cuba, Mexico, India and Switzerland spoke.

The DSB took note of the statements and agreed to revert to this matter at its next regular meeting.

[6]Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela.

9. US draft bill concerning the definition of "domestic industry" in the area of safeguards (WT/DSB/M/16)

At the DSB meeting on 8 May 1996, the representative of Mexico expressed his delegation's concerns regarding the draft bill to be submitted for approval by the US Senate under which the definition of "domestic industry" contained in the US legislation on safeguards would be redefined.

The representatives of Canada, Argentina, Australia, Brazil, Chile, Costa Rica, Dominican Republic, Egypt, El Salvador, Guatemala, Honduras, New Zealand, Nicaragua, Norway, Peru, the Philippines on behalf of ASEAN countries, and Uruguay spoke.

The DSB took note of the statements.

10. Report on progress of preparatory work for the Singapore Ministerial Conference (WT/DSB/M/21)

At the DSB meeting on 15 and 16 July 1996, the Chairman announced that at the meeting of the General Council scheduled for 18 July he would present an oral report on the activities of the DSB in implementing the provisions of the DSU.

The DSB took note of the information.

11. DSB report to the General Council for the Singapore Ministerial Conference (WT/DSB/M/20,22,24)

At the DSB meeting on 5 July 1996, the Chairman proposed that the DSB submit its annual report for consideration by the General Council at its meeting on 7 November 1996.

The DSB took note of the statement.

At the DSB meeting on 27 September 1996, the Chairman drew to the attention of Members that certain aspects concerning the DSB's activities referred to in his statement made at the General Council meeting on 18 July 1996, would be included in the annual report of the DSB to be submitted for approval by the DSB at its meeting on 16 October 1996.

The representatives of Jamaica, Mexico and Norway spoke.

The DSB took note of the statements.

At the DSB meeting on 16 October 1996, the Chairman sumbitted for adoption a draft text of the 1996 Annual Report of the DSB contained in WT/DSB/W/37. He proposed that following its adoption, the Secretariat be authorized to update the Annual Report under its own responsitility. He also proposed that an annex be attached to the Annual Report containing an overview of the state of play of WTO disputes prepared by the Secretariat.

The representatives of Canada, the United States, the European Communities, India, Korea, Norway, Hong Kong and the Chairman spoke.

The DSB took note of the statements and adopted the Annual Report contained in WT/DSB/W/37 on the understanding that drafting amendments proposed by Members with regard to the "Summary conclusions" be included in the text and circulated together with an annex as proposed by the Chairman. If necessary, informal consultations would be held on this matter. The DSB authorized the Secretariat to update the Annual Report under its own responsibility as proposed by the Chairman.

12. Summary conclusions

The Dispute Settlement Body (DSB) has been in operation for just under two years. The purpose of this section is to highlight certain aspects of the dispute settlement process during this period.

Since January 1995, 42 distinct matters have been raised in the DSB under the provisions of the DSU.[7] Dispute settlement panels have been established in respect of 12 different matters, three of which were ultimately settled without panel decisions being issued. Of the nine remaining matters, three panel reports have been circulated,[8] two of which were appealed to the Appellate Body (as at 18 October 1996). The Appellate Body has issued reports in two cases. Although in each case the Appellate Body upheld the panel's recommendations, it modified the panel's legal reasoning. The remaining six panels are expected to issue their reports in due course.

A number of observations could be made after the DSB's experience in 1995 and 1996. First, the number of matters referred to the DSB is considerably greater than was the number under GATT during similar periods. The major trading nations have been the main participants in the dispute settlement system, both as complaining and responding Members. There has been an evident tendency to use the DSU in settling trade disputes in accordance with the aim of Article 23 of the DSU on "Strengthening of the Multilateral System". A further noteworthy development is the increased use of the system by developing country Members.

Second, there have been a significant number of settlements reached under the DSU. In seven of the 42 matters referred to it, the DSB has been formally notified of settlements. In addition, in seven other matters the DSB has not received a request for the establishment of a panel, even though more than six months has elapsed since the initial request for consultations. This record suggests that the DSU is fulfilling its function of permitting, wherever possible, Members to resolve disputes quickly, without resort to the formal panel procedures.

Third, the experience of the DSB to date shows that there is increased transparency in the WTO dispute settlement system. As a result of the implementation of the General Council's Decision of 18 July 1996 on derestriction of documents, all documents circulated under the auspices of the DSB are now available as unrestricted documents or are subject to expeditious consideration for derestriction. Furthermore, the DSU provides that "mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees." The Chairman of the DSB has drawn the attention of Members to these provisions.

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[7]There have actually been 58 formal requests for consultations under the DSU and two matters brought before the DSB pursuant to the Agreement on Textiles and Clothing (ATC), which does not require consultations in the DSU, but rather allows parties to request the establishment of a panel following completion of consultation and other procedures under the ATC.

[8]Two additional short panel reports were circulated informing Members that mutually agreed solutions have been reached between the parties to the disputes.

As the body dealing with disputes in the WTO, the DSB, in accordance with the provisions laid down in the DSU, has held meetings as often as necessary in order to carry out its functions. Since January 1995, the DSB has held 22 meetings. There were two non-scheduled meetings held in 1995 and since January 1996, five such meetings have been held.

Among its functions the DSB administers the indicative list of governmental and non-governmental panelists having expertise in different fields. This list which, as of 18 October 1996 contained 189 names, has assisted Members to obtain high-level expertise in different panels.

Following the tradition of GATT, the DSB has worked in a spirit of pragmatism and facilitated the obtention of mutually acceptable solutions to trade disputes. The dispute settlement system of the WTO has however moved beyond the GATT dispute settlement procedures through the progressive development of past practices in GATT which are now enshrined in the DSU. The DSU therefore provides Members with both the possibility of reaching mutually satisfactory solutions to their disputes consistently with the WTO Agreement and with the certainty of a legal solution of such disputes, when necessary.

It may therefore be concluded that the role of the DSB in managing the settlement of disputes within the new multilateral trading system under the WTO has been positive. The DSU, under the management of the DSB, is contributing to greater security and predictability in relations amongst partners in the open multilateral trading system. Certain problems in the overall operation of the dispute settlement system have been identified and in most cases, working practices have been developed to solve these problems in a pragmatic manner. Further experience in the operation of the system is nevertheless required before it can be fully evaluated. In this respect, the Decision by Ministers to review the operation of the system within four years after its entry into force will provide an opportunity for such an evaluation and for the introduction of improvements in the system if necessary.

It can finally be stated that the effective operation of the dispute settlement system during the first two years of its existence has fostered greater cooperation amongst Members, reflecting their growing trust in the multilateral system, and thus contributing towards the strengthening and the consolidation of the WTO and the open multilateral trading system.

ANNEX

OVERVIEW OF THE STATE OF PLAY OF WTO DISPUTES

At the DSB meeting on 16 October 1996, the Secretariat was requested to provide an overview of the state of play of disputes under the dispute settlement system in the WTO. The attached overview, which reflects the state of play of WTO disputes from 1 January 1995 to 18 October 1996, has been prepared by the Secretariat under its own responsibility. Section I of the overview indicates the state of play of disputes until the stage of the establishment of panels. Section II indicates the state of play of disputes from the establishment of panels until the stage of adoption of Appellate Body reports.

SECTION I

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
1. Malaysia - Prohibition of Imports of Polyethylene and Polypropylene	13.01.95 Singapore **WT/DS1/1**	10.01.95	11.03.95			17.03.95 Singapore **WT/DS1/2** withdrawal of request on 19.07.95 **WT/DSB/M/6**	
2. United States - Standards for Reformulated and Conventional Gasoline	02.02.95 Venezuela **WT/DS2/1**	24.01.95	25.03.95			27.03.95 Venezuela **WT/DS2/2**	10.04.95 **WT/DSB/M/3**
3. Korea - Measures Concerning the Testing and Inspection of Agricultural Products	06.04.95 United States **WT/DS3/1**	04.04.95	03.06.95	09.06.95 Japan **WT/DS3/2**			
4. United States - Standards for Reformulated and Conventional Gasoline	12.04.95 Brazil **WT/DS4/1**	10.04.95	09.06.95			22.05.95 Brazil **WT/DS4/2**	31.05.95 **WT/DSB/M/5**

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
5. Korea - Measures Concerning the Shelf-Life of Products	05.05.95 United States **WT/DS5/1**	03.05.95	02.07.95	24.05.95 Canada **WT/DS5/2** 09.06.95 Japan **WT/DS5/4**	31.07.95 **WT/DS5/5 & Corr.1** 24.11.95 **Add.1** 22.04.96 **Add.1/Rev.1** 22.04.96 **Add.2** 22.04.96 **Add.3** 19.07.96 **Add.4** 20.09.96 **Add.5**		
6. United States - Imposition of Import Duties on Automobiles from Japan under Sections 301 and 304 of the Trade Act of 1974	22.05.95 Japan **WT/DS6/1**	17.05.95	16.07.95	02.06.95 EC **WT/DS6/2** 12.06.95 Australia **WT/DS6/3**	19.07.95 **WT/DSB/M/6**		
7. EC - Trade Description of Scallops	24.05.95 Canada **WT/DS7/1**	19.05.95	18.07.95	09.06.95 Chile **WT/DS7/2** 09.06.95 Iceland **WT/DS7/3** 09.06.96 Japan **WT/DS7/4** 12.06.95 Peru **WT/DS7/5**	19.07.96 **WT/DS7/12**	10.07.95 Canada **WT/DS7/7 & Corr.1**	19.07.95 **WT/DSB/M/6**

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
8. Japan - Taxes on Alcoholic Beverages	29.06.95 EC **WT/DS8/1**	21.06.95	20.08.95	17.07.95 United States **WT/DS8/2** 17.07.95 Canada **WT/DS8/3**		15.09.95 EC **WT/DS8/5**	27.09.95 **WT/DSB/M/7**
9. EC - Duties on Imports of Cereals	10.07.95 Canada **WT/DS9/1**	30.06.95	29.08.95			15.09.95 Canada **WT/DS/9/2**	11.10.95 **WT/DSB/M/8**
10. Japan - Taxes on Alcoholic Beverages	17.07.95 Canada **WT/DS10/1**	07.07.95	05.09.95	21.07.95 United States **WT/DS10/2** 27.07.95 EC **WT/DS10/3**		15.09.95 Canada **WT/DS10/5**	27.09.95 **WT/DSB/M/7**
11. Japan - Taxes on Alcoholic Beverages	17.07.95 United States **WT/DS11/1**	07.07.95	05.09.95			15.09.95 USA **WT/DS11/2 & Corr.1**	27.09.95 **WT/DSB/M/7**
12. EC - Trade Description of Scallops	25.07.95 Peru **WT/DS12/1**	18.07.95	15.09.95	09.08.95 Canada **WT/DS12/3** 11.08.95 Chile **WT/DS12/2 & Rev.1** 17.08.95 Japan **WT/DS12/5**	19.07.96 **WT/DS12/12**	15.09.95 Peru **WT/DS12/6** 22.09.95 Peru **WT/DS12/7**	11.10.95 **WT/DSB/M/8**
13. EC - Duties on Imports of Grains	26.07.95 United States **WT/DS13/1**	19.07.95	17.09.95			29.09.95 United States **WT/DS13/2**	

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
14. EC - Trade Description of Scallops	31.07.95 Chile **WT/DS14/1**	24.07.95	22.09.95	07.08.95 Canada **WT/DS14/2** 11.08.95 Peru **WT/DS14/3** 17.08.95 Japan **WT/DS14/4**	19.07.96 **WT/DS14/11**	15.09.95 Chile **WT/DS14/5** 27.09.95 Chile **WT/DS14/6**	11.10.95 **WT/DSB/M/8**
15. Japan - Measures Affecting the Purchase of Telecommunications Equipment	24.08.95 EC **WT/DS15/1**	18.08.95	17.10.95	31.08.95 United States **WT/DS15/2**			
16. EC - Régime for the Importation, Sale and Distribution of Bananas	04.10.95 Guatemala Honduras Mexico United States **WT/DS16/1**	28.09.95	26.11.95	13.10.95 St. Lucia **WT/DS16/2** 20.10.95 Colombia **WT/DS16/3** 24.10.95 Dominican Rep **WT/DS16/4** 25.10.95 Venezuela **WT/DS16/5** 20.10.95 Nicaragua **WT/DS16/6** 30.10.95 Costa Rica **WT/DS16/7**			
17. EC - Duties on Imports of Rice	11.10.95 Thailand **WT/DS17/1**	05.10.95	04.12.95				

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
18. Australia - Measures Affecting Importation of Salmon	11.10.95 Canada **WT/DS18/1**	05.10.95	04.12.95				
19. Poland - Import Régime for Automobiles	18.10.95 India **WT/DS19/1**	28.09.95	27.11.95		11.09.96 **WT/DS19/2**		
20. Korea - Measures Concerning Bottled Water	22.11.95 Canada **WT/DS20/1**	08.11.95	08.01.96	30.11.95 United States **WT/DS20/2** 14.12.95 EC **WT/DS20/4**	6.05.96 **WT/DS20/6**		
21. Australia - Measures Affecting the Importation of Salmonids	23.11.95 United States **WT/DS21/1**	20.11.95	19.01.96	13.12.95 Canada **WT/DS21/2**			
22. Brazil - Measures Affecting Desiccated Coconut	20.12.95 Philippines **WT/DS22/1** 10.01.96 **Rev.1**	30.11.96	29.01.96			08.02.96 Philippines **WT/DS22/5**	05.03.96 **WT/DSB/M/12**
23. Venezuela - Anti-Dumping Investigation in Respect of Imports of Certain Oil Country Tubular Goods (OCTG)	4.01.96 Mexico **WT/DS23/1**	5.12.95	3.02.96				
24. United States - Restriction on Imports of Cotton and Man-Made Fibre Underwear	15.01.96 Costa Rica **WT/DS24/1** 23.01.96 **Corr.1**	22.12.95	20.02.96			27.02.96 Costa Rica **WT/DS24/2**	05.03.96 **WT/DSB/M/12**

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
25. EC - Implementation of the Uruguay Round Commitments Concerning Rice	19.01.96 Uruguay **WT/DS25/1** 19.10.96 **Corr.1**	14.12.95	12.2.96				
26. EC - Measures Concerning Meat and Meat Products (Hormones)	31.01.96 United States **WT/DS26/1**	26.1.96	26.3.96	8.02.96 New Zealand **WT/DS26/2** 9.02.96 Australia **WT/DS26/3** 13.02.96 Canada **WT/DS26/4**		25.04.96 United States **WT/DS26/6**	20.05.96 **WT/DSB/M/17**
27. EC - Régime for the Importation, Sale and Distribution of Bananas	13.02.96 Ecuador Guatemala Honduras Mexico United States **WT/DS27/1**	05.02.96	05.04.96	28.02.96 Dominican Republic **WT/DS27/2** 28.02.96 St. Lucia **WT/DS27/3** 28.02.96 Nicaragua **WT/DS27/4** 01.03.96 Jamaica **WT/DS/27/5**		12.04.06 Ecuador, Guatemala, Honduras, Mexico, United States **WT/DS27/6**	08.05.96 **WT/DSB/M/16**
28. Japan - Measures Concerning Sound Recordings	14.02.96 United States **WT/DS28/1**	09.02.96	09.04.96	28.02.96 EC **WT/DS28/2**			

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
29. Turkey - Restrictions on Imports of Textile and Clothing Products	15.02.96 Hong Kong **WT/DS29/1**	12.02.96	12.04.96	01.03.96 EC **WT/DS29/2** 28.02.06 Malaysia Philippines Thailand **WT/DS29/3** 28.02.96 Peru **WT/DS29/4** 29.02.96 India **WT/DS29/5** 01.03.96 Brazil **WT/DS29/7** 01.03.96 Canada **WT/DS29/8**			
30. Brazil - Countervailing Duties on Imports of Desiccated Coconut and Coconut Milk Powder from Sri Lanka	05.03.96 Sri Lanka **WT/DS30/1**	23.02.96	23.04.96				
31. Canada - Certain Measures Concerning Periodicals	14.03.96 United States **WT/DS31/1**	11.03.96	10.05.96			24.05.96 United States **WT/DS31/2**	19.06.96 **WT/DSB/M/19**
32. United States - Measures Affecting Imports of Women's and Girls' Wool Coats					30.04.96 **WT/DS32/2**	15.03.96 India **WT/DS32/1**	17.04.96 **WT/DSB/M/14**

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
33. United States - Measures Affecting Imports of Woven Wool Shirts and Blouses						15.03.96 India **WT/DS33/1**	17.04.96 **WT/DSB/M/14**
34. Turkey - Restrictions on Imports of Textile and Clothing Products	25.3.96 India **WT/DS34/1**	21.03.96	20.05.96				
35. Hungary - Export Subsidies in Respect of Agricultural Products	02.04.96 Argentina Australia Canada New Zealand Thailand United States **WT/DS35/1**	27.3.96	26.5.96	12.04.96 Japan **WT/DS35/2**			
36. Pakistan - Patent Protection for Pharmaceutical and Agricultural Chemical Products	06.05.96 United States **WT/DS36/1**	30.04.96	29.06.96	28.05.96 EC **WT/DS36/2**		4.07.96 US **WT/DS36/3**	
37. Portugal - Patent Protection under the Industrial Property Act	06.05.96 United States **WT/DS37/1**	30.04.96	29.06.96		8.10.96 **WT/DS37/2** 15.10.96 **Corr.1**		
38. United States - The Cuban Liberty and Democratic Solidarity Act	13.05.96 EC **WT/DS38/1**	3.05.96	2.07.96			8.10.96 **WT/DS38/2** 14.10.96 and **Corr.1**	
39. United States - Tariff Increases on Products from the European Communities	29.05.96 EC **WT/DS39/1**	18.04.96	17.06.96			24.6.96 EC **WT/DS39/2**	

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
40. Korea - Laws, Regulations and Practices in the Telecommunications Procurement Sector	20.05.96 EC **WT/DS40/1**	9.05.96	8.07.96				
41. Korea - Measures Concerning Inspection of Agricultural Products	31.05.96 US **WT/DS41/1**	24.05.96	23.07.96				
42. Japan - Measures Concerning Sound Recordings	04.06.96 EC **WT/DS42/1**	28.05.96	27.07.96	11.06.96 US **WT/DS42/2**			
43. Turkey - Taxation of Foreign Film Revenues	17.06.96 US **WT/DS43/1**	12.06.96	11.08.96				
44. Japan - Measures Affecting Consumer Photographic Film and Paper	21.06.96 US **WT/DS44/1**	13.06.96	12.08.96			20.09.96 US **WT/DS44/2**	16.10.96 **WT/DSB/M/24**
45. Japan - Measures Affecting Distribution Services	20.06.96 US **WT/DS45/1** 24.09.94 US **WT/DS45/1/ Add.1**	13.06.96 20.09.94	12.08.96				
46. Brazil - Export Financing Programme for Aircraft	21.06.96 Canada **WT/DS46/1**	19.06.96	18.08.96			17.09.96 Canada **WT/DS46/2** 4.10.96 **WT/DS46/4**	

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
47. Turkey - Restrictions on Imports of Textile and Clothing Products	26.06.96 Thailand **WT/DS47/1**	20.06.96	19.08.96				
48. European Communities - Measures Affecting Livestock and Meat (Hormones)	08.07.96 Canada **WT/DS48/1**	28.06.96	27.08.96	22.07.96 Australia **WT/DS48/2** 23.07.96 US **WT/DS48/3** 23.07.96 New Zealand **WT/DS48/4**		17.09.96 Canada **WT/DS48/5**	16.10.06 **WT/DSB/M/24**
49. United States - Anti-Dumping Investigation Regarding Imports of Fresh or Chilled Tomatoes from Mexico	08.07.96 Mexico **WT/DS49/1**	01.07.96	30.08.96				
50. India - Patent Protection for Pharmaceutical and Agricultural Chemical Products	09.07.96 US **WT/DS50/1**	02.07.96	31.08.96	22.07.96 EC **WT/DS50/2**			
51. Brazil - Certain Automotive Investment Measures	06.08.96 Japan **WT/DS51/1**	30.07.96	28.09.96	13.08.96 Korea **WT/DS51/2** 15.08.96 EC **WT/DS51/3** 15.08.96 United States **WT/DS51/4** 19.08.96 Canada **WT/DS51/6**			

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
52. Brazil - Certain Measures Affecting Trade and Investment in the Automotive Sector	14.08.96 US **WT/DS52/1**	09.08.96	08.10.96	19.08.96 Canada **WT/DS52/2** 19.08.96 Japan **WT/DS52/3** 28.08.96 Korea **WT/DS52/4** 02.09.96 EC **WT/DS52/5**			
53. Mexico - Customs Valuation of Imports	9.09.96 EC **WT/DS53/1**	27.08.96	26.10.96	18.09.96 Norway **WT/DS53/2** 30.09.96 Switzerland **WT/DS53/3**			
54. Indonesia- Certain Measures Affecting the Automobile Industry	14.10.96 EC **WT/DS54/1**	3.10.96	2.12.96	18.10.96 United States **WT/DS54/2** .. Japan **WT/DS54/3** .. Korea **WT/DS54/4**			
55. Indonesia - Certain Measures Affecting the Automobile Industry	10.10.96 Japan **WT/DS55/1**	4.10.96	3.12.96	18.10.96 United States **WT/DS55/2** .. EC **WT/DS55/3**			

Dispute	Request for Consultations (date of circulation)	Date of Receipt of the Request for Consultation	Expiration of Consultation Period	Request to Join Consultations	Mutually Agreed Solution	Request for Establishment of a Panel	Panel Established
56. Argentina - Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items	15.10.96 United States **WT/DS56/1**	4.10.96	3.12.96	.. Hungary **WT/DS56/2**			
57. Australia - Textile, Clothing and Footwear Import Credit Scheme	09.10.96 United States **WT/DS57/1**	7.10.96	6.11.96				
58. United States - Import Prohibition of Certain Shrimp and Shrimp Products	14.10.96 India, Malaysia, Pakistan and Thailand **WT/DS58/1**	8.10.96	7.12.96				
59. Indonesia - Certain Measures Affecting the Automobile Industry	15.10.96 United States **WT/DS59/1**	8.10.96	7.12.96	.. Japan **WT/DS59/2**			
60. Guatemala - Anti-Dumping Investigation Regarding Imports of Portland Cement from Mexico	24.10.96 Mexico **WT/DS60/1**	15.10.96	14.12.96				

SECTION II

Title	Panel Established	Panel Report Circulated	Expiration of 20-Day Period	Expiration of 60-Day Period	Notice of Appeal	Panel Report Adopted	Appellate Report Circulated	Expiration of 30-Day Period	Appellate Report Adopted
1. United States - Standards for Reformulated and Conventional Gasoline	10.04.95 Venezuela **WT/DS2** 31.05.95 Brazil **WT/DS4**	29.01.96 **WT/DS2/R**	18.02.96	29.03.96	21.02.96 United States **WT/DS2/6**	20.05.96 **WT/DS2/9**	29.04.96 **WT/DS2/AB/R**	29.05.96	20.05.96 **WT/DS2/9**
2. Japan - Taxes on Alcoholic Beverages	27.09.95 EC **WT/DS8** Canada **WT/DS10** US **WT/DS11**	11.07.96 **WT/DS8/R** **WT/DS10/R** **WT/DS11/R**	31.07.96	09.09.96	08.08.96 Japan **WT/DS8/9** **WT/DS10/9** **WT/DS11/6**		4.10.96 **WT/DS8/AB/R** **WT/DS10/AB/R** **WT/DS11/AB/R**	3.11.96	
3. EC - Trade Description of Scallops	19.07.95 Canada **WT/DS7**	05.08.96 **WT/DS7/R**							
4. EC - Trade Description of Scallops	11.10.95 Peru **WT/DS12** Chile **WT/DS14**	05.08.95 **WT/DS12/R** **WT/DS14/R**							
5. Brazil - Measures Affecting Desiccated Coconut	05.03.96 Philippines **WT/DS22**	17.10.96 **WT/DS22/R**	06.11.96	16.12.96					

WORLD TRADE ORGANIZATION

WT/DSB/8/Corr.1
20 November 1996

(96-4928)

DISPUTE SETTLEMENT BODY

DISPUTE SETTLEMENT BODY

Annual Report (1996)

Corrigendum

Sub-item 8(j)(ix), page 14:

The second paragraph should read as follows: "The representatives of the European Communities, the United States, Australia, Bolivia, on behalf of members of the Rio Group[6], Canada, Cuba, Mexico, India and Switzerland spoke."

[6]Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela.

WORLD TRADE ORGANIZATION

WT/DSB/8/Add.1
15 November 1996

(96-4795)

DISPUTE SETTLEMENT BODY

DISPUTE SETTLEMENT BODY

Annual Report (1996)

Addendum

This addendum updates the DSB Annual Report (1996) circulated on 28 October 1996 with the action taken by the DSB at its meeting on 29 October and 1 November 1996. The information on the action taken by the DSB at that meeting also supplements the information on DSB activities in Section 12 "Summary Conclusions" of the Annual Report and in Section II of its Annex containing the "Overview of the State of Play of WTO Disputes".

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1. Recourse to dispute settlement procedures
   - Japan
     - Taxes on alcoholic beverages (WT/DSB/M/25)

At the DSB meeting on 29 October and 1 November 1996, the DSB considered the Appellate Body report in WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R and the Panel report in WT/DS8/R, WT/DS10/R and WT/DS11/R pertaining to the complaints by the European Communities, Canada and the United States respectively.

The representatives of the European Communities, Canada, the United States and Japan spoke.

The DSB took note of the statements, adopted the Appellate Body report in WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R and the Panel report in WT/DS8/R, WT/DS10/R and WT/DS10/R as modified by the Appellate Body report.

2. Rule of quorum (WT/DSB/M/25)

At the DSB meeting on 29 October and 1 November 1996, Japan raised the question of the rule of quorum in the rules of procedure of the DSB which provided for a quorum of a simple majority of Members, i.e. 63 delegations under the present WTO Membership. Since attendance at WTO meetings was usually less that 63 delegations he suggested that the rule of quorum be amended. The Chairman said that at an appropriate time informal consultations would be held on this matter which was also relevant for other WTO bodies, and urged delegations that until a proper solution was found such problems be approached in a spirit of pragmatism.

The representative of Norway spoke.

The DSB took note of the statements.

SECTION III

TRADE POLICY REVIEW BODY

WORLD TRADE ORGANIZATION

WT/TPR/27
28 October 1996

(96-4484)

Trade Policy Review Body

TRADE POLICY REVIEW MECHANISM

REPORT TO THE SINGAPORE MINISTERIAL CONFERENCE

1. The Trade Policy Review Mechanism was established in 1989, on a provisional basis, as an early harvest of the Uruguay Round. It has thus been in existence for seven years. The Marrakesh Agreement, which confirmed the status of the Mechanism, envisages an appraisal of its operation at the latest in 1999 ("not more than five years after the entry into force of the Agreement Establishing the WTO"). Members, however, have kept the Mechanism under constant review since its inception and a number of procedural improvements have been introduced in the past few years.

2. This report by the Trade Policy Review Body provides an interim assessment of the extent to which the TPRM is fulfilling its stated objectives, its value to Members, its cost-effectiveness and the scope for further procedural improvements. A table of Trade Policy Reviews to date is annexed.

Fulfilling its Objectives

3. In framing their expectations of the TPRM, Members are guided by the objectives stated in Annex 3 to the Marrakesh Agreement:

> "to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. Accordingly, the review mechanism enables the regular collective appreciation and evaluation of the full range of individual Members' trade policies and practices and their impact on the functioning of the multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members."

4. Measurement of the TPRM's coverage to date depends on the yardstick used. The 57 members reviewed so far (a number on several occasions) account for 98 per cent of all Members' trade in goods and services. The TPRM spotlight has therefore effectively focused on all the major players in the WTO trading system and has illuminated the most significant trends. By another yardstick, however, the outcome is less reassuring: with WTO membership of 108 (counting the European Communities as one entity) only just over half of Members have been reviewed during the seven-year existence of the Mechanism. The question of completing the coverage of developing countries is taken up in paragraphs 12-14 below.

5. The content and style of the reviews is obviously critical to their effectiveness. There is general acceptance that reviews should be comprehensive, rigorous and analytical, and conducted at an appropriately senior level. By and large, experience to date suggests that these criteria are being met.

While the scope for procedural improvements is constantly being assessed, the essential character of the reviews has not been challenged. One indicator of the general health of the process is the level and composition of delegations from Members under review: this has improved markedly since the establishment of the WTO, with a majority of Members reviewed during the past two years being led at Ministerial or deputy Ministerial level, and with delegations including substantial expertise from capitals.

6. Attempting to ensure that the reviews are comprehensive is not without risk. A criticism has been made that the process can focus too much on detail, at the cost of giving insufficient attention to policy direction. However, the TPRM is envisaged as a review of policies and practices: of the implementation of policy as well as its overall direction. It will continue to be a matter for the Secretariat in its preparation of documentation, and for Members in the manner of their participation in the meetings, to seek to achieve an appropriate balance between discussion of policy direction and of details of implementation.

Value to Members

7. There is a clear value for WTO Members in having a forum where they can openly discuss each other's trade and trade-related policies, elicit information and register concerns. The benefits for the country under review are also significant: the TPRM can provide a valuable input into national policy making, serving as an independent, objective assessment of trade and economic policies; Members have also commented on the extent to which the experience of review has helped to strengthen inter-agency discussion and co-operation in their own countries. The trading system as a whole benefits in that the process can sometimes assist governments in pursuing desirable trade policy reforms; it also frequently illuminates areas of WTO obligations which may have received insufficient attention to date and thus helps to ensure that these are addressed.

8. The dual aspects of self-analysis and external audit underpin the effectiveness of the TPRM exercise for all Members. In practice, specific features of a review can assume a particular importance depending on the trade and economic situation of the Member under review. The larger trading entities are generally not short of opportunities for presentation of their trade policies; in their case, the most significant aspect of the review is the opportunity for trading partners to comment on the basis of an independent WTO Secretariat analysis. In many cases, however, review meetings can provide a useful forum for governments to explain the development of policies; additionally, in the case of developing countries, the process can help to identify particular technical assistance needs.

Cost effectiveness

9. The TPR Division in the Secretariat has an annual staff budget of some Sfr. 4 million (just under 6 per cent of the total). With a staff complement of 27 (17 professionals) it accounts for around 10 per cent of the professional staff of the organization, excluding translators, interpreters and administration. Members also devote considerable time to the preparation and servicing of meetings. The relationship between tasks and capacity obviously requires careful balancing: issues of TPRM coverage, depth of the preparatory process, and desirable follow-up work, have to be approached in the light of the resources available. This will need even more careful attention as WTO membership expands.

10. The continuing challenge is to ensure maximum effectiveness of the resources used. In this connection, a number of areas offer scope for further examination:

- In reviewing a cross-section of countries each year, the TPRM inevitably shows up wider patterns which are influencing policy approaches in individual Members. Over the past few years, for example, the overriding common theme that has emerged is the rapid pace of change, with a sustained shift to more market-oriented and outward-looking trade and investment régimes, deriving in part from autonomous liberalization policies and in part from the stimulus provided by the Uruguay Round. In terms of enhancing the process, the Annual Overview of Developments in the International Trading System, provided for in Section G of the Agreement on the TPRM, may be used to develop a more structured approach than has existed in the past of looking at the composite picture emerging from individual reviews and to identify wider themes for consideration by WTO members and committees.

- The TPRM occupies a unique place within the WTO in promoting non-confrontational discussion of key trade policy issues. Its specific delinkage from dispute settlement procedures is an essential feature which must be safeguarded; however, further opportunities might be sought for encouraging greater cross-fertilization between TPRB discussions and those undertaken in other WTO bodies.

- One area which is receiving particular attention is enhancing awareness of the TPRM outside the Geneva circle. While WTO member Governments of course have the primary stake in the TPRM, the material produced is also of interest in the business and academic communities. The long-term health of the process can only benefit from wide dissemination of information about reviews. A considerable amount of media briefing is already done by the Secretariat and the Chair, and both the Summary Observations by the Secretariat and the Closing Remarks by the Chair are made available on the WTO Internet home page. Further improvements such as speedier publication of reports (within one month to six weeks of TPRB meetings) and improved use of the Internet for dissemination and sale of full reports are currently under active consideration by the Secretariat for early introduction.

Coverage of Developing Countries

11. The coverage of developing countries in the TPRM to date includes most of the major developing country Members of the WTO, as well as a number of smaller countries that have volunteered to come under review. There are still, however, over 50 developing country Members that remain to be reviewed, including a significant number of African and least developed countries.

12. The involvement of developing countries in the TPRM is examined in some detail in a Note of 12 July 1996, circulated to all WTO Members, from the Chair of the TPRM to the Chair of the Committee on Trade in Development. The summary conclusion in that Note was:

> "Involvement in the TPRM is an important way for developing countries, particularly least developed countries, to develop confidence and experience with the WTO. This needs to be borne in mind in (a) planning the TPRM timetable and (b) ensuring that technical assistance is available to those LDCs who would otherwise have difficulty in preparing for and undergoing review. With increased participation of developing countries in the TPRM, it will be particularly important to ensure that lessons learned from these reviews are channelled into the WTO machinery".

13. In an effort to complete the coverage of developing countries, including least developed countries, while taking account of resource constraints, the Secretariat is currently exploring ways of grouping

reviews - for example in the case of some Southern African or Caribbean countries - while respecting the individual nature of the TPR process. The question of completing the coverage of TPRs, particularly to the smaller developing and least-developed countries, is one which will require particular attention in the preparation of the TPRB timetable.

Procedural Improvements

14. As noted, there has been a fairly continuous process of self-examination within the TPRB over the years, leading to a number of improvements in procedures. A first set of modifications was introduced in 1994 (L/7458). More recent discussions have been reflected in two Notes from the Chair, the first in December 1995 (WT/TPR/13) and the second in July 1996 (WT/TPR/20). The procedural issues addressed include preparatory documentation, choice of discussants, level of representation at meetings, Chairperson's summing up, follow-up to meetings. In so far as there has been agreement on procedural adaptations, these have been or are being put into effect.

15. One concern of Members is to ensure that, as an exercise in transparency, the TPRB clearly reflects the progress made by Members in implementing the WTO Agreements. The Secretariat is therefore encouraged to continue providing, in its reports, systematic information on measures taken by Members under review in the context of the Agreements, the mechanisms by which these are implemented, and notifications made.

16. As indicated in paragraph 5, since the entry into force of the WTO, the majority of the Members coming for review have been represented at Ministerial or Deputy Ministerial level; in most other cases, they have been represented by senior officials from the capital. However, this level of representation has not always been matched by the participation - either in numbers or level - by other Members of the TPRB. If the rôle of the TPRM is to be preserved and strengthened, it is important both that there be a substantial number of delegations present in Trade Policy Reviews and that these delegations be represented at appropriate level.

17. It has also been stressed that Members owe it to the health of the system to observe strictly the deadlines laid down for answering questionnaires and delivering documentation; delays in the completion of reviews both affect the review process for the Member concerned and slow down the programme in general.

18. One of the more substantive issues addressed has been the cycle of reviews. While one delegation has proposed a modification to provide for a three year cycle for members currently on a two-year review pattern, there has been no support from other members for such a change. However, it has been agreed that, in the case of two-year reviews, every second review might have an "interim" character, although this should not detract from the comprehensive nature of reviews of such members.

Conclusion

19. The TPRM is a unique element in the range of WTO activities. It is the only focus for peer review of the full range of trade policies and can often be of considerable assistance to Members in their domestic review and revision of policy. In addition, it is of significant value in providing authoritative, well founded analyses of developments in trade policies and practices. Given the benefits of the process, Members who have not yet presented themselves for review are strongly encouraged to do so; those who would feel the need of technical assistance in undergoing the process are reminded of the possibilities in this regard.

20. While Members are satisfied with the considerable progress made in improving the functioning of the TPRM, they are also conscious of the high level of Secretariat and national resources involved in the process, and anxious to ensure that these resources continue to be used effectively. Members will therefore continue to assess the content, coverage and resources used in reviews to try to ensure the needs of all WTO members are met. They will also seek to enhance the impact of the Mechanism in the ways outlined in this report, while ensuring that its distinctive character is preserved.

Trade policy reviews conducted under GATT 1947 and WTO provisions, 1989-1996

Europe/Middle East	Asia/Pacific	Africa	America
Austria[1a]	Australia (2)[a]	Cameroon[a]	Argentina[a]
Czech Republic[b]	Bangladesh[a]	Côte d'Ivoire[b]	Brazil (2)[c]
European Communities (4)[c]	Hong Kong (2)[a]	Egypt[a]	Bolivia[a]
Finland[1a]	India[a]	Ghana[a]	Canada (4)[c]
Hungary[a]	Indonesia (2)[a]	Kenya[a]	Chile[a]
Iceland[a]	Japan (3)[a]	Mauritius[b]	Colombia (2)[c]
Israel[a]	Korea (2)[c]	Morocco (2)[c]	Costa Rica[b]
Norway (2)[c]	Macau[a]	Nigeria[a]	Dominican Republic[b]
Poland[a]	Malaysia[a]	Senegal[a]	El Salvador[b]
Romania[a]	New Zealand (2)[c]	South Africa[a]	Mexico[a]
Slovakia[b]	Pakistan[a]	Tunisia[a]	Peru[a]
Sweden[1] (2)[a]	Philippines[a]	Uganda[b]	United States (4)[c]
Switzerland (2)[c]	Singapore (2)[c]	Zambia[b]	Uruguay[a]
Turkey[a]	Sri Lanka[b]	Zimbabwe[a]	Venezuela[b]
	Thailand (2)[c]		
14	15	14	14

a Reviewed under the GATT.
b Reviewed under the WTO.
c Reviewed under the GATT and the WTO.

1 Included in EU from 1995.

SECTION IV

COUNCIL FOR TRADE IN GOODS

WORLD TRADE ORGANIZATION

G/L/134
5 November 1996

(96-4676)

Council for Trade in Goods
1 November 1996

REPORT OF THE COUNCIL FOR TRADE IN GOODS TO THE GENERAL COUNCIL

Introduction

1. This report has been established in accordance with the statement by the Chairman of the General Council, at the meeting on 16 April 1996, with regard to "Reporting Procedures for the Singapore Ministerial Conference". It covers the period from 1 January to 4 November 1996;[1] it comprises a Section I: factual part, and a Section II: conclusions and/or recommendations. The report also covers the activities of the subsidiary bodies of the Council for Trade in Goods (hereinafter referred to as "the Council"), as outlined under item 19(a).

2. In carrying out its task, the Council has held eight regular meetings. The minutes of these meetings, which remain the record of the Council's work, are contained in documents G/C/M/8 to

3. The following subject matters which were raised and/or acted upon in the Council are included in the report:

[1]The report of the Council for Trade in Goods for 1995 is contained in Section IV of document WT/GC/W/25.

SECTION I: FACTUAL PART

1. Observer status for International Intergovernmental Organizations (G/C/M/8 to 14)

1.1 At its meeting of 29 January 1996, the Council agreed that pending the adoption of criteria and conditions for observer status for international intergovernmental organizations in the WTO and unless a delegation raised an objection, those organizations invited to the current meeting of the Council be invited to its next meeting on an ad-hoc basis. The organizations concerned were: FAO, IMF, ITCB, OECD, UN, UNCTAD, World Bank and the WCO.

1.2 At its meetings of 14 February 1996, 19 March 1996, 22 May 1996 and 5 July 1996 the Council agreed to invite the same organizations on an ad-hoc basis to its next respective meeting.

1.3 At the meeting of 25 July 1996, the Chairman pointed out that at its meeting of 18 July 1996, the General Council had approved the "Guidelines on Observer Status for International Intergovernmental Organizations". In light of this decision he proposed to hold informal consultations on which International Intergovernmental Organizations would be granted observer status in the Goods Council.

1.4 At its meeting of 19 September 1996, the Council agreed that pending the outcome of further consultations, the organizations which had been following the Council' s meeting up to now on an ad-hoc basis, could attend future meetings of the Council on an ad-hoc basis.

2. Election of Chairperson of the Council (G/C/M/8)

2.1 At its meeting of 14 February 1996, the Council unanimously elected Ambassador Narayanan, as Chairman of the Council for 1996.

3. Appointment of Officers for the Committee on Agriculture, Committee on Sanitary and Phytosanitary Measures, Working Party on State-Trading Enterprises, Working Group on Notification Obligations and Procedures (G/C/M/8)

3.1 At its meeting of 14 February 1996, the Council approved the appointments of the following Chairpersons: Committee on Agriculture: Mr. D. Tulalamba (Thailand); Committee on Sanitary and Phytosantiary Measures: Mr K. Bergholm (Finland); Working Group on Notification Obligations and Procedures: Mr. A Shoyer (United States); Working Party on State Trading Enterprises: Mr. P. May (Australia).

3.2 At its meeting of 14 February 1996, the Council took note of the results of the consultations held by the Chairman on Chairpersons for 1996 for the other subsidiary bodies as follows: Committee on Technical Barriers to Trade: Ms. C. Guarda (Chile); Committee on Market Access: Mr. J. Saint-Jacques (Canada); Committee on Customs Valuation: Mr. P. Palecka (Czech Republic); Committee on Import Licensing: Mr. C. Mbegabolawe (Zimbabwe); Committee on Rules of Origin: Mr. Osakwe (Nigeria); Committee on Anti-Dumping Practices: Mr. O. Lundby (Norway); Committee on Subsidies and Countervailing Measures: Mr. V. Do Prado (Brazil); Committee on Safeguards: Mr. A. Buencamino (Philippines); Committee on Trade-Related Investment Measures: Mr. V. Notis (Greece).

3.3 The Council also agreed that the question of Vice-Chairpersons should be handled at the level of the Committees themselves through a process of consultations.

3.4 A number of delegations stated that future consultations on Chairpersons should be initiated as early as possible, they should be more transparent, and the principle of rotation should be the rule wherever possible. The point was also made that in the future the question of the Vice-Chiarmanship should be settled in the context of such consultations.

4. Approval of Rules of Procedure of the Committees on Agriculture, Anti-dumping Practices, Safeguards, Subsidies and Countervailing Measures (G/C/M/10)

4.1 At its meeting of 22 May 1996, the Council approved the rules of procedure of the Committees on Agriculture (G/AG/W/22), Anti-Dumping Practices (G/ADP/W/135/Rev.1), Safeguards (G/SG/W/59/Rev.1) and Subsidies and Countervailing Measures (G/SCM/W/143/Rev.1).

5. Letter from the Chairman of the Committee on Trade and Development (G/C/M/10 and 13 and Corr.1)

5.1 At the meeting of 22 May 1996, the Chairman informed the Council that the Chairman of the Committee on Trade and Development (CTD) had sent a letter to him requesting information on the implementation of development-related provisions in those Uruguay Round Agreements dealt with by the Council. This information was necessary for the review to be conducted by the CTD. He had sent a letter to the chairpersons of the various subsidiary bodies of this Council requesting them to give him information on the work done in this area. After receipt of this information, he would take further action on the basis of the information provided.

5.2 At the meeting of 19 September 1996, the Chairman informed the Council that the responses to the letter he had sent to the Chairpersons of the subsidiary bodies of the Council had been received and forwarded to the Chairman of the CTD. The Secretariat had made a compilation of those responses in document WT/COMTD/W/16 and Addendum. The matter was now under consideration in the CTD.

6. Circulation and Derestriction of Council Documents (G/C/M/13 and Corr.1)

6.1 At the meeting of 19 September 1996, the Chairman drew the Council's attention to the decision taken by the General Council at its meeting of 18 July 1996 on "Procedures for the Circulation and Derestriction of WTO documents" (WT/L/160/Rev.1). The Council took note of the decision.

7. Availability of documents in Spanish (G/C/M/13 and Corr.1)

7.1 At the meeting of 19 September 1996, the representative of El Salvador, also on behalf of GRULAC, expressed concern at the fact that documents were not made available in the Spanish language in time for meetings. Another representative stated that the same problem had arisen regarding documents in French.

8. Committee on Market Access

Semi-annual report of the Committee (G/C/M/11)

8.1 At its meeting of 5 July 1996, the Council took note of the report made by the Chairman of the Market Access Committee (G/MA/4) concerning (1) implementation of HS96 changes; (2) other waivers; (3) establishment of consolidated loose-leaf schedules; (4) non-tariff matters; (5) Integrated Data Base; and (6) Report of the Committee to the Council in connection with the Singapore Ministerial Meeting.

9. Agreement on Subsidies and Countervailing Measures

State of play concerning subsidy notifications - lack of compliance with subsidy notification requirements under Article 25.2 of the Agreement on Subsidies and Countervailing Measures (G/C/M/10)

9.1 At the meeting of 22 May 1996, the representative of the EC conveyed concern about the lack of compliance by Members with their notification obligation under Article 25.2 of the Subsidies Agreement.

10. Working Party on State Trading Enterprises (G/C/M/14)

10.1 At its meeting of 15 October 1996, the Council took note of the communication from the European Communities circulated in G/STR/W/33. The EC requested the Council to refer its submission to the Working Party on State Trading Enterprises for its consideration. The Council agreed to revert to this matter at an appropriate time.

11. Customs Unions and Free-Trade Areas: regional agreements
(G/C/M/8, 9, 10,11 and 13 and Corr.1)

11.1 At its meeting of 29 January 1996, the Council took note of the information provided by the Chairman that at the last meeting of the General Council, a decision was taken in principle, to establish a Committee dealing with regional trading matters. Consultations were being held by the Chairman of the General Council concerning the nature and terms of reference of the new body. The Council agreed that the question of establishment of separate Working Parties would have to be reviewed in light of the final decision on this issue.

11.2 At its meeting of 19 March 1996, the Council took note of a decision taken by the General Council to establish a Committee on Regional Trade Agreements (WT/L/127) which would carry out the examination of such agreements in accordance with the procedures and terms of reference adopted by the Council and which would thereafter present its report to the Council for appropriate action.

(a) Customs Union between Turkey and the European Community (EC) (G/C/M/8)

11.3 At its meeting of 29 January 1996, the Council took note of the communication (WT/REG22/N/1) from the parties, indicating the entry into force on 1 January 1996 of the Customs Union between Turkey and the EC. The Council established a Working Party to examine the Agreement.

(b) Agreement between the Government of Denmark and the Home Government of the Faroe Islands, of the one part, and the Government of Iceland, of the other part, on free trade between the Faroe Islands and Iceland (G/C/M/8)

11.4 At its meeting of 19 March 1996, the Council took note of the notification from the parties to the Agreement (WT/REG23/N/1), indicating the entry into force on 1 July 1993 of the Agreement (WT/REG23/1). The Council established a Working Party to examine the Agreement.

(c) Agreement between the Swiss Government, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, on free trade between the Faroe Islands and Switzerland (G/C/M/9)

11.5 At its meeting of 19 March 1996, the Council took note of the notification from the parties to the Agreement (WT/REG24/N/1), indicating the entry into force on 1 March 1995 of the Agreement (WT/REG24/1). The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(d) Agreement between the Government of Norway, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part, on free trade between the Faroe Islands and Norway (G/C/M/9)

11.6 At its meeting of 19 March 1996, the Council took note of the notification from the parties to the Agreement (WT/REG25/N/1), indicating the entry into force on 1 July 1993 of the Agreement (WT/REG25/1). The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(e) Agreements between the Czech Republic and Bulgaria, and the Slovak Republic and Bulgaria (G/C/M/9)

11.7 At the meeting of 19 March 1996, the representative of the Czech Republic, speaking also on behalf of the Slovak Republic and the Republic of Bulgaria, informed the Council of the signing in December 1995 of the free trade agreements between the Czech Republic and Bulgaria and between the Slovak Republic and Bulgaria. These agreements had been applied on a provisional basis since 1 January 1996 and would be notified to the WTO when the ratification processes in each of the signatory states had been completed.

(f) Preferential tariff treatment for the countries of former Yugoslavia (G/C/M/9)

11.8 At the meeting of 19 March 1996, the representative of the EC informed the Council that his delegation intended to ask for a waiver from obligations under Article I of the GATT in order to grant the countries of former Yugoslavia preferential access to the Community market for a limited period of time.

(g) EFTA-Estonia, EFTA-Latvia, EFTA-Lithuania Free Trade Agreements (G/C/M/10)

11.9 At the meeting of 22 May 1996, the representative of Iceland on behalf of the EFTA countries and Estonia, Latvia and Lithuania informed the Council that the EFTA states and Estonia, Latvia and Lithuania respectively had concluded Free Trade Agreements in December 1995. The Agreements were expected to enter into force or to be applied on a provisional basis as of 1 June 1996. The content and structure of the Agreements were similar to the free trade agreements which had been concluded between the EFTA states and the Central and Eastern European countries with certain adjustments reflecting recent developments. The Agreements would be notified under Article XXIV: 7(a) of GATT 1994.

(h) Enlargement of the Central European Free Trade Agreement (CEFTA) (G/C/M/10)

11.10 At the meeting of 22 May 1996, the Slovak Republic on behalf of the parties to the Central European Free Trade Agreement (CEFTA) and Slovenia informed the Council that the text of the CEFTA had been complemented by provisions of Article 39 (a) which allowed for accession to the CEFTA by other countries. On this basis, the Republic of Slovenia had signed the Agreement on Accession

with the four parties on 25 November 1995. The Agreement was being applied on a provisional basis and would enter into force once ratification procedures in the countries, parties to this Agreement, had been completed.

(i) Europe Agreements between the European Communities and the Czech Republic, and the European Communities and the Slovak Republic (G/C/M/10)

11.11 At the meeting of 22 May 1996, the Chairman informed the Council that the Europe Agreement between the EC and the Czech and Slovak Federal Republic, had been replaced by separate Agreements with each of the successor states. The examination of these Agreements (WT/REG18/6 and 7) would take place in the Committee on Regional Trade Agreements.

(j) Free-Trade Agreement between the Czech Republic and Romania (G/C/M/11)

11.12 At its meeting of 5 July 1996, the Council took note of the notification from the parties to the Agreement (WT/REG26/N/1), which also indicated that since the entry into force of the Agreement (WT/REG26/1), the parties had agreed to accelerate the elimination of customs duties on most industrial products (WT/REG26/2). In 1995, the Council had been informed that this Free Trade Agreement, signed on 24 October 1994, was being applied provisionally since 1 January 1995, and was to be established over a transitional period ending not later than 1 January 1998. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(k) Free-Trade Agreement between the Slovak Republic and Romania (G/C/M/11)

11.13 At its meeting of 5 July 1996, the Council took note of the notification from the parties to the Agreement (WT/REG27/N/1), which also indicated that since the entry into force of the Agreement (WT/REG27/1), the parties had agreed to accelerate the elimination of customs duties on most industrial products (WT/REG27/2). The Council had been informed in 1995, that this Free Trade Agreement, signed on 24 October 1994, was being applied provisionally since 1 January 1995, and was to be established over a transitional period ending not later than 1 January 1998. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(l) Free Trade Agreement between the EFTA States and Estonia (G/C/M/13 and Corr.1)

11.14 At its meeting of 19 September 1996, the Council took note of the notification from the parties to the Agreement (WT/REG28/N/1), indicating that the Free Trade Agreement (WT/REG28/1) was signed on 7 December 1995 and had been applied on a provisional basis as of 1 June 1996, pending ratification by the parties to the Agreement. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(m) Free Trade Agreement between the EFTA States and Latvia (G/C/M/13 and Corr.1)

11.15 At its meeting of 19 September 1996, the Council took note of the notification from the parties to the Agreement (WT/REG29/N/1), indicating that the Free Trade Agreement (WT/REG29/1) was signed on 7 December 1995 and had been applied on a provisional basis as of 1 June 1996, pending ratification by the parties to the Agreement. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

(n) Free Trade Agreement between the EFTA States and Lithuania (G/C/M/13 and Corr.1)

11.16 At its meeting of 19 September 1996, the Council took note of the notification from the parties to the Agreement (WT/REG30/N/1), indicating that the Free Trade Agreement (WT/REG30/1) had been applied on a provisional basis as of 1 August 1996, pending ratification by the parties to the Agreement. The Council adopted the terms of reference under which the Committee on Regional Trade Agreements should examine this Agreement.

12. Waivers under Article IX of the WTO Agreement

(a) Harmonized System - Requests for extensions of waivers

Bangladesh, Bolivia, Guatemala, Jamaica, Morocco, Nicaragua, Sri Lanka (G/C/M/11)

12.1 At its meeting of 5 July 1996, the Council considered requests by Bangladesh (G/L/77), Bolivia (G/L/78), Guatemala (G/L/86), Jamaica (G/L/79), Morocco (G/L/80), Nicaragua (G/L/81) and Sri Lanka (G/L/83) for an extension until 30 April 1997 of waivers already granted in connection with their implementation of the Harmonized System.

12.2 The Council approved the texts of the draft decisions on the waiver extensions in G/C/W/40 (Bangladesh), G/C/W/41[2] (Bolivia), G/C/W/48[3] (Guatemala), G/C/W/42 (Jamaica), G/C/W/43 (Morocco), G/C/W/44 (Nicaragua) and G/C/W/46 (Sri Lanka), and recommended their adoption by the General Council.

(b) Malawi - Renegotiation of Schedule LVIII (G/C/M/8)

12.3 At its meeting of 29 January 1996, the Council considered a request by Malawi (G/L/51) for an extension, until 30 June 1996, of the waiver granted to it in connection with the renegotiation of its Schedule. The Council approved the text of the draft decision (G/C/W/31) on the waiver extension, and recommended its adoption by the General Council.

(c) Senegal - Renegotiation of Schedule XLIX (G/C/M/11)

12.4 At its meeting of 5 July 1996, the Council considered a request by Senegal (G/L/82) for an extension, until 30 April 1997, of the waiver granted to it in connection with the renegotiation of its Schedule. The Council approved the text of the draft decision (G/C/W/45) on the waiver extension, and recommended its adoption by the General Council.

(d) Zambia - Renegotiation of Schedule LXXVIII (G/C/M/11)

12.5 At its meeting of 5 July 1996, the Council considered a request by Zambia (G/L/84) for an extension, until 30 April 1997, of the waiver granted to it in connection with the renegotiation of its Schedule. The Council approved the text of the draft decision (G/C/W/47) on the waiver extension, and recommended its adoption by the General Council.

[2] G/C/W/41/Corr.1 in Spanish.

[3] G/C/W/48/Corr.1 in Spanish.

(e) Decision on the introduction of Harmonized Commodity Description and Coding System (HS) changes into WTO schedules of tariff concessions on 1 January 1996 (G/C/M/11)

12.6 At its meeting of 5 July 1996, the Council considered the draft of a decision (G/MA/W/6) concerning a waiver, which related to the HS96 changes to be introduced in Member's tariff schedules on 1 January 1996. A waiver had appeared necessary for those Members finding it necessary to consult or negotiate under Article XXVIII of GATT 1994 as a result of the HS96 changes. The Council approved the extension of the time-limits set out in the draft decision and agreed that it be transmitted to the General Council for adoption.

(f) Waivers falling under paragraph 2 of the Understanding in Respect of Waivers of Obligations under GATT 1994 (G/C/M/11, 13 and Corr.1 and 14)

12.7 At its meeting of 19 September 1996, the Council took note of the concerns voiced by one delegation regarding the important number of requests for extensions of waivers from the obligations under paragraph 1 of Article I of GATT 1994. In the view of this delegation, stricter conditions applied under the WTO than under GATT 1947 for the granting of waivers or their possible extensions.

(i) Cuba - Paragraph 6 of Article XV of GATT 1994 (G/C/M/11 and 13 and Corr.1)

12.8 At its meeting of 5 July 1996, the Council considered the request for an extension of a waiver by Cuba (G/L/89) with respect to paragraph 6 of Article XV of the GATT 1994. The Council agreed to revert to this issue, as appropriate, in the light of the outcome of further consultations that were in progress.

12.9 At its meeting of 19 September 1996, the Council took note of the statement by the Chairman that the consultations had led to an understanding that waivers falling under paragraph 2 of the Understanding in Respect of Waivers of Obligations under GATT 1994 should follow the procedure set out in paragraph 3 of Article IX of the WTO Agreement. The Council approved the draft decision (G/C/W/51/Rev.1) on the waiver extension, and recommended its adoption by the General Council.

(ii) United States - Former Trust Territory of the Pacific Islands (G/C/M/13 and Corr.1)

12.10 At its meeting of 19 September 1996, the Council considered a request by the United States (G/L/101) for an extension of the waiver from its obligations under paragraph 1 of Article I of GATT 1994. The Council approved the draft decision (G/C/W/53) on the waiver extension and recommended its adoption by the General Council.

(iii) United States - Imports of Automotive Products (G/C/M/13 and Corr.1 and 14)

12.11 At its meeting of 19 September 1996, the Council considered a request by the United States (G/L/103 and Corr.1) for an extension of the waiver granted in connection with imports of automotive products. In light of one delegation's request for further information on this waiver request, the Council agreed to revert to this matter at its next meeting.

12.12 At its meeting of 15 October 1996, the Council approved the draft decision (G/C/W/55) on the waiver extension and recommended its adoption by the General Council.

(iv) United States - Andean Trade Preference Act (G/C/M/13 and Corr.1)

12.13 At its meeting of 19 September 1996, the Council considered a request by the United States (G/L/102) for an extension of the waiver granted in connection with the Andean Trade Preference Act.

The Council approved the draft decision (G/C/W/54) on the waiver extension and recommended its adoption by the General Council.

(v) Canada - CARIBCAN (G/C/M/13 and Corr.1)

12.14 At its meeting of 19 September 1996, the Council considered a request by Canada (G/L/100) for an extension of the waiver granted in connection with CARIBCAN. The Council approved the draft decision (G/C/W/52) on the waiver extension and recommended its adoption by the General Council.

(vi) European Communities (G/C/M/13 and Corr.1)

- European Communities - Fourth ACP-EEC Convention of Lomé

12.15 At its meeting of 19 September 1996, the Council considered a request by the EC and the Governments of the ACP States which were also WTO Members (G/L/107 and 108) for an extension of the waiver granted in connection with the Fourth ACP-EEC Convention of Lomé. The Council approved the draft decision (G/C/W/58/Rev.1) on the waiver extension and recommended its adoption by the General Council.

- France - Trading Arrangements with Morocco

12.16 At its meeting of 19 September 1996, the Council considered a request by the EC (G/L/107 and 109) for an extension of the waiver granted in connection with France - Trading Arrangements with Morocco. The Council approved the draft decision (G/C/W/59/Rev.1) on the waiver extension and recommended its adoption by the General Council.

(vii) South Africa - Base Dates under Article I:4 (G/C/M/13 and Corr.1)

12.17 At its meeting of 19 September 1996, the Council considered a request by South Africa (G/L/104) for an extension of the waiver granted in connection with base dates under Article I:4 of the GATT. The Council approved the draft decision (G/C/W/56/Rev.1) on the waiver extension and recommended its adoption by the General Council.

(viii) Zimbabwe - Base Dates under Article I:4 (G/C/M/13 and Corr.1)

12.18 At its meeting of 19 September 1996, the Council considered a request by Zimbabwe (G/L/106) for an extension of the waiver granted in connection with base dates under Article I:4 of the GATT. The Council approved the draft decision (G/C/W/57/Rev.1) on the waiver extension and recommended its adoption by the General Council.

13. Issues raised concerning Members' trade practices

(a) Brazilian Measure concerning the automotive sector (G/C/M/8, 9 and 10)

13.1 At its meeting of 29 January 1996, the Council took note of the information provided by Brazil, that after negotiations with Mercosur, the Brazilian Government had sent to Congress a Provisional Measure 1235 that dealt with the automotive sector.

13.2 At the meeting of 19 March 1996, the representative of Brazil informed the Council that it had submitted to the Secretariat on 15 March 1996, a request for a waiver (G/L/68) from certain WTO

obligations as a consequence of the adoption of a special regime concerning investment measures in the automotive sector.

13.3 At the meeting of 22 May 1996, Brazil informed the Council that, following informal consultations with interested WTO Members, it had withdrawn its request for a waiver (G/L/75), presented on 15 March 1996, regarding the Brazilian automotive regime.

(b) US draft bill concerning the definition of "domestic industry" in the area of safeguards (G/C/M/8)

13.4 At the meeting of 29 January 1996, the representative of Mexico expressed concern regarding a draft bill that was passed in the US Senate concerning the definition of "domestic industry" in the United States legislation in the area of safeguards when dealing with perishable agricultural products.

(c) US - "Cuban Liberty and Democratic Solidarity Act of 1996" (G/C/M/9)

13.5 At the meeting of 19 March 1996, the representative of Cuba voiced concern at the signing into law by the US President of the "Cuban Liberty and Democratic Solidarity Act of 1996", which in the view of Cuba harmed the interests of third-country WTO Members due to its extraterritorial effects".

(d) Ban on exports of wild-harvested shrimps to the US (G/C/M/9 and 10)

13.6 At the meeting of 19 March 1996, the representative of the Philippines, also on behalf of the ASEAN countries, informed the Council that following the decision of the US Court of International Trade on 29 December 1995, exports of wild-harvested shrimps to the US after 1 May 1996 would be embargoed if the exporting country did not adopt sea turtle conservation programs comparable to the US program.

13.7 At the meeting of 22 May 1996, the representative of Hong Kong expressed concern on this matter, and requested further information from the United States.

(e) US Narcotics Control Trade Act (G/C/M/9)

13.8 At the meeting of 19 March 1996, the representative of Mexico informed the Council of a US draft Bill which if it became law could cause problems to US trading partners. The Bill would oblige the US government to impose trade sanctions on those countries which it felt were not doing enough to act against the production or traffic in illegal narcotics.

(f) Impairment by the European Community of Tariff Treatment of High Technology Products (G/C/M/10)

13.9 At the meeting on 22 May 1996, the United States informed the Council that on 2 May 1996, it had requested consultations with the EC concerning tariff treatment being applied to high technology products, i.e. Local Area Network (LAN) equipment and personal computers with television capability (G/L/73).

(g) Argentine footwear (G/C/M/11)

13.10 At the meeting of 5 July 1996, the United States representative stated that in September 1995, Argentina had enacted decrees which established specific duties for imports of footwear, textiles and apparel. In the view of the US, these specific duties violated Argentina's tariff bindings, and its obligations under the Customs Valuation Agreement.

(h) US request for Consultations concerning Restrictive Business Practices in the Japanese Photographic Film and Paper Market (G/C/M/13 and Corr.1)

13.11 At the meeting of 19 September 1996, the US representative stated that his government had requested consultations on this matter with Japan pursuant to the CONTRACTING PARTIES' Decision of 1960 on "Restrictive Business Practices: Arrangements for Consultations" under the GATT (BISD 9S/170).

(i) EC proposal on "Trade Facilitation" (G/C/M/15)

13.12 At the meeting of 1 November 1996, under "Other Business", the representative of the European Communities drew attention to a proposal submitted by his delegation on trade facilitation (G/C/W/67). This proposal covered the question of simplification and harmonization of trade procedures in order to arrive at lower trade barriers and improved market access.

14. Agreement on Preshipment Inspection

(a) Commencement of Operations of the Independent Review Entity (G/C/M/10 and 15)

14.1 At the meeting of 22 May 1996, the Chairman informed the Council that the Independent Review Entity under the Agreement on Preshipment Inspection, established by Decision of the General Council (WT/L/125/Rev.1) at its meeting of 13 December 1995, had become operational as of 1 May 1996 (G/PSI/IE/2).

14.2 At the meeting of 1 November 1996, the Chairman informed the Council that since the Independent Review Entity (IE) had become operational, the IE had received no applications requesting independent review.

(b) Review under Article 6 of the Preshipment Inspection (PSI) Agreement (G/C/M/13 and Corr.1 and 14)

14.3 At the meeting of 19 September 1996, the Chairman informed the Council that Article 6 of the PSI Agreement provided for a review of the provisions, implementation and operation of this Agreement by the Ministerial Conference at the end of the second year from the date of entry into force of the WTO Agreement. However there was no specific body designated to conduct such a review. The Council agreed to the Chairman's proposal to consult informally on the question of the body to be designated to conduct the review as well as the timing of the exercise.

14.4 At its meeting of 15 October 1996, the Council recommended that the General Council acting on behalf of the Ministerial Conference in accordance with Article IV:2 of the Agreement establishing the World Trade Organization, set up a Working Party under the Council with the following terms of reference: "to conduct the review provided for under Article 6 of the Agreement on Preshipment Inspection and to report to the General Council through the Council, in December 1997."[4]

(c) Notifications (G/C/M/15)

14.5 At its meeting of 1 November 1996, the Council had before it documents concerning information on the notifications submitted by Members under the Agreement. Pursuant to Article 5 of the Agreement, 35 Members had notified their laws and regulations by which they had put the Agreement into force

[4]See 1 of "Section II: Conclusions and/or Recommendations".

as well as other laws and regulations relating to preshipment inspection (G/PSI/N/1, Add.1, Add.2, Add.3, and Add.4). Of these, 3 Members had notified laws and regulations putting the Agreement on Preshipment Inspection into force; 13 Members had notified other laws and regulations relating to preshipment inspection; and 19 Members had notified that they had no laws or regulations relating to preshipment inspection.

15. Working Group on Notification Obligations and Procedures

(a) Status of work in the Working Group (G/C/M/9)

15.1 At its meeting of 19 March 1996, the Council took note of the report provided by the Chairman of that Group on the status of work in the Group. The Group had identified four general subjects for examination namely: (1) duplication of notification obligations; (ii) simplification of data requirements and the standardization of formats; (iii) improvement in the timing of the reporting process; and (iv) possible assistance to some developing countries in meeting their notification obligation. The Council took note of the report.

(b) Report of the Working Group on Notification Obligations and Procedures (G/C/M/14)

15.2 At its meeting of 15 October 1996, the Council considered the report of the Working Group (G/L/112) and took the following action on the recommendations contained in the report:

(1) it agreed to request the Committee on Agriculture to consider the modified notification formats contained in the draft revision to document G/AG/2, as set out in document G/NOP/W/15 and to request the Committee on Subsidies and Countervailing Measures to consider the modified notification formats contained in draft revision to document G/SCM/6, as set out in document G/NOP/W/15. Both Committees should consider the modified notification formats with a view to achieving greater coherence and efficiency in the notification system;

(2) it agreed to request the General Council to take the necessary steps to eliminate the notification obligations in the Decisions of the GATT 1947 CONTRACTING PARTIES relating to import licensing procedures (L/3756 and SR/28/6)[5]. The Council also agreed to refer the Decisions of the GATT 1947 CONTRACTING PARTIES relating to quantitative restrictions and non-tariff measures (BISD 32S/92-93 and BISD 31S/227-228), and to Marks of Origin (BISD 7S/30-33) to the Market Access Committee, and to retain the Decision on Liquidation of Strategic Stocks (BISD 3S/51) in the Council, for further consideration;

(3) it agreed that a comprehensive listing of notification obligations and the compliance therewith by all WTO Members be maintained on an ongoing basis and be circulated semi-annually to all Members. The Council also agreed to an updating of the listing of notifications received, as set out in Annex III to the report of the Working Party, prior to the Singapore Ministerial Meeting;

(4) it agreed to consider the preparation of general guidelines for the bodies under its purview, providing for the regular review of questionnaires and formats and of the situation as regards compliance with notification obligations;

(5) it agreed to forward the to the Committee on Trade and Development the recommendation that "active consideration be given …to the development of a special programme of assistance to developing country Members and particularly to the least-developed country Members providing more

[5]See 2 (a) of "Section II: Conclusions and/or Recommendations".

intensive technical assistance, possibly with the participation of other organizations, focusing on the development of systems and structures required to respond to notification obligations";

(6) it agreed to request the Ministerial Conference or the General Council to consider the establishment, at an appropriate time, of a body with a mandate to review the notification obligations and procedures throughout the WTO Agreement. Alternatively, consideration might be given to the establishment of a body, or the extension/modification of the mandate of the current Working Group, to conduct, at an appropriate time, a further comprehensive review of the notification obligations and procedures in the agreements in Annex 1A of the WTO Agreement. It was suggested that future work also encompass matters relating to the Central Registry of Notifications, electronic transmission of notifications and further work on the notifications handbook[6].

15.3 In connection with the last recommendation, one delegate stated that his delegation preferred the establishment of a body to conduct at the end of 1998 a comprehensive review of notification obligations and procedures in all the agreements covered by the WTO and not just those in Annex 1A.

16. Implementation of the Agreement on Textiles and Clothing (ATC) and related matters (G/C/M/11, 12, 13 and Corr.1, 14 and 15)

16.1 The Council, at the request of some Members, discussed the implementation of the Agreement on Textiles and Clothing and related matters pursuant to Article IV:5 of the WTO Agreement and in preparation for the Singapore Ministerial Conference. The discussion took place on 5 July, 25 July, 19 September and 15 October 1996.

16.2 The Council's discussion was based on written contributions by Pakistan on behalf of the ASEAN Members of the WTO, i.e. Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand; and Hong Kong, India, Korea and Pakistan (G/L/92); the United States (G/L/95 and Add.1); and the European Communities (G/L/97). The Council also had before it the report of the Textiles Monitoring Body (G/L/113).

Issues and Problems

16.3 The full account of the discussions in the Council was provided in the minutes of its meetings (G/C/M/11-14). The key issues and problems identified were the following:

(i) Integration Programmes

16.4 Recalling that a central feature of the ATC was the progressive character of the integration process, concerns were expressed that the first stage of integration programmes implemented by four importing Members on 1 January 1995 had not been commercially meaningful as none of the products integrated (except one product (work gloves) by one Member) had been subject to quantitative restrictions. Moreover, these products had been concentrated in relatively less value-added areas. The first stage integration had therefore not meaningfully improved access to these markets. There were no indications that the second stage integration on 1 January 1998 would be more commercially meaningful. The integration programmes should contain a mixture of restrained and unrestrained products, and a balanced proportion of sensitive and non-sensitive products with greater emphasis on clothing. Only integration programmes on these lines would ensure a smooth transition to the GATT/WTO disciplines, in the interest of both restraining and exporting Members.

16.5 In response, it was stated that the choice of products to be integrated at each intermediate stage was a matter for each individual Member to decide. This could, with perfect legitimacy, result in

[6]See 2 (b) of "Section II: Conclusions and/or Recommendations".

products being integrated which were not subject to restrictions. Specific proposals had been made in the negotiations, providing for mandatory integration of restrained products, but these proposals had not been retained. The requirements stipulated in the ATC had been fully met. A number of products to be integrated or being proposed for integration at Stage Two were subject to quantitative restrictions. The growth factors which were also required in the ATC were having a very significant impact on quota levels, both in terms of liberalization and their contribution to continuous adjustments and increased competition in the markets of restraining Members. Furthermore, the ATC contained a provision for early elimination of restrictions, which one Member had made use of. In addition, it was stated that pursuant to Article 7, Members should take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as, *inter alia*, to achieve improved access to exporting Members' markets for textiles and clothing products as part of the integration process.

16.6 It was also argued that integration had a separate purpose and had not been designed as the primary means of liberalization. In response, it was argued that the ATC contemplated integration to proceed in parallel with increased growth rates; in addition, both these processes were also designed to achieve progressive liberalization of trade.

(ii) Use of Transitional Safeguards

16.7 Concerns were expressed that the introduction of transitional safeguard measures would have a restrictive as well as a disruptive effect on trade, even if they were subsequently rescinded. They could also frustrate the integration process. The ATC's transitional safeguard was a deviation from GATT 1994, because it was selective and discriminatory in nature. The ATC recognized the exceptional nature of the transitional safeguard and provided for it to be applied "as sparingly as possible, consistently with the provisions of this Article and the effective implementation of the integration process" (Article 6.1). However, in the first year of the ATC, one WTO Member had notified the invocation of this clause in respect of 24 cases within the space of a few months against no less than 14 WTO Members, which were all developing countries. In the case of seven of these actions which came in the form of dispute cases before the TMB, three had been rescinded after the TMB found no justification for them. Three actions had been brought before the Dispute Settlement Body, of which two were currently being examined by panels. The fragile grounds on which Article 6 had been invoked in these cases was also borne out by the fact that in another seven cases, the requests for consultations or the measures adopted had been withdrawn even before they could be reviewed by the TMB; this included an action where imports of a product had already been restrained from the Member concerned. An unduly large number of restraints were still in place. The transitional safeguard had thus been used in violation of this important provision, and also contrary to the "objective of further liberalization of trade" referred to in the preamble to the ATC.

16.8 In response, it was stated that any Member had the right to invoke safeguard measures. All the invocations referred to had been consistent with ATC procedures and were justified. A number of measures had been rescinded and at present 11 restraints were in place. Requests for consultations were made to give time for trade to adjust and to prevent damage in the market and once this was achieved the measures were rescinded. The TMB recommendations had been heeded. The concept of "sparingly" was a relative one and should also be seen in the light of the fact that the Member in question was a huge importer. The existence of this provision helped to proceed with greater confidence in going ahead with the integration process. The overall effect of what had happened seems not to be discouraging for the future of the integration process. Over the last nine months the particular Member had made only one request for consultations under this Article. As a result, the total number of requests for consultations had been considerably lower than in 1995. It was also argued that the use of Article 6 was not exceptional in nature. In the negotiations specific proposals had been made that would have avoided the use of discriminatory measures, but these proposals had not been retained.

(iii) Bilaterally Agreed Arrangements

16.9 It was stated that a fundamental concept of the ATC was to strengthen the multilateral disciplines in the field of textile and clothing trade with a view to ensuring final integration of the sector into the GATT/WTO rules. It was recalled that, in the context of safeguard measures, a number of bilateral arrangements had been notified. Concern was expressed that though under the ATC the TMB was required to determine whether these bilateral arrangements had been justified in accordance with the provisions of Article 6, some of these had not been subsequently confirmed by the TMB as being in conformity with the provisions of the ATC. The absence of endorsement by TMB of a safeguard action did not make the safeguard action legal. Thus, the integrity of the multilateral rules and disciplines was weakened.

16.10 In response, it was stated that Article 6 made explicit provisions for bilaterally agreed restraint measures, and some other Articles also provided that Members consult with a view to reaching mutually agreed solutions. In the absence of confirmation by the TMB, a safeguard action did not become illegal. During the negotiations a proposal had been made for mandatory endorsement of safeguard actions by the TMB. This proposal had not been retained.

16.11 In response, it was pointed out that Article 6.9 of the ATC provided for a TMB determination as to whether bilaterally agreed restraint measures were in accordance with the provisions of Article 6.

(iv) Functioning of the Textiles Monitoring Body

16.12 It was recalled that the TMB was required to supervise the implementation of the ATC, to examine all measures taken under it and their conformity therewith, and to take the actions specifically required of it by the ATC (Article 8.1). Before raising a textile matter in the Dispute Settlement Body, it had first to be raised at the TMB. Concerns were expressed that, in order to retain the confidence of all Members, there was a particular need to enhance transparency of the TMB's functioning, and to ensure *ad personam* participation by its members so as to ensure impartiality. The TMB had recognized that in a few cases it could not arrive at a consensus decision on matters brought to it, and, therefore, could not fulfil its mandate. This, apart from having an adverse impact on trade, had seriously modified the balance of rights and obligations of the ATC. The TMB should ensure that such situations did not arise in future. The TMB should give adequate reasons for its recommendations or, where recommendations should have been made but were not made, the main reasons underlying the TMB's failure to discharge its functions should have been made known. This would have enhanced the effectiveness and accountability of the Body as a whole and would have further strengthened the confidence of WTO Members that the way TMB functions was fair. Those Members which maintained a permanent seat in the Body had the advantage of maintaining an "institutional memory" on points which could be revisited in the future, unlike other Members whose representatives served in the TMB on a rotating basis. Greater transparency would provide rotating members with a better understanding. In reviewing safeguard measures, the TMB had, on occasions, failed to point out substantive as well as procedural inconsistencies in measures taken. Its review process had not always taken place within ATC disciplines. The TMB should also make available notifications received by it to all WTO Members without delay. Under Article IV:5 of the WTO Agreement, the Council "shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A."

16.13 In response, it was stated that the TMB had done its job under difficult circumstances; one had full confidence in its competence and integrity. The TMB had succeeded, by a systematic approach, in setting certain standards for assessing the justification of the existence of serious damage. The TMB's role and responsibilities as established by the ATC should be recognized. The view that the TMB had erred in procedures and substance on some occasions could not be shared. Some of the TMB's problems were due to ambiguities in the ATC itself. The TMB was a quasi-judicial body, therefore, there were reasonable limits to how transparent it could be. The TMB had acknowledged problems

with decision-making and had mentioned as possible factors the circumstances of its establishment, the large number of disputes it had faced and tight time-constraints under which it often operated. Its reports had to be carefully crafted and if more transparency was requested then the reports would have to be more detailed, which would in turn also increase the TMB's workload and difficulties with respect to decision-making. Despite best efforts and certainly good faith efforts, the TMB had faced cases the nature of which required time - it was unfair to criticise this. One could only urge that it make greater efforts and hope that its members could overcome divergencies of views and enhance TMB's ability to reach consensus. The TMB's report to the Council had facilitated increased transparency, which should be encouraged.

16.14 It was also stated that the degree of acceptance or compliance with TMB recommendations would be one important element in any assessment of its functioning. It was argued that the fact that one Member declined to follow a TMB recommendation affirming a Member's safeguard action undermined the ATC's assumption that Members would follow the TMB's recommendations.

16.15 In response, it was pointed out that the ATC did not require governments to comply with TMB recommendations but to endeavour to accept them in full and that it would be wrong to imply that affected exporting Members should not exercise the dispute settlement rights under Article 8.10.

(v) Treatment of Small Suppliers and Least Developed Countries

16.16 With respect to small suppliers, it was recalled that, according to Article 1.2, meaningful increases in access possibilities must be provided for small suppliers, using the provisions of Articles 2.18 and 6.6(b). Concern was expressed that the only way to determine if the provisions were being complied with was to receive notifications from Members imposing or maintaining restrictions, indicating the way in which "meaningful increases" in access possibilities were being implemented.

16.17 In response it was stated that the Members were abiding now and would continue to abide by their obligations to small suppliers.

16.18 It was recalled that the ATC provided that, to the extent possible, exports from a least-developed country Member might also benefit from the provisions of Article 2.18 (concerning improved growth in quota levels) so as to permit meaningful increases in access possibilities for such Members. Provisions on special treatment of LLDCs had also been provided in the preamble, in the footnote to Article 1.2 and in Article 6.6(a). These provisions did not specify the precise modalities for according such treatment, but one way might be to review the quotas in place, including more favourable growth rates. In the Marrakesh Declaration, Ministers had recognized the importance of the implementation of special provisions for the LLDCs and had declared their intention to continue to assist and facilitate the expansion of their trade and investment opportunities. They had agreed to keep under regular review by the Ministerial Conference and the appropriate organs of the WTO the impact of the results of the Uruguay Round on the LLDCs with a view to fostering positive measures to enable them to achieve their development objectives. Positive measures were required to stop the further marginalization of LLDCs, whose integration into the global trading system would be in the interest of all WTO Members.

16.19 In response, it was stated that Members were abiding now and would continue to abide by the best endeavour provisions in favour of LLDCs. One Member added that although it maintained restraints on certain textile exports of an LLDC Member, that Member, although being a very large supplier, had unusually free access and benefitted from initial quota growth rates in excess of 8 per cent. Another Member added that it had no restraints on LLDCs and that it applied zero tariffs.

(vi) Particular Interests of Cotton-Producing Countries

16.20 Recalling that according to Article 1.4 "the particular interests of the cotton producing exporting Members should, in consultation with them, be reflected in the implementation of the provisions of this Agreement", it was pointed out that, as was clear from the quoted wording, the onus of consultations was on the importing Member integrating products into GATT 1994. Concern was expressed that no such consultations had been notified, nor held. The TMB had received no notifications relating to the implementation of this provision. It should have sought information from the Members concerned. Therefore the requirements of this provision had not been fulfilled and the particular interests of cotton-producing exporting Members had not been reflected in the implementation of the provisions of the ATC.

16.21 In response it was stated that this provision had been faithfully implemented. No specific consultations had been requested from any Member with respect to this provision. Some Members had held consultations with a number of countries which they considered to be relevant to Article 1.4. There was no obligation to notify the TMB and no Member had taken this issue to the TMB.

(vii) Rules of Origin

16.22 It was recalled that according to the ATC the introduction of changes, such as changes in practices, rules and procedures, should not upset the balance of rights and obligations between the Members concerned; adversely affect the access available to a Member; impede full utilization of such access; or disrupt trade under the ATC (Article 4.1). The Agreement on Rules of Origin (ARO) further provided that pending the completion of the work programme for harmonization of origin rules, Members should ensure, *inter alia*, that their rules of origin were not used as instruments to pursue trade objectives directly or indirectly. Concerns were expressed that one Member had implemented changes in its origin rules for textile and clothing products as an instrument of trade policy. This was contrary to the provisions of the ARO as well as Article 4 of the ATC, and had introduced great uncertainty and unpredictability with adverse effects on the exports of a large number of Members. Corrections to this situation were necessary. The harmonization of the rules of origin had been mandated by the ARO to be undertaken at the multilateral level; the fact that the Member concerned had harmonized its rules of origin relating to imports of textiles and clothing products unilaterally demonstrated that it had proceeded contrary to the relevant provisions of the ARO and the ATC. This development was very disturbing considering that the objective of the ATC was to bring about further liberalization, not restrictions, of trade in textiles and clothing.

16.23 In response, it was stated that Members requesting consultations under Article 4 were required to show that there had been a change in the implementation and administration of restrictions and if that was the case, that they had been adversely affected or trade disrupted. In consultations with various Members, it had in a number of cases been agreed that the implementation of revised origin rules had had no adverse impact. In cases where adverse impact could be demonstrated, the particular Member was working towards a mutually satisfactory solution. The new rules had been designed to conform with rules of other Members and also to provide greater protection against circumvention. One Member had expressed concern about the new rules and was consulting with the Member in question, but had so far not requested the intervention of any WTO body. The Members who felt that they were affected by the changes in the rules were free to raise the matter in the appropriate forum.

(viii) Other ATC Issues (Outward Processing Trade, Special Regimes, etc.)

16.24 It was stated that a fundamental principle of the GATT/WTO was the elimination of discriminatory treatment in international commerce. Concerns were expressed, however, that special regimes were continually being extended to provide better access to certain Members. Special regimes were also being used to promote the interests of special interest groups in importing countries, such

as manufacturers of fabrics at the expense of the export of textile and clothing products from developing country manufacturers. It should be ensured that access rights of other restrained Members were not adversely affected.

16.25 In response it was stated that the ATC required more favourable treatment to qualifying re-imports as defined by the laws and practices of the importing country. The ATC gave importing Members discretion on what type of more favourable treatment was to be given to this trade. A particular Member was currently providing more favourable treatment to re-imports under its outward processing programme, fully consistent with the ATC.

(ix) Relationship Between Restrictions and Regionalism

16.26 Concerns were expressed that expanding restrictions in the context of regionalism had adverse implications, especially for the export prospects of developing country Members. Unilateral restrictions under the pretext of regional obligations could not be justified under GATT 1994 or the ATC and could undermine the implementation of the ATC objective of further liberalization of trade.

16.27 In response, it was stated that regionalism could beneficially influence trade in overall terms through its impact on both quantitative restrictions and tariff rates. General conclusions could not be drawn from very specific individual cases. The general question of regionalism should appropriately be discussed in the Committee on Regional Trading Arrangements.

(x) Use of Trade Measures for Non-Trade Purposes

16.28 Concerns were expressed that pressures had been growing for trade measures in pursuit of non-trade objectives, particularly affecting textile products. Often, such measures carried a protectionist bias, were based on criteria outside the framework of WTO rules and disciplines, produced serious disruptive effects for the trade interest and prospects of developing country Members, and may impinge on the effective implementation of the ATC. Measures being adopted or contemplated under the pretext of social and environmental concerns were examples of such non-tariff barriers.

16.29 In response it was stated that it was inappropriate to concentrate on just one sector when dealing with this issue which had a much broader scope than textiles trade. The subject should be dealt with in a wider context.

(xi) Market Access

16.30 It was stated that an important element of the ATC was increased opening of the textiles markets of all WTO Members. Article 7.1(a) provides that "as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to: (a) achieve improved access to markets for textile and clothing products through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities". Concerns were expressed that some exporting Members had not complied with their obligations under Article 7. In examining the extent to which the commitment to achieve improved access to markets had been complied with, attention should also be paid to any instances where *de facto* market access had been reduced through the raising of applied tariff rates, in addition to the reduction or elimination of non-tariff barriers. One Member had invited exporting Members to make it clear in what way they would be prepared to give effect to this commitment. A trade-off for the progressive liberalization of restraints by importing Members was the removal of various impediments to textile imports by exporting Members.

16.31 In response, it was stated that the Uruguay Round results constituted a total package with a general equilibrium between rights and obligations for all Members. Benefits given to certain Members in the ATC through progressive integration of the textile and clothing trade into the ATC were trade-offs for the obligations these Members had undertaken in other Agreements. Besides, Article 7 explicitly referred to "specific commitments undertaken by Members as a result of the Uruguay Round" and therefore there was no obligation on the part of any Member to provide additional market access over and above the commitments already included in its Schedule of Commitments. International trade could not be conducted on a basis of sectoral reciprocity. There had been notifications expressing appreciation to certain exporting Members for having provided effective access in their markets for textiles and clothing products. No provisions in the ATC required that the integration be conditional on the removal of impediments to textile imports by exporting Members. The approach undertaken by importing Members at offering more meaningful integration in exchange for greater market access in exporting Members was not justified. The suggestion that attention should also be paid to increased applied tariff rates was rejected because the multilateral trading system had, as its cornerstone, the concept of bindings of tariffs. It was the right of any Member to apply any rates so long as these were within the bound levels in its schedule. Applied rates could fluctuate depending on the revenue and development needs of Members.

16.32 In response, it was stated that there was no attempt to establish a new kind of conditionality; what was being looked for was the widest possible contribution to the worldwide liberalization of trade in textiles and clothing. A Member, of course, might adjust an applied tariff rate upwards to the bound level. However, one would seriously question the logic of those who would argue that there was no deterioration of the real conditions of market access to countries that make such adjustments.

16.33 The points were also made that neither in the Market Access Committee, the TMB nor the DSB had there been complaints as to compliance with market access obligations. The scheduled commitments only provided secure and predictable trading opportunities and did not necessarily translate into higher trade volumes in each case. Moreover, a large group of Members had adopted unilateral liberalization measures. What was needed was a mechanism which would enable those Members to be compensated for these measures which had benefitted the whole multilateral trading system.

(xii) Rules and Disciplines

16.34 It was stated that the Council should examine Members' compliance with GATT 1994 rules and disciplines having an impact on trade in the textiles sector. If necessary, it should request relevant information from other relevant bodies such as those dealing with anti-dumping, balance-of-payments, subsidies and/or the protection of intellectual property.

16.35 In response it was stated that an effective evaluation of the implementation of the ATC should not be extended to compliance with other WTO disciplines. There were concerns about the growing misuse of anti-dumping proceedings on textile products which resulted in the disruption and dislocation of trade amounting to trade harassment. Any perceived non-fulfilment of obligations should be brought to the attention of the relevant Committees.

(xiii) Circumvention

16.36 Concerns were expressed that effective implementation of the ATC depended on exporting Members adopting effective measures to prevent circumvention of the Agreement. Transshipment, in particular, was a large and growing problem. The overall problem of transshipment was much bigger than the amount of imports which had been subject to charge-back. Members had committed themselves in the ATC to establish the necessary mechanisms to deal with this problem. They should abide by this and commit themselves to closer cooperation in this area.

16.37 In response it was stated that the concerned Members continued to fully implement anti-circumvention measures. They had fully cooperated with their trading partners at combating and redressing situations which might suggest the existence of circumvention. They reaffirmed their commitments to close cooperation but stated that recourse to the remedies provided for in the ATC was the proper course to follow. One of the main problems was the subjective manner in which the circumvention provisions were being interpreted and applied. The magnitude of the problem should not be exaggerated. It was also pointed out that implementation of the ATC could not be made conditional on effective anti-circumvention measures.

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16.38 Divergent views were expressed with respect to possible conclusions and/or recommendations, with reference to the issues and problems referred to in paragraphs 16.4-16.37 above.

16.39 At the Council's meeting of 1 November 1996 Hong Kong, on behalf also of the ASEAN WTO Members, i.e. Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand; and Colombia, Costa Rica, India, Pakistan and Peru and with the support of some other Members, presented under "Other Business" a proposal for conclusions and recommendations in respect of the implementation of the Agreement on Textiles and Clothing. The proposal was subsequently circulated as G/C/W/65.

16.40 At the same meeting, also under "Other Business" Pakistan, on behalf of a number of Members, presented a draft of a Ministerial Decision, subsequently circulated as G/C/W/66.

16.41 Divergent views were expressed on how these proposals should be treated.

17. Textiles Monitoring Body (TMB)

Report of the TMB (G/C/M/14)

17.1 The Textiles Monitoring Body is a standing body of the WTO set up pursuant to Article 8:1 of the Agreement on Textiles and Clothing to supervise the implementation of the Agreement, to examine all measures taken under it, and their conformity with it, and to take the actions specifically required of it by the Agreement. The TMB consists of a Chairman and 10 members. The members are appointed by Members designated by the Council to serve on the TMB, discharging their function on an *ad personam* basis. The TMB's report is therefore not a report by a body consisting of WTO Members.

17.2 At its meeting of 15 October 1996, the Council considered the Report of the Textiles Monitoring Body (G/L/113) in the context of the preparations for the Singapore Ministerial Conference. The full account of the discussions in the Council was provided in the minutes of the meeting (G/C/M/14). The following is (a) a summary of the comments made by Members at that meeting; and (b) action taken by the Council.

A. Summary of Comments Made by WTO Members

17.3 Some Members stated that the report was a complete, well-documented analysis of the activities of the TMB based on the mandate given to it in the ATC. It was the most important reference document for analysis of the implementations of the ATC, giving a factual account on the way in which the Members had complied with their obligations and the way in which the different problems which had arisen had been analyzed and assessed. It was an important contribution to the Council towards understanding the major complexity of the matters being handled by the Body and the difficulties therein. The TMB was a hard-working body, and a number of delegations appreciated the amount of time and effort given by the TMB members and its Chairman to completing the report. It was also stated that it was apparent that the TMB had relied extensively on notifications by Members to perform its tasks.

17.4 Some Members stated that, according to Article 8.3, the TMB was supposed also to rely on additional and supplementary information that could or should be available to it. In certain cases, it had not sought such information, e.g. from the importing as well as the major cotton-producing Members as to whether consultations required under Article 1.4 had been conducted. The TMB had also overlooked changes in the rules of origin of one importing Member and should have been able to at least state that the transitional safeguard had not been sparingly used. The TMB had received but not yet disclosed a number of notifications involving administrative arrangements. It would seem important for the TMB to review these to ensure that they were consistent with the provisions of the ATC. It was also stated that the report confirmed almost all concerns voiced with regard to the operation of the TMB, as well as on the implementation of the ATC.

17.5 In response it was stated that no complaints had been brought to the TMB concerning changes in the rules of origin nor about non-sparing use of transitional safeguards.

17.6 It was stated that while the TMB had brought out the absence of commercially meaningful integration in the first stage, it had erred in not pointing out that the integration programmes of Members which did not maintain quantitative restrictions carried over from the MFA was a notional integration, and that the products they selected for integration had no implication for the access; unlike in the case of the four other Members.

17.7 In response it was stated that the TMB had handled the integration notifications in a factual and separate manner which recognized that the obligations concerning integration arose from differing legal provisions (paragraphs 7(a) and 7(b) of Article 2).

17.8 It was also stated that the report should have included information as to whether the Member taking safeguard action had claimed serious damage or actual threat thereof or both, and whether the TMB had found serious damage or actual threat or both.

17.9 In response it was stated that such information was not an important and certainly not a necessary element that should have been included in the report.

17.10 Some Members stated that the manner in which Article 6 notifications had been reviewed by the TMB did not always seem to have taken place within the disciplines of the ATC. For example specific limits lower than the rollback level, inconsistent with the ATC, should have been pointed out by the TMB. The TMB had accepted, in several cases, bilateral solutions which were not consistent with the letter and the spirit of the ATC; in this connection, the so-called Guaranteed Access Levels (GALs) were mentioned. The TMB had concluded that a notified restraint was justified "in overall terms", a term not used in Article 6. When further bilateral consultations had been recommended, rights and obligations had been modified. Doubts were expressed with regard to a statement in the report that Members invoking the safeguard provisions had, in all cases, strictly observed the procedural requirements. The TMB had gone beyond the provisions of the ATC, in that Article 8.9 did not envisage any requirement of Members "to comply" with TMB recommendations, especially when read with the provision of Article 8.10 which enabled Members to pursue unresolved matters in the DSB. It was also recalled that the TMB had stated its awareness of the concerns expressed by some Members with respect to lack of sufficient improvements in access to markets in some developing country Members. However, there had not been any notification by any WTO Member to the TMB with regard to the implementation of Article 7. Nor had there been any communication from the Market Access Committee to the TMB on the matter of cross- and reverse-notifications. It was surprising that the TMB should have made such an extra-jurisdictional observation.

17.11 In response to some of these points it was stated that the GALs involved an outward processing programme and Article 6 explicitly not only permitted such programmes but required that a Member using Article 6 give more favourable treatment to Members involved in outward processing programmes.

The GALs offered to certain Members were necessary to remain in conformity with Article 6. The remark by the TMB that in most cases Members could comply with recommendations was a positive statement of fact which did not reflect distorted legal obligations, namely that Members had been able, following their best endeavours, to comply in full with the recommendations made. In most cases Members had been able to abide by TMB recommendations, which boded well for the ATC. Reference had been made to dispute cases where the Body could not reach agreement, but the avoidance of decisions on late or absent notifications was of equal concern. The TMB was entitled to mention market access because Article 8:1 entrusted it with supervision of all aspects of the ATC, including Article 7.

17.12 Recalling that the report did recognize that there had been difficulties which were very often due to the limited amount of time available to review dispute cases, the view was expressed that it would be inconsistent with the provisions of the ATC to provide time-frames other than those prescribed in Article 6. The danger of accepting such a view, and transposing it to other processes under the Dispute Settlement Body, could not be over emphasized.

17.13 In response, the view was expressed that this was simply stating a fact. It was unfair to criticize the TMB in this matter. One could see from the length of the report what tasks the TMB faced. In some cases it might not be possible for the Body to reach consensus, particularly when it was operating under tight deadlines.

17.14 Recalling that the TMB had expressed awareness of the need for giving reasons for its decisions, some Members did not agree that more detailed reports might render consensus more difficult to achieve or require additional time. The discipline of having to provide reasons or common rationale for a decision or recommendation would encourage TMB members to study the various elements seriously and discharge their duties strictly in an *ad personam* capacity. The TMB's reviews should be dictated by the actions themselves rather than by the convenience of the participants. They believed greater transparency provided for greater accountability and therefore greater acceptability. It was further recalled that the TMB was concerned that in a few cases it had not been able to arrive at a consensus decision and therefore could not fulfil its mandate. The TMB also had said that this could have an adverse impact on the Members affected. It was actually concerned about the implications of unresolved issues for the continued operation of the Agreement. However, while the TMB stated its determination to take all necessary steps to overcome such difficulties, it went on to say that similar circumstances could not be excluded in the future. It was of concern that the TMB recognized that it had not fulfilled its mandate under the ATC and then also recognized the possibility that such a situation might occur again. Furthermore, the TMB was aware of the implications for trade of requests for consultations made with a view to introducing transitional safeguard measures. However, the TMB only said that further efforts would be made to provide as many details and explanations as possible. There was thus neither a demonstration of will to address the roots of the problem nor a commitment to provide common rationale.

17.15 In response the view was expressed that the TMB had been able to establish standards for the review of notifications and disputes which could provide guidance to Members with respect to the implementation of the ATC. The reasons for TMB's decisions were important not only for the parties to whom they were directed, but for all other Members. The TMB had acknowledged these problems and was determined to make every effort to overcome the obstacles to reaching decisions by consensus and to try to make its decisions more understandable. One could only urge the TMB to make greater efforts so as to enhance its ability to reach consensus decisions. An assessment of TMB's functioning could not be made without taking into consideration circumstances of its establishment, the initial workload it was faced with, as well as the importance of this sector of international trade. It was a fact that more detailed reports might render consensus more difficult to achieve and/or require additional time. Explanations in case of no consensus also required consensus in the TMB. Because of the quasi-judicial nature and neutrality requirement of the TMB there should be a reasonable limit to its transparency. Some also argued that TMB's problems were partly due to shortcomings in the ATC

itself. The ATC established the TMB and unless one was ready to embark on substantial legislative and negotiating activity which did not seem feasible, one had to continue to live with the TMB. The course of action therefore was to try to enhance its functioning precisely through a discussion such as the present one. By the very nature of its constitution the TMB had limits to a perfect performance.

17.16 It was stated that the report of the TMB had contributed towards greater transparency of the TMB functioning, and that this trend should be encouraged.

B. Action Taken by the Council

17.17 The Council took note of the TMB's report and decided to annex it to Council's own report to the General Council.

17.18 The Council also agreed to take the following action on the three recommendations made by the TMB to the Council:

(i) it took note of the observations and concerns contained in paragraph 102 of the TMB report and recalled to Members the particular importance of strictly adhering to the notification requirements under the Agreement on Textiles and Clothing;

(ii) it agreed that the Chairman resume consultations on the proposal of the *ad personam* status of TMB's members (G/C/W/20) at an appropriate time;

(iii) it took note of the recommendation that due consideration should be given to the schedule of meetings of the TMB in the WTO's overall schedule of meetings.

18. Proposals and Initiatives for Further Trade Liberalization

(G/C/M/11, 13 and Corr.1, 14 and 15)

18.1 At the meeting of 5 July 1996, the representative of Australia stated that while the built-in agenda covered many areas, it failed to deal with industrial tariffs. For that reason Australia proposed that the Singapore Ministerial Conference agree to begin comprehensive industrial tariff negotiations in the year 2000, at the same time as further negotiations in agriculture and services, and mandate the Council or the Committee on Market Access to undertake preparatory work for such negotiations as from 1997 (G/L/96).

18.2 At the meeting of 19 September 1996, the representative of Australia further clarified the proposal made by his delegation in the context of preparations for the Singapore Ministerial Conference. The Council agreed to the Chairman's proposal to consult informally on this matter.

18.3 At the meeting of 15 October 1996, the representative of Australia proposed that a draft recommendation on this matter be included in the report of the Council.

18.4 At the meeting of 1 November 1996, the representative of Australia proposed that the Council consider the inclusion of a recommendation in Section II of its report to the effect that "Members agreed to keep under review the prospect of effecting further trade liberalisation including on an autonomous, plurilateral or multilateral basis".

18.5 In the discussions of this matter in the Council, Members expressed divergent views with respect to the substance of the Australian proposal as well as the request for the inclusion of a recommendation in the report of the Council. While some Members expressed support in varying degrees for the proposal, other Members expressed opposition to the proposal as well as to the request for a recommendation.

18.6 At the resumed meeting of 4 November 1996, the representative of Australia stated that his delegation would continue to work with other delegations towards the objective that the Singapore Ministerial Conference underlines the commitment of the WTO to the further progressive liberalization of tariffs through successive rounds of multilateral trade negotiations. At this stage, Australia would not insist on the inclusion of the recommendation proposed in Section II of the Council's report.

18.7 At the meeting of 1 November 1996, under "Other Business", a proposal was also submitted by Canada on Further Tariff Liberalization (G/MA/W/9) which recommended a WTO work programme to address, *inter alia* the acceleration of Uruguay Round tariff reductions, expansion of membership for existing sectoral and harmonization initiatives, and identification of additional sectors for zero-for-zero and harmonization initiatives.

18.8 Additionally, two communications were submitted at that meeting under "Other Business": one by the United States (G/MA/W/8), concerning the Information Technology Agreement on further liberalization of information technology products; and one by the European Communities on behalf of the WTO Members concerned (G/MA/W/10), on Trade in Pharmaceutical Products outlining the review of pharmaceutical product coverage that had resulted in the addition of 465 products for duty-free treatment.

19. Singapore Ministerial Conference

(a) Reports of subsidiary bodies of the Council (G/C/M/13 and Corr.1, 14 and 15)

19.1 At its meeting of 19 September 1996, the Council agreed to the Chairman's proposal to consult informally on the Council's treatment of the reports of its subsidiary bodies.

19.2 At its meeting of 15 October 1996, the Council agreed that the broad guidelines with regard to the handling of the reports of 12 of its subsidiary bodies (i.e., the Committees on Agriculture, Anti-Dumping Practices, Customs Valuation, Import Licensing, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade, Trade-Related Investment Measures and the Working Party on State Trading Enterprises) who were expected to submit their reports on a consensus basis to the Council in the context of the Singapore Ministerial Conference, would be to take note of those reports and annex them to its own report. This would be without prejudice to the ability of Members to raise points with regard to the reports, and also the ability of the Council to record observations, to make recommendations, and to take decisions, if considered necessary. With regard to the factual report from the Independent Entity under the PSI Agreement and the report from the Working Group on Notification Obligations and Procedures, the Council agreed to treat them in the same way as the other 12 reports. As concerned the TMB report, the Council agreed to the Chairman's proposal to consult informally on how to deal with this report.

19.3 As regards the reports of the Committees on Agriculture (relating to the Marrakesh Ministerial Decision on Measures concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries)[7], Anti-Dumping Practices, Customs Valuation, Import Licensing, Market Access, Rules of Origin, Safeguards, Sanitary and Phytosanitary Measures, Subsidies and Countervailing Measures, Technical Barriers to Trade and Trade-Related Investment Measures, the Independent Entity, the Working Group on Notification Obligations and Procedures and the Working Party on State Trading Enterprises, the Council at its meeting of 1 November 1996, took note of them and decided to annex them to its own report. As regards the report of the TMB,

[7]At the time of adoption of the Council's report, the report of the Committee on Agriculture on the Implementation of the Agreement on Agriculture and the work of the Committee had not been received. The Council agreed to consider that report separately after its receipt and forward it to the General Council as an addendum to the Council's report.

the Council took note of it and decided to annex it to its own report; this action was preceded by a full consideration of the report (see discussion in paragraphs 17.1 to 17.18).

19.4 At its meeting of 1 November 1996, the Council took note of the concerns voiced by some delegations on the third sentence of paragraph 15 of the report of the Committee on Technical Barriers to Trade (TBT) relating to the issue of eco-labelling and its coverage in the TBT Agreement.

(b) Report by the Council for Trade in Goods to the Ministerial Conference (G/C/M/10, 11, 13 and Corr.1, 14 and 15)

19.5 At its meeting of 22 May 1996, the Chairman referred to the statement made by the Chairman of the General Council at the meeting of 16 April 1996, concerning "Reporting Procedures for the Singapore Ministerial Conference" (WT/L/145), and suggested holding informal consultations at a later stage on the Council's report to the Singapore Minsterial Conference.

19.6 At its meeting of 5 July 1996, the Chairman stated that in the context of the status of work with respect to the Singapore Ministerial Conference he wished to address two aspects regarding this process. While the situation was satisfactory in respect of scheduled commitments, a serious problem seemed to be emerging in respect of compliance with notification obligations in a number of Agreements, as reflected in document issued by the Working Group on Notification Obligations and Procedures. The second aspect related to the indication given by the Chairman of the General Council that it would be appropriate for the Chairmen of the sectoral Councils to present an oral report to the General Council regarding the current status of work concerning the preparations for the Singapore Ministerial Conference, particularly in respect of implementation and the built-in agenda. Accordingly, he intended to present an oral report on his own responsibility to the General Council at the meeting scheduled for 18 July 1996.

19.7 At its meeting of 19 September 1996, the Council agreed to the Chairman's proposal to consult informally on the format and content of the Council's report to the Singapore Ministerial Conference.

19.8 At its meeting of 15 October 1996, the Council agreed that the Council's report would consist of two parts, one factual and one containing conclusions and/or recommendations.

19.9 At its resumed meeting of 4 November 1996, the Council adopted the report to the General Council contained in G/C/W/62/Rev.1, as amended in the light of the discussion at that meeting[8].

[8] The report was subsequently issued in its final version as G/L/134.

SECTION II: CONCLUSIONS AND/OR RECOMMENDATIONS

The conclusions and/or recommendations of the subsidiary bodies of the Council are contained in the reports of the respective bodies annexed to this report.

The following conclusions and/or recommendations arise directly from the deliberations of the Council:

1. Agreement on Preshipment Inspection

1.1 The Council recommends that the General Council acting on behalf of the Ministerial Conference in accordance with Article IV:2 of the Agreement establishing the World Trade Organization, set up a Working Party under the Council with the following terms of reference:

> "to conduct the review provided for under Article 6 of the Agreement on Preshipment Inspection and to report to the General Council through the Council, in December 1997."

2. Notification Obligations and Procedures

(a) The Council requests the General Council to take the necessary steps to eliminate the notification obligations in the Decisions of the GATT 1947 CONTRACTING PARTIES relating to import licensing procedures (L/3756 and SR/28/6).

(b) The Council requests the Ministerial Conference or the General Council to consider the establishment, at an appropriate time, of a body with a mandate to review the notification obligations and procedures throughout the WTO Agreement. Alternatively, consideration might be given to the establishment of a body, or the extension/modification of the mandate of the current Working Group, to conduct, at an appropriate time, a further comprehensive review of the notification obligations and procedures in the agreements in Annex 1A of the WTO Agreement. It was suggested that future work also encompass matters relating to the Central Registry of Notifications, electronic transmission of notifications and further work on the notifications handbook.

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

G/L/134/Add.1
7 November 1996

(96-4726)

Council for Trade in Goods
1 November 1996

REPORT OF THE COUNCIL FOR TRADE IN GOODS TO THE GENERAL COUNCIL

Addendum

At its resumed meeting of 5 November 1996, the Council took note of the report of the Committee on Agriculture on the implementation of the Agreement on Agriculture and the work of the Committee and decided to annex it to its own report.

Conseil du commerce des marchandises
1er novembre 1996

RAPPORT DU CONSEIL DU COMMERCE DES MARCHANDISES AU CONSEIL GENERAL

Addendum

A la réunion qui a repris le 5 novembre 1996, le Conseil a pris note du rapport du Comité de l'agriculture sur la mise en oeuvre de l'Accord sur l'agriculture et les travaux du Comité et a décidé de l'annexer à son propre rapport.

Consejo del Comercio de Mercancías
1º de noviembre de 1996

INFORME DEL CONSEJO DEL COMERCIO DE MERCANCÍAS AL CONSEJO GENERAL

Addendum

En la reunión reanudada el 5 de noviembre de 1996, el Consejo tomó nota del informe del Comité de Agricultura acerca de la aplicación del Acuerdo sobre la Agricultura y la labor del Comité y decidió adjuntarlo como anexo a su propio informe.

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

G/L/134/Add.1/Corr.1
7 November 1996

(96-4735)

Council for Trade in Goods
1 November 1996

REPORT OF THE COUNCIL FOR TRADE IN GOODS
TO THE GENERAL COUNCIL

Corrigendum

In the first line replace "5 November 1996" with "6 November 1996".

Conseil du commerce des marchandises
1er novembre 1996

RAPPORT DU CONSEIL DU COMMERCE DES MARCHANDISES
AU CONSEIL GENERAL

Corrigendum

A la première ligne, remplacer "5 novembre 1996" par "6 novembre 1996".

Consejo del Comercio de Mercancías
1º de noviembre de 1996

INFORME DEL CONSEJO DEL COMERCIO DE MERCANCÍAS
AL CONSEJO GENERAL

Corrigendum

En la primera línea, sustitúyase "5 de noviembre de 1996" por "6 de noviembre de 1996".

SECTION V

COUNCIL FOR TRADE IN SERVICES

WORLD TRADE ORGANIZATION

S/C/3
6 November 1996
(96-4706)

Council for Trade in Services

COUNCIL FOR TRADE IN SERVICES

Report to the General Council

Part I: Activities of the Council and Subsidiary Bodies

1. The Council for Trade in Services has held nine meetings during 1996. Reports on such meetings are contained in documents S/M/8 -16. The Council addressed the following matters:

Procedures for the Implementation of Article XXI (Modification of Schedules)

2. Paragraph 5 of Article XXI of the GATS (Modification of Schedules) calls upon the Council for Trade in Services to establish procedures for rectification or modification of schedules. In informal consultations in the Uruguay Round, participants had been working on the basis of a detailed preliminary draft of such procedures. During 1995, informal consultations started under the Council on the basis of that draft and continued in 1996 resulting in three consecutive revisions the last of which was circulated in an informal note by the Secretariat dated 23 May 1996. Several delegations expressed the view that in the light of additional questions which had been raised, informal consultations should continue with a view to producing a final draft text for consideration and adoption by the Council. Consultations are continuing.

Taxes and Subsidies at the Sub-Central Level

3. In accordance with the statement made by the Chairman of the Group of Negotiations on Services dated 13 December 1993 (MTN.GNS/50), participants in the Uruguay Round were given an additional period of time until 15 June 1994 to complete the scheduling of measures relating to subsidies and taxes at the sub-central level. The statement also stipulated that "it is understood that this process will not result in any alteration in the negotiated balance of rights of 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". Pursuant to that statement, the United States submitted a communication, contained in PC/SCS/W/4 dated 30 June 1994, through the Sub-Committee on Services. Upon request from delegations, the communication was subject to multilateral consultations under the auspices of the Sub-Committee on Services during 1994 and under the auspices of the Council during 1995 and 1996. At its meeting of 4 March 1996, the Council considered an interim report on the progress achieved in consultations thus far (S/C/W/13). The Council took note of the report and agreed that multilateral consultations shall continue with a view to reaching a satisfactory outcome fully consistent with GATS disciplines. A number of delegations took the view that future consultations on the matter should not be directed towards fact finding, but should focus on practical solutions to the problems identified in previous consultations.

Notification of the Establishment of Enquiry and Contact Points

4. Paragraph 4 of Article III and paragraph 2 of Article IV of the GATS call upon Members to establish enquiry points and, where appropriate, contact points within two years from the date of entry into force of the Agreement. However, these articles do not require the notification of the establishment and location of these agencies. Given the objective behind the establishment of such agencies, the Council considered it desirable that their existence and location be made known. The Council therefore, at its meeting on 28 May 1996, adopted the "Decision on the Notification of the Establishment of Enquiry and Contact Points" (S/L/23) which calls upon Members to notify the establishment of such agencies. So far twenty-four Members have submitted such notifications (S/ENQ/1 - 24).

Notifications pursuant to Article V (Economic Integration)

5. At its meeting on 22 November 1995, the Council for Trade in Services had received a communication from the European Communities and their Member States notifying the "Economic Integration Agreement" as instituted by the Treaty of Rome, subsequently enlarged, and modified most recently by the Treaty on the European Union. At its meeting on 23 September 1996, the Council decided to request the Committee on Regional Trade Agreements to examine the Agreement in terms of its consistency with the provisions of Article V of the GATS.

6. The Council has also received notifications pursuant to paragraph 7(a) of Article V from Australia and New Zealand (S/C/N/7), the European Communities and their Member States and the Slovak Republic (S/C/N/23), the Republic of Hungary (S/C/N/24), the Republic of Poland (S/C/N/25), the Czech Republic (S/C/N/26), Romania (S/C/N/27) and the Kingdom of Norway, the Republic of Iceland and the Principality of Liechtenstein (S/C/N/28).

At its meeting on 30 October 1996 the Council decided to request the Committee on Regional Trade Agreements to examine the following agreements:

- Protocol on Trade in Services to the Australia - New Zealand Closer Economic Relations Trade Agreements (S/C/N/7)

- Europe Agreement between the European Communities and their Member States and the Slovak Republic (S/C/N/23)

- Europe Agreement between the European Communities and their Member States and Republic of Hungary (S/C/N/24)

- Europe Agreement between the European Communities and their Member States and Republic of Poland (S/C/N/25)

Committee on Specific Commitments

7. The Committee on Specific Commitments has held two meetings in 1996. Its discussions have focused on how to organise its activities and work priorities according to its three main areas of responsibility as specified in the terms of reference (see document S/L/16).

8. With respect to the first responsibility - overseeing the implementation of commitments - Members generally consider that the oversight function should be handled on an *ad-hoc* basis and should focus on technical aspects of implementation.

9. Members consider that a great deal of useful work can be done in the Committee regarding the second function - examining technical aspects of schedules of commitments and MFN exemption lists in order to improve their technical accuracy and coherence but without affecting the current commitments. A start has been made in examining issues relating to the definition of sectoral coverage of commitments and to the adequacy of the existing GATS classification list. The Committee discussed a Secretariat paper on relevant developments in services classification systems in coordination with other international organizations and their implications for negotiations and scheduling under the GATS. The Committee has also discussed the question of how to facilitate the handling of lists of commitments and MFN exemptions. In this regard, the Secretariat prepared a paper analysing relevant issues concerning, first, the introduction of a loose-leaf binding system for the lists and, second, current developments at the WTO in the computerisation of schedules.

10. With respect to the third function of the Committee - overseeing the application of the procedures for the modification of schedules under GATS Article XXI - Members generally consider that the Committee should address relevant issues when the procedures themselves have been finalized.

Working Party on Professional Services

11. Since starting work in July 1995, the WPPS has held seven meetings. Its deliberations have focused on the three sets of issues in the accountancy sector laid down in paragraph 2 of the *Decision on Professional Services*. These issues are: (a) the development of multilateral disciplines to ensure that domestic regulatory requirements are based on objective and transparent criteria and are not more burdensome than necessary; (b) the use of international standards and (c) the establishment of guidelines for the recognition of qualifications.

(a) Development of multilateral disciplines

12. The activities of the Working Party have focused on the establishment of an extensive information base on regulation in the accountancy sector and on prioritizing and addressing specific issues with a view to the development of multilateral disciplines particularly in this sector.

13. The Working Party has devoted considerable time and effort to the collection and analysis of data and studies of domestic regulation in the accountancy sector. A seminar was organized at which the International Federation of Accountants (IFAC) presented the results of a major international survey on the regulation and structure of accountancy services, explained its role and that of the International Accounting Standards Committee (IASC) in setting international standards in such areas as auditing, education for accountants and financial reporting, and introduced a statement on recognition of accountancy qualifications. Briefings were also received from the OECD and UNCTAD, both of which have carried out extensive work on accountancy services. The OECD presented the results of its survey on regulations on access for professional services and the categorized inventory of measures affecting trade in professional services. UNCTAD, through its Inter-governmental Working Group of Experts on International Accounting Standards of Accounting and Reporting (ISAR), explained its main activities in promoting international harmonization of corporate accounting and reporting practices.

14. In order to complete the information that had been made available by the above organizations on the regulatory regimes of Members affecting the accountancy sector, a supplementary questionnaire on specific aspects of domestic regulation was circulated to WPPS Members. Twenty-three responses covering thirty-seven Members have been received to date.

15. With respect to issues, Members drew up a non-exhaustive list of priority issues, based on delegation submissions and statements, which define in some detail the policy areas for which the Working Party is developing multilateral disciplines. The issues proposed for consideration comprise: qualification requirements and procedures; licensing requirements (other than qualification requirements) and procedures; regulations governing the establishment of a commercial presence; nationality/citizenship/residency requirements; professional liability and ethics; regulations governing entry and temporary stay of natural persons for the purpose of supplying accountancy services. The two remaining issues, relating to guidelines for recognition of qualifications and use of international standards, are dealt with below.

16. Among these issues Members have concentrated initially on licensing requirements and procedures in the accountancy sector. In this regard, the Working Party has started to examine the applicability of the concepts and approaches taken in the *Technical Barriers to Trade (TBT) Agreement* as they apply to licensing requirements and the other measures covered by GATS Article VI.4. Similarly, the WPPS has begun to examine the relevance of the disciplines in the *Import Licensing Agreement* to the need to ensure that licensing procedures in the accountancy sector do not in themselves restrict trade.

(b) Use of international standards

17. The main role of the Working Party in this area is to keep track of work going on elsewhere and encourage cooperation with relevant international organizations. In a further seminar members of the Working Party received briefings on the development of international standards by the IASC and the International Auditing Practices Committee (IAPC), and on their co-operation with the International Organization of Securities Commissions (IOSCO).

(c) Establishment of non-binding guidelines for mutual recognition agreements or arrangements in the accountancy sector

18. The Working Party has also worked on the development of non-binding guidelines for the negotiation of mutual recognition agreements or arrangements, which are permitted under the conditions laid down in Article VII of the GATS. The purpose of such guidelines, which would constitute a road map or checklist, would be to assist on a voluntary basis the negotiation and conclusion of mutual recognition agreements or arrangements among WTO Members and to ensure their transparency. At its seventh meeting, the Working Party took note that a draft paper entitled *Guidelines for Mutual Recognition Agreements or Arrangements in the Accountancy Sector* had been prepared and is under discussion.

Working Party on GATS Rules

19. The Working Party on GATS Rules was established in March 1995 by the Council on Trade in Services to carry out the negotiating mandates contained in the GATS on emergency safeguard measures, government procurement in services and subsidies. Article X requires that multilateral negotiations shall be held on the question of emergency safeguard measures, based on the principle of non-discrimination, the results of which are to enter into effect not later than 1 January 1998. Article XIII of GATS calls for multilateral negotiations on government procurement in services within two years from the date of entry into force of the WTO Agreement. Article XV of GATS stipulates that negotiations will be held with a view to developing the necessary disciplines to avoid the trade-distortive effects of subsidies that may arise in certain circumstances and to address the appropriateness of countervailing procedures. It also required Members to exchange information concerning all subsidies related to trade in services and to establish a future work programme to determine how, and in what time frame, negotiations on such multilateral disciplines will be conducted.

20. The Working Party has held eight meetings. The Working Party first took up the issue of emergency safeguard measures, followed at intervals of three months by government procurement in services and subsidies. Thus, since its fifth meeting, the Working Party has considered all three negotiating mandates at every meeting. Differing views have been expressed by Members in regard to the question of developing an emergency safeguard mechanism under GATS and substantive discussions are continuing in regard to this question. Working papers on emergency safeguard measures were submitted to the Working Party by Australia (S/WPGR/W/5), Thailand (S/WPGR/W/6) and Switzerland (S/WPGR/W/14). The Working Party agreed that those Members wishing to do so would provide written contributions in relation to questions raised in document S/WPGR/W/15 on emergency safeguard measures.

21. The discussions in the Working Party on the subject of government procurement in services have addressed various aspects of possible disciplines, particularly in relation to transparency. In addition, Members have considered the implications of the existence of the Agreement on Government Procurement (GPA) for any disciplines that might be developed in GATS, as well as some of the reasons given by Members as to why they are not signatories of the GPA. Members are also engaged, on a voluntary basis, in an information-gathering exercise in relation to national procurement regimes affecting trade in services.

22. The Working Party' s deliberations on the subject of subsidies have so far been of a preliminary nature. Many delegations have noted the inherent complexity of the subsidy issue in services, urging a careful and systematic approach to the negotiating mandate. Some discussion has taken place on the question whether a distinction should be made between broad-based subsidies of general applicability and narrower, sector specific subsidies. The Working Party has begun to consider the modalities of the information exchange exercise called for in the negotiating mandate. A working paper on conceptual issues relating to subsidies was submitted to the Working Party by Chile (S/WPGR/W/10).

Negotiations on Basic Telecommunications

23. The Negotiating Group on Basic Telecommunications, established by Ministerial decision at Marrakesh, completed its work on 30 April 1996. The Negotiating Group had held 17 meetings between May 1994 and April 1996. Fifty-three WTO Members were full participants in the negotiations and 24 governments participated as observers. The NGBT submitted its final report to the Council for Trade in Services (S/NGBT/18) on 30 April; to it were attached a list of the results of the negotiations, in the form of 34 Schedules of Commitments representing 48 WTO Member governments and one List of Article II (MFN) Exemptions. Also on 30 April, the Council adopted the Decision on Commitments in Basic Telecommunications (S/L/19) and the Fourth Protocol to the General Agreement on Trade in Services (S/L/20).

24. Of the 34 Schedules attached to the Protocol, 32 offer market access commitments in voice-telephony; 28 relate to local telephone services, 27 to domestic long distance and 25 to international services. Other services on which commitments were offered included data-transmission services (31 schedules), cellular/mobile telephone markets (28), private-leased circuit services (27) other types of mobile services (22) and satellite services (16). In a number of cases these commitments would be phased-in over time. Thirty of the 34 Schedules include commitments relating to regulatory disciplines on such matters as competition safeguards, interconnection, licensing and the independence of regulators - matters which had been extensively discussed in NGBT meetings devoted to conceptual and technical issues.

25. The Schedules and Exemption Lists attached to the Fourth Protocol will enter into force on 1 January 1998 provided that the Protocol has been accepted by all Members concerned. However, the Decision by which the Council adopted the Protocol also provided that during the period from 15 January to 15 February 1997 the Schedules and Exemption Lists may be supplemented or modified, and established a new Group on Basic Telecommunications to conduct consultations on the implementation of this provision.

26. The Council Decision also included a standstill provision calling upon the Members concerned, to the fullest extent consistent with their existing legislation and regulations, not to take measures which would be inconsistent with their undertakings resulting from these negotiations. The Council, which will monitor the acceptance of the Protocol, will also examine any concerns raised by Members regarding the standstill.

27. The Group on Basic Telecommunications (GBT) held its first meeting on 19 July 1996. At that meeting, the Group decided to be open to all Members of the WTO. Participants recognized the importance of the results achieved in April, in terms of creating a benchmark for further liberalization and establishing new regulatory disciplines. Participants suggested that the principal issues before the GBT included the desirability of improving the quantity and quality of Schedules offered, and the need to address possible distortions in trade resulting from the coexistence of open markets and monopoly markets in international telecommunications services and to clarify commitments on the provision of satellite-based services.

28. The GBT approved a timetable of meetings and activities leading up to the 15 February 1997 deadline for the modifications. The timetable comprised monthly meetings in September, October and November 1996 and a more intensive programme of meetings to be held during the 15 January to 15 February period, the conduct of bilateral negotiations in association with these meetings, and indicative dates for the submission to the Group of proposals for new or improved draft offers throughout the process. It was also proposed that the GBT should hold a high-level meeting in November 1996.

Negotiations on Maritime Transport Services

29. The Ministerial Decision on Negotiations on Maritime Transport Services and the Annex on Negotiations on Maritime Transport Services provided a mandate for Members to negotiate, by the end of June 1996, commitments relating to maritime transport services leading to the elimination of restrictions within a fixed time scale. The Decision established the Negotiating Group on Maritime Transport Services to carry out the negotiations. The Negotiating Group held 16 meetings and reported periodically to the Council on Trade in Services.

30. In October 1994, the Negotiating Group issued a Questionnaire on Maritime Transport Services covering market structure and regulatory issues. The Group reviewed participants' responses to the questionnaire. In all, 35 of the full participants and two observer governments submitted questionnaire responses. Another activity of the Group was to examine outstanding technical and conceptual issues. Among issues discussed were technical matters relating to the scheduling of commitments on international shipping, auxiliary services, access to and use of port facilities and multimodal transport services. At the end of June 1995, participants began submitting draft offers of commitments on maritime transport services to serve as the basis for negotiations.

31. At its meeting on 28 June 1996, the Council for Trade in Services adopted a Decision to suspend the negotiations on maritime transport services and to resume them with the commencement of comprehensive negotiations on services, in accordance with Article XIX of the GATS, and to conclude them no later than at the end of this first round of progressive liberalization (S/L/24).

32. After the suspension of the negotiations, two Members, Iceland and Norway, consolidated their best offers, i.e. transformed their offers into specific commitments to be inscribed in their schedules. Two Members, Austria (in the context of its accession to the European Union) and the Dominican Republic, withdrew their commitments, while two Members, Canada and Malaysia, modified their commitments slightly. Currently, 35 Members have commitments on maritime transport services. This includes: 29 Members who made commitments in the Uruguay Round, 4 Members (Papua New Guinea, Saint Christopher and Nevis, Sierra Leone and Slovenia) who acceded subsequently, and 2 Members (Iceland and Norway) who made commitments after the extended negotiations.

33. At the time of suspension of the negotiations, 56 governments (including the European Communities and their Member States) had elected to participate fully in the negotiations. Another 16 governments were participating in the process as observers. By that time 24 conditional offers had been submitted.

Committee on Trade in Financial Services

34. The activities of the Committee on Trade in Financial Services in 1996 focused on five main issues: monitoring of the acceptance and implementation of the results of the financial services negotiations concluded in July 1995; exchange of information on recent developments in financial services trade; consideration of some technical issues regarding the schedules of specific commitments and Article II (MFN) exemptions; availability of financial services data; and organization of future work. The work of the Committee in 1996 was conducted under the Chairmanship of Mr. Frank Swedlove of Canada. The Committee held two formal meetings in 1996.

35. On the monitoring of the acceptance and implementation of the results of the financial services negotiations, the Committee provided transparency on the status of acceptances of the Second Protocol to the GATS to all Members, and contributed to the completion of the acceptance process by the Members concerned.[1] Although not all Members concerned were able to accept the Protocol by the initial deadline of 30 June 1996, it entered into force on 1 September 1996 by virtue of a decision taken on 30 July 1996 by Members which had accepted it. This was in accordance with the procedures inscribed in the Protocol adopted by the Committee in July 1995. A decision by the Council for Trade in Services was also taken on the same day to extend the period for acceptance of the Protocol until 30 November 1996, allowing the remaining Members to accept. The Committee continues to monitor the acceptance of the Protocol by the remaining Members.

36. Concerning the exchange of information on recent developments in financial services trade, several Members reported recent liberalization measures. These developments were welcomed, and Members were encouraged to report any related developments to the Committee for transparency purposes.

37. Regarding the consideration of technical issues, the Secretariat produced a note indicating issues for discussion on two technical questions; the distinction between Modes 1 and 2 in financial services and sectoral classification of financial services. Other technical issues, such as how to improve the verification of schedules and MFN exemptions after negotiations, have also been raised. The Committee agrees to pursue these discussions.

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[1]The Members concerned are: Australia, Brazil, Canada, Chile, Czech Republic, Dominican Republic, Egypt, European Communities and their Member States (15), Hong Kong, Hungary, India, Indonesia, Japan, Korea, Kuwait, Malaysia, Mexico, Morocco, Norway, Pakistan, Philippines, Poland, Singapore, Slovak Republic, South Africa, Switzerland, Thailand, Turkey, Venezuela. Members who have not accepted the Protocol as of 5 November 1996 were Belgium, Brazil, Egypt, Greece, Portugal and Spain.

38. On the availability of financial services data, the Committee encouraged the Secretariat to work in close cooperation with other international organizations in their efforts to improve the availability of statistics, and requested it to report on any future developments with respect to this subject.

39. The Council for Trade in Services had decided in July 1995 that all Members be given the opportunity to modify or withdraw all or part of their specific commitments and to list Article II (MFN) exemptions under the GATS in financial services during a period of 60 days beginning on 1 November 1997. The Committee will oversee negotiations undertaken in accordance with this decision, and has decided that such negotiations will resume in early April 1997.

40. On the organization of future work, the Committee recognized the importance of proper early preparation for the resumption of negotiations in 1997. It therefore agreed to draw up a timetable for such negotiations leading to their conclusion in December 1997. Such a timetable will be presented to the next meeting of the Committee to be held in early April 1997.

Movement of Natural Persons

41. During 1996, the Council reviewed the status of acceptance of the Third Protocol to the GATS.[2] The Protocol had been open for acceptance until 30 June 1996. At that point, there remained five Members which had not accepted the Protocol due to procedural delays. At its meeting on 30 July 1996 the Council reviewed the situation and adopted the "Decision on the Acceptance of the Second and Third Protocol to the General Agreement on Trade in Services" (S/L/28) which provides an additional period for acceptance, until 30 November 1996.

[2]Members who attached a schedule to the Third Protocol were: Australia, Canada, European Communities and their Member States (15), India, Norway and Switzerland. Members who, as of 5 November 1996, have not accepted the Third Protocol: Belgium, Greece, Portugal, Spain and Switzerland.

Part II: Future work

Negotiations on Basic Telecommunications

42. It is recommended that Ministers stress their commitment to bring the negotiations on basic telecommunications to a successful conclusion by 15 February 1997, urge all WTO Members to strive for significant, balanced and non-discriminatory liberalization commitments on basic telecommunications by that date and recognize the importance of resolving the principal issues before the GBT.

Committee on Trade in Financial services

43. It is recommended that Ministers stress their commitment to bring the negotiations on trade in financial services, to be resumed in early April 1997, to a successful conclusion within the prescribed time frame.

Working Party on GATS Rules

44. It is recommended that Ministers note that more analytical work will be required on emergency safeguard measures, government procurement in services, and subsidies. They agree that the Working Party on GATS Rules should aim, in accordance with the provisions of Article X, to complete negotiations on the question of emergency safeguard measures by 31 December 1997. If negotiations have not been concluded by that date, the Council for Trade in Services may extend the provisions of Article X of the GATS to an appropriate time. Ministers agree to review the report of the Council on progress in the GATS Rules negotiations at their meeting in 1998, bearing in mind the need to carry forward the negotiations expeditiously.

Working Party on Professional Services

45. The Working Party on Professional Services should:

- Aim to complete its work on the accountancy sector by the end of 1997.

- Pursue work on the Article VI.4 work programme as it relates to professional services, examining, as appropriate, both horizontal aspects of this work and specific issues related to particular services with due consideration for the diversity of professional services.

- Pursue work on voluntary guidelines for mutual recognition agreements or arrangements.

- Cooperate with UNCTAD in its work on professional services, particularly on the accountancy sector.

- Encourage the efforts made by other relevant international organizations as defined by the GATS, including the International Accounting Standards Committee and the International Organization of Securities Commissions, to formulate international standards in the accountancy sector which are aimed at achieving greater comparability in financial statements and facilitating the effective liberalization of accountancy services.

Committee on Specific Commitments

46. The Committee on Specific Commitments should pursue its mandate, including work relating to the scheduling of commitments, and should make recommendations for improving the technical accuracy and coherence of schedules of specific commitments and lists of exemptions from Article II of the GATS before the commencement of the next round of negotiations on services liberalisation pursuant to Article XIX of the GATS.

Further work by the Council

47. It is recommended that Ministers reaffirm the importance of progressive liberalization of trade in services as mandated in Article XIX and other relevant provisions of the GATS. The requisite work to facilitate such negotiations, taking into account the need for appropriate flexibility, shall include, *inter alia,*:

- The Council for Trade in Services will develop an information exchange programme. The aim of this programme is to facilitate the access of all Members, in particular developing country Members, to information regarding laws, regulations, administrative guidelines and policies affecting trade in services in order to contribute to the assessment of trade in services which would assist future negotiations in the services sector. The structure should be simple and able to provide a common standard and concise multilateral basis to understand the state and evolution of the regulations governing the services sector avoiding any unnecessary burden to the Members in general and developing country Members in particular. During 1997, the Council should agree to the modalities and the timing for this programme.

- The Council should begin the consideration of guidelines and procedures for negotiations mandated under Article XIX at an appropriate time.

- The Council should examine, as appropriate, under Article VI:4 of the GATS, measures relating to qualification requirements and procedures, technical standards and licensing requirements with a view to taking the work as far as possible before the commencement of the next round of liberalization negotiations referred to above.

Negotiations on Maritime Transport Services

48. It is recommended that Ministers take note of the current status of the suspended negotiations on maritime transport services and confirm their commitment to proceed according to the agreed conclusions.

SECTION VI

COUNCIL FOR TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

WORLD TRADE ORGANIZATION

IP/C/8
6 November 1996

(96-4704)

Council for Trade-Related Aspects of Intellectual Property Rights

REPORT (1996) OF THE COUNCIL FOR TRIPS

I General

1. Since the period covered by its last report[1], the Council for TRIPS has held six formal meetings, on 11 December 1995 and on 22 February, 9 May, 22-25 July, 18 September and 5 November 1996. The minutes of these meetings are to be found in documents IP/C/M/5-10.[2] This report covers this period, but also contains references to the work done by the Council for TRIPS in 1995.

2. The first two of the meetings referred to above were chaired by Mr. Stuart Harbinson (Hong Kong). The remainder were chaired by Ambassador Wade Armstrong (New Zealand).

3. Meetings of the Council were open to all WTO Members. In addition, government observers to WTO bodies were invited. WIPO was invited to all meetings, in accordance with the recommendation of the Preparatory Committee as confirmed by the General Council. Pursuant to the interim procedure on observer status for intergovernmental organizations evolved under the auspices of the General Council, the FAO, the IMF, the OECD, UNCTAD, the United Nations, UPOV (International Union for the Protection of New Varieties of Plants), the World Bank and the WCO were invited to meetings of the Council.

II Implementation

(i) Notifications and Notification Procedures

(a) Article 63.2

4. At its meeting in November 1995, the Council adopted the following decisions to give effect to the obligation to notify implementing legislation under Article 63.2: Procedures for Notification of, and Possible Establishment of a Common Register of, National Laws and Regulations under Article 63.2 (document IP/C/2); Format for Listing of "Other Laws and Regulations" to be Notified under Article 63.2 (document IP/C/4); and Checklist of Issues on Enforcement (document IP/C/5).

5. These procedures require that, 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. A very substantial volume of legislation has been notified under these procedures. As of the date of this report, 30 Members have notified some or all of their implementing legislation. Most

[1]Document WT/GC/W/25, Section VI

[2]Document IP/C/M/10 to be issued

of the material to be notified by Members whose legislation, in the area of copyright and related rights, was the subject of review at the Council's July meeting (see paragraph 14 below) has been notified; three other countries have notified some of their legislation while indicating that this is without prejudice to their transition period under the provisions of Article 65; and 11 Members have notified legislation relating to the implementation of Article 70.8 and, in some cases, Article 70.9 of the TRIPS Agreement. These notifications are circulated in the IP/N/1/COUNTRY/- series of documents.

6. At its November 1995 meeting, the Council also agreed that Members would provide responses to a checklist of issues on enforcement (IP/C/5). In recognition of the fact that preparation of the responses would take time, the procedures require them to be submitted "as soon as possible" after the time that a Member is obliged to start applying the provisions of the TRIPS Agreement on enforcement. Eight Members have notified responses. These responses have been circulated in the IP/N/6/COUNTRY/- series of documents. At the July 1996 meeting of the Council, the Chairman urged the Members concerned to provide their responses soon and in any case before the end of 1996.

7. The national treatment and MFN obligations of Articles 3, 4 and 5 of the TRIPS Agreement became applicable to all Members from 1 January 1996. So far, no notifications have been received under Article 63.2 relating specifically to the implementation of these provisions, except in so far as such notifications have formed part of the comprehensive notifications by developed country Members of their general implementing legislation. The Council has considered whether there may be technical difficulties with meeting this notification requirement. At the Council's July meeting, a proposal was made for a simplified procedure in this connection and the Council agreed that the matter be taken up in informal consultations. Following these informal consultations, the Council agreed at its September meeting that the Members concerned had a range of options as to how to meet these notification requirements in a way best suited to their national circumstances. Three options were identified in particular:

- notifying the specific provisions of laws and regulations that implement the obligations set out in Articles 3, 4 and 5;

- notifying all intellectual property laws and regulations; or

- making a general statement that nationals of other WTO Members enjoy non-discriminatory treatment, together with a list of any exceptions to that principle.

The Council invited the Secretariat to prepare a paper which would recognize these three options and contain a draft format for the last option. This paper will be considered by the Council at its meeting scheduled for 11-15 November 1996.

(b) Articles 1.3 and 3.1

8. Articles 1.3 and 3.1 of the TRIPS Agreement, relating to the definition of beneficiary persons under the Agreement and to national treatment, allow certain exceptions to the normal rules on these matters, provided that notifications are made to the Council for TRIPS. 24 Members have submitted notifications under these provisions. These notifications are contained in the IP/N/2/COUNTRY/- series of documents.

(c) Article 4(d)

9. Article 4(d) of the TRIPS Agreement requires a Member seeking to justify an exception to the MFN rule on the basis of an international agreement relating to the protection of intellectual property which had entered into force prior to the entry into force of the WTO Agreement to notify that agreement

to the Council for TRIPS. At the meeting of the Council in November 1995, the Chairman drew the attention of Members to the need to make notifications under Article 4(d) by 1 January 1996 if Members wished to have legal cover from that date for any exceptions to MFN treatment that they seek to justify by reference to the provisions of Article 4(d). To date, 28 Members have made notifications under this provision. These notifications are contained in the IP/N/4/COUNTRY/- series of documents.

10. In discussions at the Council's meetings of February, May and July 1996, some Members expressed concern about some of the notifications made, in particular that the absence of sufficient guidelines for such notifications meant that the notifications did not always enable the other Members to understand the specific element of discrimination that was being sought to be justified. As agreed at the Council's February meeting, the Chairman held informal consultations on this matter. To facilitate these consultations, he circulated an informal background note by the Secretariat. It was generally felt in the Council that it would be valuable to continue work on the development of criteria that could assist individual Members in making or reviewing their notifications, but that such criteria could not add to or diminish the rights and obligations of WTO Members under the provisions of Article 4(d). Further consultations on this matter will be held.

(d) Article 69

11. Article 69 of the TRIPS Agreement requires Members to establish and notify contact points for the purposes of cooperating with each other with a view to eliminating international trade in goods infringing intellectual property rights. Procedures for such notifications were agreed by the Council in September 1995. To date, 67 Members have notified contact points. The most recent compilation of these is contained in document IP/N/3/Rev.2.

(e) Notifications Under Other Provisions of the Agreement

12. A number of notification provisions of the Berne and the Rome Conventions are incorporated by reference into the TRIPS Agreement but without being explicitly referred to in it. At its meeting in February 1996, the Council invited each Member wishing to make such notifications to make them to the Council for TRIPS, even if the Member in question had already made a notification under the Berne or the Rome Convention in regard to the same issue, and drew the attention of Members to the discussion relating to the timing of such notifications in paragraphs 16 through 21 of document IP/C/W/15, a Secretariat background note on the subject. To date, one Member has made a notification under this procedure. Notifications of this kind are being circulated in the IP/N/5/COUNTRY/- series of documents.

(ii) Monitoring the Operation of the Agreement

(a) Review of National Laws and Regulations

13. At its meeting in November 1995, the Council adopted a "Schedule for the Consideration of National Implementing Legislation in 1996/1997" (IP/C/3). This provided for legislation in the area of copyright and related rights to be reviewed by the Council in July 1996. Following informal consultations, the Council agreed at its May 1996 meeting on procedures for the Council's review of legislation in this area. These procedures provided for written questions and replies prior to the review meeting, with follow-up questions and replies during the course of the meeting.

14. At the Council's meeting of 22-25 July 1996, the legislation in the area of copyright and related rights of 29 Members was reviewed. A number of these Members indicated that they still had steps to take to comply fully with their TRIPS obligations in this area. The record of the introductory statements made by delegations, the questions put to them and the responses given is being circulated

in the IP/Q/COUNTRY/- series of documents. At subsequent meetings of the Council, an opportunity will be given to follow-up points emerging from the review session which delegations consider have not been adequately addressed. In this connection, it was recognized that the review of national implementing legislation implied quite a heavy workload and that it was important to allow an adequate opportunity, consistent with the provisions of Article 63 of the Agreement, for a follow-up to all Members, in particular to developing country Members that had constraints on their resources affecting their ability to analyse and digest some of the material.

15. The procedures adopted by the Council for the review provided that the review would apply to the copyright and related rights legislation of Members obliged to comply with the TRIPS Agreement under Article 65.1 and of any other Members not still availing themselves in respect of this area of legislation of any longer transition period to which they may be entitled. During the course of the review, questions were put to a number of Members which did not consider that they fell into either of these categories and which did not provide answers in the Council's meeting.

16. In accordance with the "Schedule for Consideration of National Implementing Legislation in 1996/1997" (IP/C/3), the Council will review legislation in the areas of trademarks, geographical indications and industrial designs at its meeting scheduled for 11-15 November 1996. Legislation in the areas of patents, layout-designs of integrated circuits, undisclosed information and the control of anti-competitive practices in contractual licences is scheduled for review in the first half of 1997, and that in the area of enforcement in the second half of 1997.

(b) Implementation of Article 70.8 and 70.9

17. At its meetings in February, May, July and September 1996, the Council considered the implementation of Article 70.8 and the related provisions of Article 70.9. At these meetings the Council took note of statements by some Members of their concern that not all Members to which these provisions applied were giving effect to them or, in the event that they had done so, had not notified the relevant legislation under Article 63.2. At the Council's meetings of May and July 1996, some Members informed the Council that they were engaged in dispute settlement proceedings on this matter with two other Members (IP/D/2 and IP/D/5).

(c) Implementation of Article 70.2

18. At the Council's February meeting, statements were made concerning compliance with Article 70.2 in regard to the patent term and in respect of rights in sound recordings. Dispute settlement proceedings initiated in connection with these matters have been notified to the TRIPS Council in documents IP/D/1, 3 and 4. On 3 October 1996, the Council was informed of a mutually agreed solution reached between the parties on the first of these issues (document IP/D/3/Add.1). In this notification, which was made to the Council for TRIPS for its information and without prejudice to the rights and obligations of other Members, the parties involved expressed their understanding that Article 70.2 in conjunction with Article 33 requires developed country parties to provide a patent term of not less than 20 years from the filing date for patents that were in force on 1 January 1996, or that result from applications pending on that date. The notification also indicates that the affected party has taken the necessary steps to confirm that all affected patents will enjoy a term that is the longer of 15 years from the date of grant or 20 years from the date of filing.

(iii) Revocation of Patents

19. At the Council's July and September meetings, a number of Members stated their views on the grounds that could justify the revocation of a patent. The Council took note of the statements.

(iv) Technical Cooperation

20. In accordance with a decision taken by the Council in November 1995, the Chairman made available for the February 1996 meeting of the Council an informal discussion note outlining and structuring the issues which had been raised in the Council's various discussions on the subject of technical cooperation and identifying possible options for carrying forward the Council's work in this area (subsequently distributed as IP/C/W/21). As a result of the ensuing discussion, the Council agreed on the following:

- that the Council would seek the annual updating by developed country Members of information on their technical cooperation activities pursuant to Article 67 of the Agreement, and that in 1996 the updating would be sought in time for the Council's meeting scheduled for September 1996;

- that the Council's September 1996 meeting would have a special, but not exclusive, focus on the issue of technical cooperation;

- that the Secretariat would prepare an analytical summary of the information on technical cooperation activities already presented and, on this basis, consideration would be given to whether Members would be invited to use a common list of basic headings in presenting an overview of their technical cooperation activities;

- that the Secretariat would be invited to present a suggestion for a specific pilot project for a workshop, to be held in the margins of the Council meeting, that would permit a more in-depth, thematic discussion of a particular aspect of technical cooperation.

21. At its May meeting, the Council considered a proposal for a pilot project for an in-depth discussion of a specific aspect of technical cooperation. The Council agreed that the Secretariat should go ahead, hopefully in cooperation with the International Bureau of the WIPO, to organize a workshop on border enforcement, to be held immediately before or after the Council's meeting of 18 September 1996. The workshop, organized jointly by the WTO Secretariat and the International Bureau of WIPO, was held on the afternoon of 17 September 1996.

22. At the Council's July meeting, it was agreed that developed country Members, in submitting updated information on their technical cooperation activities prior to the Council's September meeting, would notify a contact point or contact points which could be addressed by a developing country Member seeking technical cooperation. The contact point could be the same as the one that the developed country Member in question had notified under Article 69 of the Agreement, or it could be different, depending on the structure of the Members' administrations.

23. The Council's September meeting had a special focus on the issue of technical cooperation. For that meeting, nine developed country Members supplied updated information on their technical cooperation activities and information was also supplied by the WTO Secretariat and six intergovernmental organizations. The contact points notified by developed country Members are being compiled in a single document (IP/N/7). In addition to reviewing this information, the Council assessed the experience with the workshop on border enforcement, organized jointly by the WTO Secretariat and the International Bureau of WIPO on 17 September. A number of delegations said that the issue of technical cooperation should be brought to the attention of Ministers at Singapore. The Council has agreed to continue its discussion on technical cooperation at its meeting scheduled for 11-15 November 1996, when it is expected that further information on technical cooperation activities will be available from other developed country Members.

(v) Cooperation with WIPO

24. Article 68 of the TRIPS Agreement provides that the Council shall, in consultation with WIPO, seek to establish, within one year of its first meeting appropriate arrangements for cooperation with the bodies of that Organization. At its December 1995 meeting, the Council for TRIPS approved a draft agreement drawn up as a result of consultations between the Chairman of the Council for TRIPS, assisted by the WTO Secretariat, and the Chairman of the WIPO Coordination Committee, assisted by the International Bureau of WIPO. The draft agreement was approved by the General Council at its meeting of 13 and 15 December 1995. Following approval by the competent bodies of WIPO and the signature by the Director's-General of the two Organizations, the Agreement between the World Intellectual Property Organization and the World Trade Organization (IP/C/6) entered into force on 1 January 1996. The Agreement provides for cooperation in the following three areas: the notification of, access to and translation of national laws and regulations; the implementation of Article 6*ter* of the Paris Convention (relating to national emblems) for the purposes of the TRIPS Agreement; and legal-technical assistance and technical cooperation.

25. At its December 1995 meeting, the Council adopted a decision on the implementation of the obligations under the TRIPS Agreement stemming from the incorporation of the provisions of Article 6*ter* of the Paris Convention 1967 (IP/C/7). This decision has as its purpose giving legal effect under the TRIPS Agreement to the procedures relating to the administration of TRIPS obligations regarding Article 6*ter* of the Paris Convention that are incorporated in the Agreement between WIPO and the WTO.

III Built-in Agenda

(i) Article 24.1

26. Under Article 24.1, Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. No time-frame is specified for such negotiations. At the July meeting of the Council, some Members addressed Article 24.1, but no specific suggestions have been made as yet in the Council with regard to such negotiations.

(ii) Article 24.2

27. Article 24.2 requires the Council for TRIPS to keep under review the application of the provisions of the Section of the Agreement on geographical indications, and states that the first such review shall take place within two years of the entry into force of the WTO Agreement. At the Council's May and July meetings, the Chairman raised the questions of when and how this review should be undertaken. As mentioned in paragraph 16 above, the Council will review legislation in the areas of trademarks, geographical indications and industrial designs at its meeting scheduled for 11-15 November 1996. The Council at its September meeting received some proposals in connection with the review under Article 24.2. It agreed to take up work on this matter by including on the agenda of the November meeting an item "Review of the Application of the Provisions of the Section on Geographical Indications under Article 24.2" which will be addressed after and taking into account the review of legislation in the areas referred to above, it being understood that this would permit the consideration of the proposals put forward in September together with any other inputs from delegations.

(iii) Article 23.4

28. Article 23.4 calls on the Council for TRIPS to undertake negotiations concerning the establishment of a multilateral system of notification and registration of geographical indications for

wines eligible for protection by those Members participating in the system, but does not specify a time-frame for such negotiations. At the July and September meetings of the Council, some delegations addressed the question of how and when these negotiations might be initiated.

(iv) Article 27.3(b)

29. Article 27.3(b) states that the provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement. At the Council's meeting in July, some delegations addressed the question of when this work should be initiated.

(v) Article 64.3

30. Article 64.3 requires the Council for TRIPS to examine, during the five years from the date of entry into force of the WTO Agreement, the scope and modalities for the complaints provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to the TRIPS Agreement, and to submit its recommendations to the Ministerial Conference for approval. No suggestions regarding this aspect of the Council's work were made during the course of 1996.

(vi) Article 71.1

31. Article 71.1 requires the Council for TRIPS to review the implementation of the TRIPS Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65, namely after 1 January 2000.

IV. Issues, Problems and Recommendations to be Brought to the Attention of Ministers

32. Members reaffirm the importance of full implementation of the TRIPS Agreement within the applicable transition periods and that each Member will take the steps which it considers appropriate so that the provisions of the Agreement will be applied.

33. Members also reaffirm the importance of the necessary provision of technical and financial cooperation by developed country Members in favour of developing country and least-developed country Members, in accordance with Article 67 of the TRIPS Agreement, in order to facilitate implementation of the Agreement.

34. Members further reaffirm their commitment to the TRIPS built-in agenda agreed during the Uruguay Round, including any time-frames specified in the relevant provisions, and to carrying out as and when appropriate analytical work and information exchange so as to allow Members a better prior understanding of the issues involved without prejudice to the timing or scope of the reviews or negotiations envisaged in that built-in agenda. In regard to geographical indications, the Council has agreed that a review of the application of the provisions of the section on geographical indications as provided for in Article 24.2 would take the form outlined in paragraph 27 above, which permits inputs from delegations on the issue of scope, and the Council will initiate in 1997 preliminary work on issues relevant to the negotiations specified in Article 23.4 of the TRIPS Agreement concerning the establishment of a multilateral system of notification and registration of geographical indications for wines. Issues relevant to a notification and registration system for spirits will be part of this preliminary work. All of the above work would be conducted without prejudice to the rights and obligations of Members under the TRIPS Agreement and in particular under the specific provisions of the TRIPS built-in agenda.

SECTION VII

COMMITTEE ON TRADE AND ENVIRONMENT

WORLD TRADE ORGANIZATION

WT/CTE/1
12 November 1996

(96-4808)

Committee on Trade and Environment

REPORT (1996) OF THE COMMITTEE ON TRADE AND ENVIRONMENT

I. INTRODUCTION

1. The Committee on Trade and Environment (CTE) was established by the WTO General Council in January 1995. The CTE's mandate and terms of reference are contained in the Marrakesh Ministerial Decision on Trade and Environment of 15 April 1994 (Annex I). This Decision mandates the CTE 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 CTE.

2. The CTE has structured its work around the ten Items listed in the Decision on Trade and Environment. For several of the Items, the CTE was able to build on discussions that had taken place in 1992-93 in the GATT Group on Environmental Measures and International Trade (EMIT) and on discussions in 1994 in a Sub-Committee on Trade and Environment of the WTO Preparatory Committee.[1]

3. The CTE met formally six times in 1995 and seven times in 1996 under the chairmanship of Ambassador Sánchez Arnau of Argentina.[2] Membership of the CTE is open to all WTO Members; observer governments and observers from inter-governmental organizations were invited to participate.[3] Informal meetings were also held, including a joint informal meeting with the Committee on Technical Barriers to Trade on the issue of eco-labelling.

4. The CTE held two stocktaking exercises, on 26-27 October 1995 and 28-29 May 1996. During the October stocktaking exercise, specific issues on the Items of the work programme were identified.[4] At the May stocktaking exercise, the schedule of meetings through to Singapore

[1]Report by Ambassador H. Ukawa (Japan), Chairman of the Group on Environmental Measures and International Trade, to the 49th Session of the CONTRACTING PARTIES, L/7402, 2 February 1994. Minutes of the meetings of the Sub-Committee on Trade and Environment of the WTO Preparatory Committee and its background documents are contained in document series PC/SCTE/M/- and PC/SCTE/W/-.

[2]Minutes of the meetings of the WTO CTE are contained in document series WT/CTE/M/-.

[3]See Item 10 of this Report.

[4]See the Summary of Activities of the CTE (1995) presented by the Chairman of the CTE (WT/CTE/W/17), contained in Annex II to this Report, for a list of the specific issues identified for Items on the work programme.

and the format of the Report were adopted.[5] The CTE was assisted by background documents prepared by the Secretariat and
documents, proposals and non-papers submitted by Members which, along with the many statements made in the CTE meetings, provided the basis for drawing up this Report.[6]

II. BACKGROUND, ANALYSIS, DISCUSSIONS AND PROPOSALS

ITEM 1 The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements

5. Under this Item, the issue of trade measures applied unilaterally by a WTO Member to address environmental problems that lie outside its national jurisdiction has been discussed. The CTE has examined whether there is a need to clarify the scope that exists under WTO provisions to use trade measures pursuant to multilateral environmental agreements (MEAs). It has also examined whether there is any need to enlarge that scope, and if so in what circumstances, with what objectives and through what means.

6. It was stated during the course of discussions under this Item that there is already scope under the WTO provisions to use trade measures for environmental purposes. These provisions aim to ensure that WTO Members may adopt or enforce measures in pursuit of important public policy objectives for the protection of their environmental resources, while safeguarding Members' WTO rights against arbitrary or unjustifiable discrimination and disguised restrictions on trade.

7. Most of the delegations which intervened in the debate on this issue stated that they consider that the provisions of GATT Article XX do not permit a Member to impose unilateral trade restrictions that are otherwise inconsistent with its WTO obligations for the purpose of protecting environmental resources that lie outside its jurisdiction. For them, a renewed commitment needs to be taken by WTO Members to avoid using trade measures unilaterally for that purpose, and numerous proposals have been made in the CTE to that effect. Another view is that there is nothing in the text of Article XX which indicates that it only applies to policies to protect animal or plant resources or conserve natural resources within the territory of the country invoking the provision. A number of Members noted that there were differing views as to what constituted "unilateralism".

8. MEAs based on international consensus are viewed by the international community as the best way of coordinating policy action to tackle global and transboundary environmental problems cooperatively[7]. The WTO has no competence in the area of environmental matters *per se*, but it is concerned with trade measures applied pursuant to MEAs which can affect WTO Members' rights and obligations. Of the many MEAs currently in effect, only about 20 contain trade provisions.[8] There are considerable differences between the trade provisions of different MEAs, in particular the kinds of trade measures that MEA Parties are authorized or required to apply and

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[5]See the Results of the Stocktaking Exercise (WT/CTE/W/33), contained in Annex III of this Report.

[6]A complete list of documents and non-papers is contained in Annex IV to this Report.

[7]See *Agenda 21*.

[8]PC/SCTE/W/3, 13 October 1994.

the conditions pursuant to which the measures are taken. No GATT or WTO trade dispute has arisen so far over the use of trade measures applied pursuant to an MEA. Nevertheless, doubts have been expressed by some WTO Members about the WTO consistency of certain trade measures applied pursuant to some MEAs, in particular discriminatory trade restrictions applied by MEA Parties against non-parties that involve extra-jurisdictional action. For some, the uncertainty these doubts create for WTO Members and for the negotiators of MEAs makes clarification of the relationship between WTO provisions and these trade measures desirable. For some others, trade measures applied pursuant to an MEA by WTO Members should be consistent with WTO rules and disciplines.

9. Coordination between trade and environment officials in national capitals and during the negotiation of MEAs and new trade rules has been recognized by many in the CTE to be an important means of ensuring coherence between MEAs and the WTO. Some consider it can be enhanced through closer cooperation between the WTO and MEAs. Several suggestions have been put forward to improve the flow of information between the WTO and MEAs. One proposal[9] is for the CTE to invite representatives of MEAs to brief it on the use of trade measures applied pursuant to the MEAs, and for the CTE to have an opportunity to express its view to MEA authorities on trade measures which are contemplated in an MEA. It has also been suggested that consultation and cooperation between the Secretariats of the WTO and MEAs should be encouraged, especially during initial negotiations and amendments of MEAs. Another proposal[10] is to enhance transparency, dialogue and cooperation between MEAs, relevant international organizations and the WTO from the initial stage of negotiation of an MEA to its implementation. This cooperation may include exchange of information, mutual participation in meetings, mutual access to documents and databases, and briefing sessions, as necessary. Another proposal[11] is that a factual reference guide containing WTO principles should be compiled by the WTO Secretariat which, after being agreed by the CTE, could be used by MEA negotiators in their consideration of proposed trade measures. A proposal[12] has been made to conclude cooperation agreements between the WTO and competent MEA institutions, providing: (i) for the WTO Secretariat to respond to requests for factual information about relevant WTO provisions; and (ii) for MEAs to inform the WTO of all envisaged trade provisions, which would be examined by the CTE and the report of the meeting would be communicated back to the MEA authorities. While acknowledging the importance of contacts between the WTO and MEA Secretariats, some are of the view that policy dialogue must take place in national capitals, that the WTO and MEAs must respect their specific areas of competence, and that the WTO Secretariat has already the authority to provide factual information about the multilateral trading system.

10. When account is taken of the limited number of MEAs that contain trade provisions, and the fact that no trade dispute has arisen over the use of those measures to date, some feel that there is no evidence of a real conflict between the WTO and MEAs; existing WTO rules already provide sufficient scope to allow trade measures to be applied pursuant to MEAs, and it is neither necessary nor desirable to exceed that scope. According to this view, the proper course of action to resolve any underlying conflict which may be felt to exist in this area is for WTO Members to avoid using trade measures in MEAs which are inconsistent with their WTO obligations. Any

[9]Proposal by Japan, WT/CTE/W/31, 30 May 1996.

[10]Non-paper by the Republic of Korea, 12 June 1996.

[11]Non-paper by Hong Kong, 22 July 1996.

[12]Non-paper by Switzerland, 20 May 1996.

clarification in that respect can be provided, as necessary, *ex post* through the WTO dispute settlement mechanism.

11. One proposal[13] is thus to confirm that the existing provisions of GATT 1994 are adequate to deal with trade measures taken pursuant to legitimate environmental objectives contained in existing MEAs, and that trade measures pursuant to future MEAs should be formulated keeping in mind the provisions of the multilateral trading system. The proposal stated that trade measures which are restrictive in nature in MEAs, even if taken for enhancing environmental protection, must respect the rule-based nature of the multilateral trading system and their costs in terms of trade restriction must be fully taken into account. In addition, any trade measures taken for achieving environmental objectives should be appropriately dealt with within the scope of Article XX of GATT 1994; that is the only way to ensure non-discrimination which is the foundation of the multilateral trading system.

12. Some feel scope for the use of trade measures applied pursuant to MEAs can be provided, if necessary, through recourse to the existing waiver provisions of Article IX of the WTO. These provide the opportunity for Members to seek, in exceptional circumstances, a waiver to a WTO obligation, subject to approval at a minimum by three-quarters of the WTO membership. A waived obligation is time-limited, and must be renewed periodically; and a trade measure applied pursuant to a waiver could still be challenged in WTO dispute settlement on the grounds of non-violation, nullification and impairment of WTO rights. The strictness of these conditions is considered by some to be appropriate for protecting the rights of WTO Members in circumstances in which, for example, MEA Parties apply WTO-inconsistent discriminatory trade measures against non-parties. This approach, they feel, could provide a measured, case-by-case response to any problems which might arise in the future. Evidence of a multilateral consensus, avoiding the need for a separate definition in the WTO of an MEA, would be established on the merits of each case since it could be presumed that an MEA which could genuinely claim broad support from the international community would find equally broad support among WTO Members.

13. To the extent that concerns exist about the time-limited nature of WTO waivers, it has been suggested that, subject to certain conditions, a special "multi-year" waiver could be provided for trade measures applied pursuant to MEAs. One such proposal[14] suggests that all measures taken under MEAs would be eligible for a waiver, provided they meet specified criteria[15], and a "negative vetting" approach could be adopted whereby the waiver would be automatically renewed if no new developments affect the exceptional circumstances which justified its granting in the first instance. Another proposal[16] suggests that specific trade measures contained in existing and future MEAs, whether among Parties or against non-parties, may be granted a waiver on a case-by-case

[13]Non-paper by India, 23 July 1996.

[14]Non-paper by Hong Kong, 22 July 1996.

[15]The criteria would be, for instance: (i) the negotiation of and participation in the MEA reflect a genuine international consensus; (ii) the MEA meets the criteria set out in the headnote to GATT Article XX; (iii) the grant of the waiver does not prejudice WTO Members' rights and obligations under the DSU, irrespective of whether they are Parties to the MEA in question. Additional criteria, such as necessity, least trade-restrictiveness, effectiveness and proportionality, would apply for non-specific trade measures. Furthermore, the criterion of "least-inconsistent with WTO provisions" should apply to specific trade measures.

[16]Proposal from ASEAN, WT/CTE/W/39, 24 July 1996.

basis subject to non-binding guidelines.[17] The waiver would be extended annually until its termination as long as the requirements contained in Article IX are met, and the "exceptional circumstances" referred to in that provision would cover specific trade measures included in MEAs. WTO Members would retain their rights to resort to non-violation dispute settlement procedures in the WTO.

14. Some others do not consider the WTO waiver provisions offer a useful approach to the use of trade measures in MEAs because waivers are designed to deal only with temporary measures involving exceptional circumstances. Recourse to an uncertain test of voting on a waiver in the WTO could fail to provide MEA negotiators with a necessary degree of security or predictability in their negotiations and it might involve the WTO passing judgement over other international legal instruments. This, they feel, could give rise to an untenable situation for WTO Members that have accepted obligations under both the WTO and an MEA.

15. Some others have suggested the issue of the use of trade measures in MEAs needs to be addressed more from an *ex ante* point of view and not only through the *ex post* means available under the WTO dispute settlement or waiver provisions. For them, international co-operation is the most environmentally effective means of tackling transboundary and global problems, because the joint efforts of all countries concerned are required: this is reflected in the increasing agenda of MEA negotiations. Although no conflict has so far arisen as regards trade measures pursuant to MEAs and WTO rules, these Members feel that it is important to adopt a preventive attitude and provide greater certainty. This would be beneficial both for environment and trade policy makers. For those Members, the key point is that MEAs and the WTO both represent different bodies of international law. Various proposals have been put forward, with a view to establishing a framework for the relationship between MEAs and WTO. Although these proposals differ in nature, scope and level of ambition, they are all based on the view that the WTO should be supportive of action at the multilateral level for the protection of the environment. They develop the view that, subject to specific conditions being met, certain trade measures taken pursuant to MEAs should benefit from special treatment under WTO provisions; this approach has been described as creating an "environmental window" in the WTO. They have a number of common features.

16. One is that although it may be desirable to clarify the treatment under WTO provisions of trade measures applied pursuant to MEAs, no additional scope than that which exists already is to be made available under GATT Article XX for the use of unilateral measures for environmental purposes. A second is that importance is attached to enhancing the transparency of trade measures applied pursuant to MEAs. Several proposals make notification of the measures to the WTO a pre-condition for them benefitting from any additional accommodation that the proposals suggest the measures might be granted under WTO provisions. A third common feature is the role which WTO dispute settlement would play in the case of a conflict arising over the use of trade measures applied pursuant to MEAs; discussions on this issue are described in more detail under Item 5 of the work programme.

17. One proposal[18] elaborates two options. The first is to include measures taken pursuant to specific provisions of MEAs in GATT Article XX. The second is to introduce a reference not only to these measures but, also in more general terms, to measures necessary to protect the "environment"; and to improve the consistency of the rules of the multilateral trading system

[17]The non-binding guidelines would include criteria such as necessity, least trade-restrictiveness, effectiveness, proportionality and the degree of scientific evidence.

[18]Non-paper by the European Community, 19 February 1996.

taking into account both the commitment expressed in the first preambular paragraph of the Agreement establishing the WTO and the fact that the environment is already mentioned in several WTO Agreements. Both options suggest the development of an Understanding under the provisions of GATT Article XX that in the event a trade measure applied pursuant to an MEA is challenged in the WTO, subject to certain procedural criteria being met[19] the dispute settlement panel would examine only whether the measure has been applied in conformity with the requirements in the headnote language of Article XX and would not consider its necessity. The aim is to send a political signal of the WTO's support for multilateral measures as a means of discouraging the use of more trade-disruptive and less-environmentally efficient unilateral ones, and so to strengthen the multilateral trading system by establishing a framework to deal with problems that arise. The WTO would not judge the legitimacy of the environmental objectives or the necessity of the measures taken to achieve these objectives because the multilateral character of the trade measures would be the best guarantee against abuse. At the same time, the WTO would retain its power to counter protectionist implementation of a multilaterally-agreed measure through the headnote language in Article XX.

18. A second proposal[20] is to develop an Understanding, applicable across all WTO Annex 1 Agreements, on differentiated treatment for trade measures applied pursuant to MEAs, depending on whether they apply between Parties or against non-parties and whether they are specifically mandated in an MEA. Specific and jointly notified trade measures applied among MEA Parties would prevail over their WTO obligations to the extent of the mandated inconsistency, and WTO dispute settlement would not be available to them for trade action within the terms of the notified measures. Non-consensual measures (those applied among Parties but not specifically mandated in an MEA, and those applied against non-parties which are specifically mandated in an MEA) could be tested through WTO dispute settlement against procedural and substantive criteria which would be set out in the Understanding. The Understanding would not apply to trade measures taken against non-parties to an MEA that were not specifically mandated in the MEA; nor would it apply to unilateral measures. These would continue to be subject to existing WTO provisions. The proposed procedural criteria aim at ensuring that an MEA reflects a genuine "multilateral" consensus through requiring: (i) negotiation of and participation in an MEA to be open on equitable terms to all interested countries; (ii) broad participation of interested countries in both geographical terms and representing varying levels of development; and (iii) adequate representation of consumer and producer nations of the products covered by the MEA. The proposed substantive criteria aim at ensuring that the trade measure is necessary to achieve the environmental objective of the MEA, including through consideration of: (i) the effectiveness of the trade measure in achieving the environmental objective; (ii) whether the measure is the least trade-restrictive or distorting; and (iii) the proportionality of the measure to the need for trade restriction to achieve the environmental objective.

19. A third proposal[21] is to introduce "a coherence clause". It would provide that in case of a WTO dispute over a trade measure mandated under an MEA, the dispute panel would examine whether the measure was applied in a manner that constitutes arbitrary discrimination between countries where the same conditions prevail or with a view to achieving trade advantages, but it would not examine the legitimacy of the environmental objective nor the measure's necessity. A

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[19]Those terms would be whether the MEA was open to participation by all parties concerned with the environmental objectives of the MEA, and reflected, through adequate participation, their interests, including significant trade and economic interests.

[20]Submission by New Zealand, WT/CTE/W/20, 15 February 1996.

[21]Non-paper by Switzerland, 20 May 1996.

list of MEAs benefiting from the coherence clause would be established. Two possible approaches were identified to establish the list: either the General Council could make a decision concerning the inclusion of each MEA on the list, or each MEA could be notified to the WTO Director-General by its depositary in which case the General Council would be asked to reach a decision only if a WTO Member objected to a proposed listing.

20. Another approach[22] proposes the "possibility of setting differentiated WTO disciplines" for trade measures applied pursuant to MEAs based on whether the trade measures are specifically mandated by an MEA and whether they are applied among Parties or against non-parties. The skeleton of this approach is illustrated in a matrix in Annex V. Trade measures taken among Parties would be eligible for qualified codification on a lapse of time basis, subject to them meeting appropriate conditions which would be less strict for measures specifically mandated in an MEA than for those simply authorized by the MEA. Under this proposal it would be premature to consider the accommodation of any other type of trade measures taken pursuant to an MEA (for example, against a non-party) that goes beyond the scope of existing WTO disciplines.

21. A different approach suggested by some Members is to develop guidelines to provide more predictability than exists at present over the treatment of certain trade measures applied pursuant to MEAs and allow for the development of mutually supportive trade and environment policies, as envisaged in *Agenda 21*. One proposal[23] made in this regard is to draw up non-binding interpretative guidelines, with the possibility of making them legally-binding with appropriate modifications as necessary. Guidelines could be used by MEA negotiators to provide them with an authoritative point of reference on the application of WTO provisions when they are considering the use of trade measures pursuant to MEAs, they could be used by WTO dispute panels when examining the compatibility with WTO rules of trade measures applied pursuant to MEAs, or they could serve as a basis on which the WTO Secretariat would provide technical advice on WTO provisions to MEA Secretariats and environmental negotiators. The proposed guidelines are not intended to be used directly in a panel examination, although they could have a certain impact on the scrutiny of panels. Formal decisions concerning substantive criteria made by the relevant MEA authority should be taken into sufficient account on the condition that the MEA meets procedural criteria that would reflect its consensual basis.[24] These substantive criteria could incorporate characteristics of MEA trade measures such as their necessity, effectiveness and proportionality.[25]

22. One proposal[26] suggested that the Committee develop an agreed framework for endorsement by the Singapore Ministerial Conference that would include, inter alia, the following

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[22]Non-paper by the Republic of Korea, 12 June 1996.

[23]Proposal by Japan, WT/CTE/W/31, 30 May 1996.

[24]Examples of procedural criteria are: (i) negotiation of the MEA is open to all countries, and takes place preferably under the UN aegis; (ii) countries from different geographical regions and at different stages of economic and social development which are Parties to the MEA have participated in the negotiations and must be reflected in the membership of the agreement; and (iii) the MEA deals with environmental protection of a transboundary or global nature.

[25]Substantive criteria are, for example: (i) trade measures are chosen only when effective and when alternative measures are ineffective in achieving the environmental objective, or when other measures are inefficient without trade measures as part of the MEA; (ii) trade measures are not more trade-restrictive than required to achieve the environmental objective; (iii) trade measures do not constitute arbitrary or unjustifiable discrimination; (iv) trade with non-parties is permitted on the same basis as with Parties if non-parties provide equivalent environmental protection; and (v) trade measures and the circumstances under which they can be taken are clearly defined.

[26]Non-paper by the United States, 11 September 1996.

points: the strong appreciation among WTO Members of the importance of MEAs; that WTO rules should not hamper the ability of MEAs to achieve their environmental objectives; that trade measures have been and will continue to be an important tool for achieving important environmental objectives; that trade measures will not always be needed, and should be used prudently but should be available when needed, and MEA negotiators are in the best position to determine when this is so; that the WTO should recognize and respect the technical and environmental expertise of MEA negotiators; and that panels can, and should, seek input from relevant MEA bodies in any dispute involving questions relating to an MEA.

23. There have been many reactions to these proposals and suggestions.

24. One set of reactions has been expressed to proposals that would increase the scope under the WTO for applying pursuant to MEAs trade measures that are considered to be inconsistent at present with its provisions, or that would limit the recourse of WTO Members to dispute settlement. Some are concerned that this could undermine the existing balance of WTO rights and obligations and create a loophole for trade protectionism. These Members believe that it could lead also to the legitimization of unilateral measures and their extrajurisdictional application, as well as the use of trade measures based on non-product-related processes and production methods (PPMs), for which in the view of these delegations no basis exists in WTO rules. Singling out trade measures pursuant to MEAs would require determining whether those trade measures are necessary or effective. This would require holistic consideration of all other measures, including positive measures, taken within the framework of an MEA, which is clearly outside the WTO's scope. Some feel also that there is a risk of introducing a direct link between "necessity" and "environment" in the WTO at a time when a clear and complete definition of "environmental necessity" is still evolving in other intergovernmental fora.

25. Concerns by some have been expressed in particular over proposals that would enlarge the scope under the WTO for the use of discriminatory trade measures against non-parties to an MEA. There is concern about who is entitled to judge the merit of a country's decision not to join an MEA, and that account be taken of the reasons why a country would take that decision (it may find the scientific evidence unpersuasive, it may not be able to afford to join or have access to necessary technology on favourable terms, it may not agree with a given environmental objective or with the means to achieve the objective, or it may consider there are more pressing national policy problems which deserve higher priority). In this regard, mention has been made of Principle 7 of the *Rio Declaration*, which states that there is a "common but differentiated responsibility" of States in resolving environmental problems of a global nature. Some feel that trade measures, and in particular discriminatory trade measures against non-parties to MEAs, are not an appropriate way to pursue international environmental objectives. They consider that discriminatory trade measures should not be used to coerce countries to become signatories to an MEA and that this is not the WTO's role, and trade measures are one of the alternatives in the package of instruments that can be used to achieve MEA objectives. They also believe that positive measures and incentives such as financial and technology transfers, increased market access and technical assistance are more efficient and effective. Therefore, changes in WTO rules to accommodate MEA trade measures which are inconsistent with WTO rules are an unbalanced and isolated approach as long as there is no parallel commitment to first use and enforce positive measures, as a means in particular to increase participation in MEAs.[27]

26. Concern was also expressed by some over any possible extension of or derogation from WTO rules for measures which are not specifically prescribed or authorized in MEAs, since this could permit justification for unilateral measures disguised as multilateralism and open the door for protectionist measures. It was emphasized that the accommodation of trade measures pursuant

[27]See in particular the Non-paper by India, 23 July 1996 and the Submission by ASEAN, WT/CTE/W/39, 24 July 1996.

to MEAs, or enlarging the scope for the use of discriminatory trade measures, could send the wrong signals to many countries, particularly developing countries which have committed themselves to trade liberalization. Other concerns include the lack of an operational definition of MEAs to differentiate them from regional and plurilateral environmental agreements, and uncertainty about the effectiveness of trade measures *vis-à-vis* other measures. For some, an operational definition of MEAs is a pre-condition for discussing the use of trade measures applied pursuant to MEAs, and the importance of further work on procedural criteria, such as those described above in paragraph 18, has been underlined in this respect.

27. Doubts have been expressed by some about the need for a "coherence clause" when only certain trade measures applied pursuant to MEAs are viewed as being potentially WTO-inconsistent, and about the appropriateness of the WTO being seen to pass judgement on individual MEAs. With regard to proposed guidelines for environmental negotiators, some feel these would appear to allow the WTO to second guess MEAs in areas outside its competence and would send a signal of mistrust to negotiators representing, in different fora, Members of the WTO. In this sense, some stated with concern that the condition that measures are not taken with a view to achieving trade advantages would imply shifting the burden of proof from the Member invoking the "coherence clause" to the Member that may decide to challenge the measure, thereby reversing GATT/WTO dispute settlement practice.

28. Doubts have been expressed by some delegations about the appropriateness and even the feasibility of formulating procedural and substantive criteria against which to evaluate the WTO-consistency of trade measures applied pursuant to MEAs. They have pointed out in this regard that the best policy package of an MEA is likely to vary according to the specific circumstances of a given environmental problem, so trade measures have been applied pursuant to MEAs for a variety of reasons and in a number of ways in the past, and there is no clear indication of how they will be used in the future. In light of this, and consistent with the view that the WTO does not have competence in environmental matters *per se*, they consider that the WTO should not formulate criteria which would limit the flexibility for environmental policy-makers to judge the legitimacy of environmental objectives and types of trade measures needed.

29. Specific concerns have been raised by some about the substantive criteria that have been proposed. With regard to "necessity", a concern has been voiced about applying in this context the interpretation that has been given by GATT dispute panels to the term "necessary" in Article XX(b) which, it has been stated, is not universally accepted. According to this view the criterion of "necessity" is not found in other provisions of Article XX, notably Article XX(g), and a recent Appellate Body Report has been cited in that regard.[28] However, it was also stated that the notion of necessity was particularly relevant in other GATT Article XX provisions that could be related to trade measures taken for environmental purposes. In addition, it has been stated that the concept of "effectiveness" cannot be found in WTO provisions or jurisprudence, and that "least trade-restrictive" and "proportionality" are not concepts that can be found in Article XX. The view of some is therefore that since such criteria would go beyond the existing conditions attached to the application of trade measures under GATT Article XX, they would make it more difficult to use trade measures for environmental purposes. This would send the wrong message with respect to the support of the international community for resolving global and transboundary environmental problems through multilateral action and could furthermore act as a disincentive to the use of multilateral action.

30. According to some others, these criteria of necessity, effectiveness, least trade restrictiveness and proportionality are implicitly included in WTO disciplines. The consideration of these criteria, in particular that of "necessity", is essential to any effort to better accommodate

[28] WT/DS2/AB/R, 22 April 1996.

trade measures pursuant to MEAs. The necessity of these measures should not be taken for granted, in particular, when their use depends more on political pressure than environmental necessity. Some stated that trade measures applied for environmental purposes are related to GATT Article XX provisions other than sub-paragraph (g) where the concept of necessity is particularly relevant. Some feel that the concept of necessity needs to be considered and redefined in the environmental context on the basis of UNCED principles, such as "common but differentiated responsibilities", equity and international cooperation. Some consider also that procedural criteria would be essential, especially in the absence of any accepted definition of an MEA.

31. A number of WTO Members remarked on the usefulness of the "differentiated approach" as a methodology for analysing issues related to this Item: the approach differentiated, on the one hand trade, measures applied among MEA Parties from those applied against non-parties to an MEA, and, on the other hand, trade measures specifically mandated or defined in MEAs from those that are not.

ITEM 5 The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

32. This Item has been discussed in conjunction with Item 1. One issue examined was what the competent forum would be to settle a dispute which arose between two WTO Members over trade measures applied pursuant to an MEA. A second was what scope there might be for enhanced institutional cooperation in this area, in particular the involvement of environmental expertise in WTO dispute settlement proceedings and of trade expertise in MEA dispute settlement proceedings when disputes concern trade measures applied pursuant to an MEA. The possibility of providing public access to WTO dispute settlement proceedings, as is the case for certain MEAs, was also raised.

33. Like the WTO, MEAs emphasize the avoidance of disputes. They include provisions to increase transparency through the collection and exchange of information, coordination of technical and scientific research, and collective monitoring of implementing measures as well as consultation provisions. Most of the MEAs that are the focus of the CTE's work contain mechanisms for resolving disputes. These range from non-binding, consensus-building mechanisms to binding, judicial procedures of arbitration, and in certain cases resort to the International Court of Justice.

34. Some feel it is each government's responsibility to avoid entering into conflicting obligations in treaties it is signatory to; that is best done at the negotiating and drafting stage. Some also have stated that disputes can be avoided if WTO Members, which are Parties to an MEA, review trade measures applied by other countries pursuant to the MEA in the context of the totality of their international obligations. Some have said that WTO Members should not resort to the WTO dispute settlement mechanism to circumvent or impair the obligations they have accepted by becoming MEA Parties. Article 3 of the Dispute Settlement Understanding (DSU) has been cited in that regard, which calls on Members before bringing a case to exercise their judgement about whether action through the DSB would be fruitful.

35. One view is that this Item raises procedural issues which could best be addressed once conclusions have been drawn under Item 1 of the work programme. Another view is that procedural issues do warrant attention; if trade measures are taken pursuant to new MEAs in the future, the possibility of a trade dispute arising may increase. In that case, attempts should be made to ensure that both trade and environment interests are taken into account and that

implementing one treaty's set of rules does not jeopardise the fulfilment of the objectives of the other.

36. Doubts have been expressed about any *a priori* WTO determination of the forum under which a dispute which involved WTO rights and obligations should be handled. Some feel a case-by-case approach would be a pragmatic solution. Others stress the importance of WTO Members maintaining their right to submit any conflict involving trade measures to WTO dispute settlement, and recall that the DSU explicitly states that the purpose of the WTO dispute settlement system is to preserve the rights and obligations of WTO Members. Thus, these Members are of the view that the WTO remains competent to deal with a conflict arising from the use of any trade measure independently of its policy objective.

37. Some feel that a dispute between WTO Members, Parties to an MEA, over trade measures taken pursuant to the MEA should in the first instance be pursued under the MEA dispute settlement mechanism. One suggestion is that MEA Parties might stipulate *ex ante* that they intend trade disputes among them arising out of implementation of the obligations of the MEA to be settled under the MEA's provisions. One contribution[29] notes that the 1982 UN Convention on the Law of the Sea, and in particular the 1994 Agreement Relating to the Implementation of Part XI of the Convention (Section 6: Production Policy), attributes competence to the WTO in settling disputes involving trade-related measures, notably production subsidies and trade restricting measures. This approach, it is suggested, can help ensure the convergence of the aims of MEAs and the WTO while safeguarding their respective spheres of competence, thus overcoming problems arising from overlapping jurisdictions. There may be value in strengthening MEA dispute settlement mechanisms, but it is recognized that this matter lies outside WTO competence. Another suggested approach is to examine whether recourse to arbitration, as provided for in DSU Article 25, can be an appropriate means of resolving trade and environment disputes.

38. In the event of a dispute between two WTO Members, one a non-party to an MEA, over trade measures applied pursuant to the MEA, some have noted that the WTO would provide the only available dispute settlement mechanism since the non-party would have no rights under, nor access to, the MEA dispute settlement mechanism. In such circumstances, it would be important for the DSB to avoid becoming involved in pure environmental conflicts, but a WTO dispute settlement panel could seek relevant environmental expertise and technical advice.

39. Article 13 and Appendix 4 of the DSU allow a panel to seek information and technical advice from any individual or body which it deems appropriate, to seek information from any relevant source and to consult experts to obtain their opinion on certain aspects of the matter, and to request a report in writing from an advisory review group with respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute. This facility is available to panels examining disputes that arise over the use of any environment-related trade measures, whether these have been applied pursuant to an MEA or not.

40. One view is that these DSU provisions are sufficient and there are no grounds for making special provision for environmental expertise. Some have stated that full use of these provisions should be encouraged. Nevertheless, mechanisms could be explored to inform panels of MEA provisions, including the application and interpretation of an MEA or judgements on environmental matters in MEAs. One suggestion has been the establishment of cooperation and consultation arrangements between MEAs and the WTO to ensure that an MEA's environmental objectives are given appropriate consideration.

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[29]Communication from Chile, WT/CTE/W/2, 16 February 1995.

41. Some have suggested strengthening the role of expert groups in WTO disputes involving environmental issues, particularly in any disputes that might arise over the use of trade measures applied pursuant to MEAs, for example by requiring the use of such groups where there are scientific and technical points at issue in the dispute. It has been noted in that connection that under the provisions of the GATS Annex on Financial Services "panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute". In this regard, it is felt that environmental expertise would be particularly important in any disputes involving the interpretation and application of an MEA, for testing the necessity of an environment-related trade measure and for the assessment of scientific evidence. However, concerns have been raised that the independence of WTO panellists to judge a dispute should not be compromised; expert opinion could help inform a panel, but outside experts should not become involved in judging whether or not measures are WTO consistent. Also, doubts have been expressed about the legal basis for WTO panels to take account of an MEA's objectives or provisions, and about whether the CTE is the appropriate forum to consider changes in the provisions of the DSU. One proposal[30] has been to confirm that DSU provisions are adequate to deal with any trade dispute brought to the WTO which may be linked to environmental issues.

42. The possibility of providing, upon request, trade expertise to MEA dispute settlement proceedings has been discussed. One circumstance which could warrant that is where an MEA refers explicitly to WTO provisions.

43. Some MEAs provide opportunities for the public to have knowledge of and observe their dispute settlement proceedings. One view is that the DSU might suffer in comparison in this regard. It has been recalled that the UN Commission for Sustainable Development at its 1994 session stressed the importance of transparency and active involvement of the public and experts in work on trade and environment, including in dispute settlement processes, and considered there was considerable need for improvement in these areas.

ITEM 2 The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

44. This Item covers environmental polices and measures not already covered under other Items of the work programme.

45. Property rights, market-making measures such as tradeable emission permits, fiscal instruments, emission taxes, financial subsidies and soft loans, liability systems, and bond and deposit-refund systems have been mentioned by some. Some consider that compared to traditional regulatory approaches towards the internalization of environmental externalities, measures such as these can often be used more flexibly in a market economy and they can be more transparent. Others consider that, nevertheless, depending on how they are designed and implemented, they can generate significant trade effects and raise national concerns about relative competitiveness differentials which can provoke demands for compensatory trade measures to be imposed.

46. Environmental subsidies were discussed. Subsidies can be used to create incentives for producers to adopt environmentally-sustainable production practices, and the specific, environmentally-related, non-actionable subsidies identified in Article 8.2(c) of the Agreement on

[30]Non-paper by India, 23 July 1996.

Subsidies and Countervailing Measures (SCM) were noted in that regard.[31] Some were of the opinion that environmental subsidies may differ from more traditional forms of production subsidies but they can still exert an important influence on prices and producers' incomes, and hence on trade. Further analysis has been suggested of the relationship of the SCM Agreement to various forms of environmental incentives, of the extent to which WTO provisions encouraged subsidization that could be environmentally-harmful, in particular but not limited to energy use, and of the use of environmental subsidies in relation to the Agreement on Agriculture, particularly its Annex 2.12.

47. One proposal and a draft Decision[32] recommends that national governments undertake environmental reviews of trade agreements likely to have significant environmental effects, and that WTO Members be invited to provide copies of such reviews and related material and methodologies to the WTO Secretariat for reference by other Members. Some feel that this issue falls outside the mandate and competence of the WTO, and that the WTO should not therefore be making recommendations of this nature. Some others feel that environmental reviews fit within the provision of the terms of reference calling for identification of the relationship between environmental measures and trade measures.

48. One proposal[33] is to consider the relationship and comparability of general trade and environmental principles. Among the principles to be considered are *inter alia* the principle of sustainable development, Principle 12 of the *Rio Declaration*[34], MFN and national treatment, transparency, the concepts of least trade-restrictiveness, proportionality and equivalence, special and differential treatment for developing countries, common but differentiated responsibility, sovereignty over environmental resources, fair and equitable sharing of benefits, and the special needs of developing countries. Some feel that consideration of environmental principles lies outside the mandate of the WTO. Some feel that summarizing complex principles could create misunderstandings. Some feel that any such list of principles should be comprehensive and include the principle of the obligation to cooperate, the polluter pays principle, and the precautionary principle. A related suggestion is to analyse the flexibility of trade principles to accommodate current and emerging environmental policies, to determine whether they prevent the internalization of environmental externalities, and whether the trade rules contribute to integrated sustainable development policies. Another suggestion is that the relationship between specific environmental policies and specific WTO Agreements could only be usefully examined on a case-by-case basis.

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[31]It was noted that SCM Article 8.2(c) provides for one-time, non-recurring measures to meet specified conditions with the purpose of promoting the adaptation of existing facilities to meet new environmental regulations and standards. It was also pointed out that Article 8.3 requires *ex ante* notification of subsides claimed under the provisions of Article 8.2(c).

[32]Submission by the United States, WT/CTE/W/37, 23 July 1996 and Non-paper by the United States, 11 September 1996.

[33]Non-paper by India, Item 2, 23 July 1996.

[34]"States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus."

ITEM 3(A) The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

49. One issue examined is the application of GATT rules on Border Tax Adjustment (BTA) to environmental taxes and charges. The potential effects of environmental taxes on trade and problems involved in the valuation for tax purposes of tradeable environmental products have also been discussed.

50. Views have been presented on the potential trade effects and general economic and environmental effectiveness of levying environmental taxes and charges on imports and rebating them on exports, depending on whether they are assigned to correcting consumption or production externalities and are levied at the national or international levels.

51. With regard to the treatment of environmental taxes and charges under the BTA provisions, the 1970 Report of the GATT Working Party has been taken as a point of reference and several of its findings were noted.[35] These were that the BTA provisions are based on the concept of trade neutrality and they apply the destination principle. Furthermore, the Working Party concluded that certain taxes not levied directly on products are ineligible for BTA. There was a convergence of views in the Working Party that taxes levied directly on products are considered eligible for tax adjustment, and a divergence of views regarding the application of BTA for *taxes occultes* (consumption taxes on capital equipment, auxiliary materials and services used in the transportation and production of other taxable goods, for example taxes on advertising, energy, machinery and transport).[36]

52. Views have been presented in the CTE on the application of BTA to environmental taxes or charges applied to non-product-related PPMs. One view is that BTA applies solely to taxes levied on products or product-related PPMs, and that taxes or charges levied on non-product-related PPMs are not eligible for BTA. Another is that GATT jurisprudence remains unclear on this point, and that certain important environmental taxes and charges might fall into the category of *taxes occultes* on which the 1970 Working Party did not reach a firm conclusion. Since the BTA provisions could influence a Member's choice of what environmental taxes and charges to apply, some feel that it is important to clarify them in certain aspects. Some suggested that environmental taxes and charges might need to be accorded different treatment under WTO rules than other fiscal measures, and cautioned against drawing premature conclusions on BTA disciplines which would make it more difficult to apply them. Some feel that the environmental policy decision to impose the internal tax or charge should be taken as given and should not influence consideration of the adequacy of WTO rules on BTA.

53. Reference has been made to the Agreement on Subsidies and Countervailing Measures (SCM), in particular its provisions on "Prohibited Subsidies" (Article 2 and Annex I) and its "Guidelines on Consumption of Inputs in the Production Process" (Annex II). Different views have been expressed on the likely treatment under the Agreement of a rebate for exported products of indirect environmental taxes on a non-product-related PPM in excess of the tax rebated on like products when sold for domestic consumption. One view is that energy taxes appear to be covered by Footnote 61 of the SCM Agreement. Another is that the principle of physical incorporation remains the basis upon which BTA is applied.

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[35]BISD 18S/97.

[36]The Working Party noted that it appeared adjustment was not normally made for *taxes occultes* except in countries having a cascade tax.

54. Views have been presented by some and questions were raised by others on methodologies to value environmental resources for the purposes of taxation, and the potential impact of different types of environmental taxes and charges on the trade of developing countries.

ITEM 3(B) The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

55. The key point of reference for discussion of this Item has been the WTO Agreement on Technical Barriers to Trade (TBT) and its relationship to environmental regulations and voluntary standards. Discussions focused on environmental labelling (eco-labelling) schemes/programmes and measures and their relationship to the provisions of the TBT Agreement[37]. Considerable empirical and analytical work was done by the GATT EMIT Group in this area, covering not only eco-labelling but also environmental packaging and waste handling requirements. That work has been recalled, and some stressed their continued interest in taking up again the analysis on environmental packaging, waste handling, and related requirements.

56. Discussions on eco-labelling have been enriched by presentations of several existing eco-labelling schemes/programmes at a joint informal session of the CTE and the TBT Committee.[38] Those presentations illustrated the variety of approaches that have been adopted towards eco-labelling by WTO Members and described the perceived environmental benefits and cost effectiveness of the different approaches.

57. Some consider there are still few eco-labelling schemes/programmes in operation in WTO Member countries and they have expressed doubts about them becoming a significant new force in the market. In this regard, some questioned why the CTE spent a large amount of time discussing voluntary eco-labelling schemes/programmes, given that approximately 20 schemes/programmes were in operation. Some feel that a deeper analysis of eco-labelling schemes/programmes is required to determine their effectiveness as policy instruments for environmental protection, particularly in view of their potential trade-distorting nature.

58. Some noted that *Agenda 21* recognized the importance of eco-labelling as an environmental policy tool to assist consumers in making informed choices, along with the need to develop criteria and methodologies for the assessment of environmental impacts and resource requirements throughout the full life-cycle of products and processes.

59. Some have noted that eco-labelling schemes/programmes are variously administered in different Members by central governments, local government bodies, and non-governmental bodies. Some of those administered at the local government level or by non-governmental standardizing bodies have significant government involvement at various stages of the process from product selection to product certification and the award of a label.

60. Existing eco-labelling schemes/programmes are overwhelmingly voluntary in nature, which some consider should relieve concerns that may exist about their potential trade restricting effects. Some others express doubts in that regard, however, saying that if the schemes/programmes are successful they influence consumer behaviour and that in this respect they can affect significantly market access and conditions of competition.

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[37]One Member suggested that the term voluntary labels be used instead of eco-labelling schemes/programmes, since it was felt that voluntary labels were not only limited to environmental issues but could be used to help achieve other objectives.

[38]WT/CTE/W/23-G/TBT/W/23, 19 March 1996.

61. One focus of discussion has been the implications that the use of Life-Cycle Approaches (LCA) in some eco-labelling schemes/programmes can have in requiring *inter alia* the use of non-product-related PPMs in order for a product to be eligible to receive an eco-label. Some have said in this context that LCA can result in standards that are based on a mixture of criteria relating to product and performance characteristics, product-related PPMs and non-product-related PPMs. They have suggested that it would not be practical to separate the coverage under WTO provisions of eco-labelled products according to the nature of the criteria used, and that all criteria involved in granting an eco-label should be covered by WTO disciplines. From an operational perspective an eco-labelling scheme programme needs to be treated as an integrated whole under WTO provisions.

62. One Member noted that the business community in both developed and developing countries acknowledged non-product-related PPMs as one of the realities of the marketplace. In many cases, business was more concerned about transparency and consultation issues, rather than with whether or not a particular standard was based upon non-product-related PPMs. However, developing country exporters appeared to require additional time to adapt to new requirements. A number of individual case studies demonstrated the pragmatic attitude of some developing country textile exporters in meeting non-product-related PPM requirements.[39]

63. Another Member noted that a number of developing countries had reported difficulties in complying with standards based on non-product-related PPM.[40] These problems were particularly acute for small firms, because of difficulties in obtaining and adapting required technology, among other factors. While transparency was a basic requirement, it was not considered adequate, as complying with the standard would restrict their market access.

64. Some others have expressed concern that multiple criteria-based schemes/programmes will inevitably reflect the environmental conditions, preferences and priorities prevailing in the domestic market, and that this can create market access difficulties. Overseas suppliers operating under different sets of environmental conditions could find it difficult and costly, especially in developing countries, to adjust their products to meet the criteria required in their export markets, and may even be placed in a situation of having to adopt practices unsuited to their local environmental conditions. They have expressed concern also about the implications of the use of LCA based *inter alia* on non-product-related PPMs, particularly where these are chosen selectively by an eco-labelling authority, for the maintenance of WTO disciplines based on the principle of "like product".

65. The view of some is that there is a need to extend the examination to different types of eco-labelling standards and discuss the trade implications of each. In this regard, it is felt important when designing LCA-based eco-labelling standards to recognize adequately different countries' particular environmental conditions and to accommodate different approaches that produce an equivalent, environmentally-beneficial result. Also, eco-labelling schemes/programmes should be designed so as to ensure that they provide sufficient and accurate information to consumers regarding the relative environmental impacts of competing products, and in that respect the principles of truthfulness, scientific basis and substantiability are important.

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[39]International Trade Centre, *Eco-labelling and other environmental quality requirements in textiles and clothing: Implications for developing countries*, 1996

[40]UNCTAD case studies, 1992-1995.

66. The CTE examined the relationship of the provisions of the TBT Agreement to eco-labelling in the light of a document prepared by the WTO Secretariat.[41] The CTE discussed (i) the application of the notification and other transparency provisions of the TBT Agreement to voluntary eco-labelling standards, and (ii) the applicability of the provisions of the TBT Agreement to voluntary eco-labelling schemes/programmes based, *inter alia*, on criteria on non-product-related PPMs.

67. Divergent views were expressed in this regard. Some expressed the view that the analysis of the two issues may not be conducted separately, and consequently should be dealt with together.

68. With regard to the first issue, given various trade-related concerns about eco-labelling schemes/programmes, it is a widely held view that full transparency plays a pivotal role in avoiding potential trade difficulties and increasing the legitimacy of such schemes/programmes and participation by interested parties in their development. It was recalled that the TBT Committee has decided that mandatory labelling requirements are subject to the notification provisions of Article 2.9 of the TBT Agreement regardless of the kind of information that is provided on the label.[42]

69. Some consider that all voluntary eco-labelling standards are subject to the transparency provisions of the Code of Good Practice for the Preparation, Adoption and the Application of Standards (Annex 3 of the TBT Agreement). Some others consider that voluntary schemes/programmes based on LCA do not seem to be fully covered by the transparency provisions of the TBT Agreement to the extent that criteria concerning non-product-related PPMs do not fall within the definition of "Standard" in Annex 1. Furthermore, in accordance with this view, a partial coverage is not in practical terms sensible, because in the operation of these schemes/programmes all criteria established for specific categories of products have to be jointly taken into account when awarding the label.

70. With regard to the second issue, many delegations expressed the view that the negotiating history of the TBT Agreement indicates clearly that there was no intention of legitimizing the use of measures based on non-product-related PPMs under the TBT Agreement, and that voluntary standards based on such PPMs are inconsistent with the provisions of the Agreement as well as with other provisions of the GATT. There is objection[43] to any attempt through CTE work on eco-labelling to extend the scope of the TBT Agreement to permit the use of standards based on non-product-related PPMs.

71. Another view is that the definition of the term "Standard" in the TBT Agreement is ambiguous with respect to its coverage of standards based on non-product-related PPMs. Some Members suggested that the definition does not seem to cover standards based, *inter alia*, on non-product-related PPMs. It cannot be stated, therefore, *a priori*, that such standards are inconsistent with the terms of the Agreement. It has been suggested that, if any kind of

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[41]WT/CTE/W/10-G/TBT/W/11, 29 August 1995."Note by the Secretariat on the Negotiating History of the Agreement on Technical Barriers to Trade with Regard to Labelling Requirements, Voluntary Standards, and Process and Production Methods unrelated to Product Characteristics."

[42]"In conformity with Article 2.9 of the Agreement, Parties are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Parties. That obligation is not dependent upon the kind of information which is provided on the label, whether it is in the nature of a technical specification or not." (G/TBT/1/Rev.3).

[43]Non-paper by the Arab Republic of Egypt, 18 June 1996.

inconsistency between the use of LCA tools in the context of voluntary eco-labelling and the provisions of the multilateral trading system were identified, the CTE should, in accordance with its terms of reference and the first preambular paragraph of the Agreement establishing the WTO, devise positive solutions to preserve the integrity of LCA. This would not imply that the use of non-product-related PPM requirements would be generally allowed.

72. Still others have stated that the TBT Agreement does not cover measures based on non-product-related PPMs, and voluntary eco-labelling schemes/programmes based on LCA are not covered by transparency provisions of the Agreement, since criteria concerning non-product-related PPMs do not fall within the definition of "Standard" in Annex 1. The CTE is not the proper forum to discuss preserving the integrity of LCA. Further, environmental impacts of different stages of a product depend on the absorptive capacities of different countries.

73. Another view is that all forms of eco-labelling, including eco-labels that involve non-product-related PPMs, are covered by the TBT Agreement and that the inclusion of non-product-related PPM-based elements in an eco-labelling regime is not *per se* a violation of WTO rules. According to this view, the TBT Agreement provides sufficient flexibility to permit non-product-related PPM-based eco-labelling to be used, subject to appropriate trade disciplines, and the validity of any eco-labelling regime under the WTO must be judged according to the relevant rules of the multilateral trading system.

74. A number of specific proposals have been made. One[44] is to confirm that the provisions of the TBT Agreement and its Code of Good Practice for the Preparation, Adoption and Application of Standards apply to all eco-labelling schemes/programmes, whether voluntary or mandatory, and whether administered by governmental or non-governmental bodies. In addition, the CTE, jointly with the TBT Committee should in its future work-programme analyse the impact of the development of international standards based on LCA in a way that does not prejudice the views of Members regarding non-product-related PPMs. In this regard it has been suggested[45] that the scope of the TBT Agreement should be interpreted to cover the use of standards based upon non-product-related PPMs in eco-labelling schemes/programmes provided that these standards adhere to multilaterally-agreed eco-labelling guidelines based on scientific criteria, are transparent, consensual and non-discriminatory.

75. In response to this proposal, some have stated that they do not see any need to confirm what is already included in existing provisions of the TBT Agreement, and they have opposed changing the interpretation or application of the TBT Agreement to permit standards to be based on non-product-related PPMs. In this regard, they have objected to including as a point of reference in the TBT Agreement international standards based on LCA that are currently being developed by the International Organization for Standardization (ISO). In their view, accepting LCA under the TBT Agreement would permit one country to impose its environmental priorities on another. They have also expressed concern about the ISO process and the difficulties for some WTO Members, particularly developing countries, to participate effectively in it because of the considerable resource commitments it involves. Consequently, they do not consider that the ISO standards currently being developed in this field take their trade interests adequately into account.

76. Some have suggested more generally that where environmental standards, not only eco-labelling but also in such areas as packaging and waste handling, are based on national environmental attributes which are not necessarily shared by other countries, international standardization will not prove to be an acceptable way forward under WTO provisions as a means

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[44]Draft Decision by Canada, WT/CTE/W/38-G/TBT/W/30, 22 July 1996.

[45]Submission by Canada, WT/CTE/W/21-G/TBT/W/21, 21 February 1996.

of avoiding unnecessary trade restriction or distortion. Rather, they consider there is a need to examine and develop the TBT provisions relating to the "equivalence" of standards and "mutual recognition" of conformity assessment procedures as a way of alleviating trade concerns. They have referred to the work of UNEP and UNCTAD in this regard.

77. Another proposal[46] is that full transparency should be encouraged to enable timely public input at each stage of an eco-labelling programme's development. This would reduce the risk that environmental criteria in eco-labelling schemes/programmes narrowly reflect national considerations, take different environmental approaches into account, and help ensure that foreign producers or countries with significant trade interests in a labelled product have both timely and effective input throughout the entire eco-labelling process. Transparency provisions should emphasize the timely access to information regarding product group definition; the identification and elaboration of environmental criteria; procedures used in the awarding of labels, and other factors. Transparency, it has been noted, is of importance not only to the trading system but to the environmental policy objectives as well.

78. Another proposal[47] in support of the importance of full transparency in the development and operation of voluntary eco-labelling schemes/programmes based on LCA suggests that two possible options should be considered: (i) seeking full coverage by the TBT Agreement; and (ii) negotiating an *ad hoc* instrument such as a code of conduct taking as a point of reference the mechanisms and procedures established in the TBT Agreement. However, the proposal notes that it may be inappropriate to address the transparency issue without first clarifying the status of LCA-based voluntary eco-labelling schemes/programmes.

79. In response to this proposal, some have expressed objection to developing a separate code of conduct.

80. One proposal[48] emphasizes the potentially adverse market access impact which eco-labelling schemes/programmes can have on developing countries, and seeks clarification of the extent to which countries, particularly developing countries, are able to participate effectively in existing transparency provisions. Article 12 of the TBT Agreement has been recalled, in which special and differential treatment of developing country Members should be accorded. In this regard, the proposal includes consideration of the transfer of appropriate technologies as one aspect of an effective transparency regime with regard to eco-labelling schemes/programmes.

81. Some consider that the discussions on this Item to date have focused on eco-labelling to such an extent that insufficient attention has been given to other environmental product requirements, notably packaging and waste handling requirements, including recycling requirements. In that regard, one view is that eco-packaging requirements generally are based on conditions which reflect the national priorities in the country which imposes them. Applying these measures to imports might not only be environmentally inappropriate but also have a negative impact on market access. According to this view, in depth discussion is necessary on the best way of ensuring that eco-packaging requirements effectively comply with the relevant provisions on non-discrimination and national treatment, since these requirements might lead to significant *de facto* trade barriers. Equality of opportunity to compete is central to this issue, and the effective application of the concept of necessity is also important.

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[46]Submission by the United States, WT/CTE/W/27; G/TBT/W/29, 25 March 1996, and as proposed in a "Draft Decision on Transparency in Eco-labelling Programmes", 11 September 1996.

[47]Non-paper by the European Community, 24 July 1996.

[48]Non-paper by India, 22 July 1996.

ITEM 4 The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

82. Ensuring that trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects (hereinafter trade-related environmental measures) are transparent helps to avoid unnecessary trade restriction and distortion from occurring and provide important information to producers and traders about overseas market access opportunities. The role which transparency plays in dispute avoidance was also noted.

83. Trade-related environmental measures should not be required to meet more onerous transparency requirements than other measures that affect trade. However, it has been felt important to examine whether any category of trade-related environmental measures currently escapes entirely coverage by WTO transparency provisions, whether existing levels of transparency provided for are adequate in the light of a measure's potential trade effects, and what improvements might be made to facilitate WTO Members' access to information about these measures. Many emphasize the horizontal nature of transparency and its links to discussions under Items 1, 3, 6, 7, 8 and 9.

84. There were initial concerns in the CTE that certain categories of trade-related environmental measures may not be covered at all by WTO transparency provisions and that consequently there may be absolute gaps which would need to be filled. A list was drawn up of the measures mentioned in this regard.[49] On the basis of a Secretariat survey, it was noted that notifications of these measures are being made by at least one Member under one or other WTO provisions. From the point of view of some therefore, the new Uruguay Round Agreements have filled the gaps which were previously identified. It has been noted also that some Trade Policy Review (TPR) reports contain information on these measures, and that TBT and SPS enquiry points are available to provide supplementary information on measures covered by those Agreements.

85. As regards the adequacy of existing levels of transparency for particular categories of trade-related environmental measures, it has been noted that WTO provisions provide incremental degrees of transparency. Beyond the general GATT obligation to publish information about all trade-related measures, higher degrees of transparency are achieved through *ex post* notification requirements, *ex ante* notification requirements, and through the establishment of enquiry points under the TBT and SPS Agreements. One view is that the degree of transparency should be correlated with the potential significance of a measure's trade effects, and a suggestion was made for the CTE to conduct more work on the potential significance of the effects of trade-related environmental measures. Some feel that in any event these measures warrant being made subject to *ex ante* notification so that foreign suppliers can comment upon them at an early stage in the development of legislation, and that special enquiry points should be established in each Member to provide upon request additional information about them. Others feel, however, that while the introduction of more stringent transparency requirements might be warranted in specific instances, no transparency provision is without cost and this issue should be pursued on a case-by-case basis under other Items of the CTE work programme or in specialized WTO Committees. Specific concerns raised about the adequacy of existing provisions for ensuring the transparency of trade measures taken pursuant to MEAs and of voluntary eco-labelling schemes/programmes were pursued further under other Items of the work programme dealing directly with those measures.

86. The issue of establishing special enquiry points in Members to provide upon request information about trade-related environmental measures was taken up in the context of discussions

[49] "Potential Identified Gaps in Existing Transparency Provisions," Annex, WT/CTE/W/28, 19 April 1996.

on what improvements might be made to facilitate Members' access to information about these measures. One proposal[50] suggests consideration be given to establishing enquiry points. Another[51] proposes that information on trade-related environmental measures which do not fall within the purview of TBT or SPS enquiry points should be provided through national enquiry points or relevant authorities. They could handle requests for additional information on measures notified under the WTO, or more generally supply information to Members, especially developing country Members, about any non-notified trade-related environment measures in effect as well as informing exporters about market opportunities created by environmental measures, such as government incentives for the consumption of certain products, government procurement requirements which give preference to products that fulfilled voluntary environmental standards, and information on NGO programmes for environmentally-friendly products.

87. Concern has also been expressed about the creation of enquiry points. Some have expressed doubts about the appropriateness of establishing a mechanism that is based on a measure's policy purpose rather than its characteristics, which is not traditional WTO practice. There are concerns also about the administrative costs involved in operating them, which it is felt would need to be weighed against their potential benefit in terms of increased transparency in order to justify the use of resources. Some stress the need not to duplicate the work of TBT and SPS enquiry points or other WTO transparency provisions, and some express concern about the essentially bilateral nature of the transparency which would be generated in this way.

88. Views have been expressed that lack of transparency may be associated more with differences in interpretation among Members of how existing WTO transparency provisions apply to trade-related environmental measures or differences in compliance with those provisions than with any systemic inadequacy. This could make it difficult for Members to have comprehensive and consistent information about trade-related environmental measures. It is proposed,[52] therefore, that Members should collectively clarify existing notification obligations covering trade-related environmental measures. Some others feel this matter could be addressed more properly in the Working Group on Transparency Obligations and Implementation than in the CTE, and it is suggested that the results of the CTE's discussions on this issue should be transmitted to that Working Party.

89. Some have noted that the absence of a centralized collection point in the WTO for notifications of trade-related environmental measures which makes it difficult at present for Members to retrieve information about these measures easily and efficiently. In this respect, a proposal was made that the Secretariat should therefore collect from the Central Registry all such notifications in a single database, which would be regularly updated.[53] The database could contain the following information for each notified measure: its nature/title; objective(s); product coverage; relevant WTO or MEA provisions; a description of how it operates; and comments on its trade effects. It could include also information provided on an essentially bilateral basis by national enquiry points, which should be copied to the WTO Secretariat so that this could be made available on a multilateral basis, as well as information on trade-related environmental measures provided in TPR reports. Attention has been drawn in this context to the existence of other databases of this nature, for example one maintained by UNCTAD, and it is felt it would be important not to create duplication.

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[50]Non-paper by Hong-Kong, 28 May 1996.

[51]Non-paper by Brazil, 22 July 1996.

[52]Non-paper by Hong Kong, 28 May 1996.

[53]Non-paper by Hong Kong, 28 May 1996.

90. Some suggest that TPR reports can help improve transparency by covering trade-related environmental measures systematically. However, others feel it is not appropriate for the TPRM to become involved in environment-related issues which they consider lie outside its mandate.

91. One point raised in relation to all of these proposals is the difficulty of defining the term "environment" in an operational way for the WTO. Many trade-related measures can be associated with a variety of different policy objectives, and environmental or conservation aims may be only a secondary or related policy characteristic. For some, this makes it difficult to arrive at any conclusion on whether gaps in transparency exist, and they feel that greater definitional clarity would be particularly important in the context of considering proposals for enquiry points dedicated to trade-related environmental measures.

ITEM 6 The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

92. This Item is of relevance to many aspects of the CTE's terms of reference and to WTO Members' agreement to conduct their trade relations in a way which allows for the optimal use of the world's resources in accordance with the objective of sustainable development, while seeking to both protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.[54]

93. Extensive reference has been made by some during discussions under this Item to the importance of a number of the general principles contained in the Rio Declaration.

94. One is that poverty is a basic cause of environmental degradation in many Member countries, and that the contribution trade can make to the eradication of poverty by raising income levels is an indispensable requirement for the promotion of sustainable development.

95. A second is that it is not trade that is generally at the root of environmental degradation, but rather unsustainable production and consumption processes. Some consider this has important implications for choosing and assigning corrective policy measures efficiently. Some have noted in this regard that the key to the achievement of environmental benefits is the development of more sustainable patterns of production and consumption.

96. A third is the principle of "common but differentiated responsibility". Some feel this should be applied to an examination of the introduction of new trade-related environmental measures which could create high adjustment costs for developing countries exporters. Some others have noted that all countries have the sovereign right to make their own judgements on the standards which they apply within their own territories and that in this regard there is a need to ensure flexibility and fairness in the implementation of sustainable development strategies in all countries.

97. A fourth principle is that policy measures applied to promote the internalization of environmental costs should not distort international trade and investment. One comment made in this regard is that measures to improve environmental conditions in one country should not shift the costs onto others. Another is that the polluter should, in principle, bear the costs of pollution.

98. A fifth is that Members should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all

[54]Preamble to the Marrakesh Agreement Establishing the World Trade Organization.

countries, to better combat the problems of environmental degradation. Some considered that where trade liberalization does not bring environmental benefits, it should be accompanied by complementary environmental and resource management policies if its full potential contribution to better protecting the environment and promoting sustainable development through more efficient allocation and use of resources is to be realized. Some others stressed that while an open multilateral trading system makes possible a more efficient use of natural resources in both economic and environmental terms, the achievement of sustainable development depends crucially on the implementation of sound environmental policies at the national and as appropriate at the international level. Some consider that trade liberalisation in general results in environmental benefits although in some cases it may need accompanying environmental policies.

99. One proposal[55] describes the problems of low-income, commodity-dependent countries and other countries which remain marginal participants in world trade, and notes that the most urgent environmental problems they face are often different from those of other countries. It suggests that action by their trading partners to assist the expansion and diversification of their export opportunities, including diversification into higher value-added products, could help these countries in their efforts to both reduce poverty and protect the environment. Some others consider that trade liberalization should be accompanied by technology and financial transfers to developing countries.

100. Some consider there is a need for more empirical and analytical work on the design and sequencing of trade and environmental policies to address the fact that trade liberalization might exacerbate environmental problems in terms of the income, scale, composition, technology and product effects resulting, in certain circumstances, from market and policy failures. Some take the view that the elimination of trade restrictions and distortions that affect international commodity prices is a *sine qua non* for achieving the goals of environmental protection and sustainable development, particularly in developing countries; their elimination should not be made conditional on changes in environmental policies in exporting countries. Some feel that even if in certain circumstances trade liberalization may magnify existing environmental problems, the proper policy response is to put in place the necessary environmental and domestic resource management policies. Policy choices in that regard, it is felt, are the responsibility of governments at the national level.

101. One proposal[56] suggests that: (i) freer trade can contribute to an expansion of economic growth; (ii) economic growth, accompanied by sound environmental policy, can improve environmental quality; (iii) eliminating market distortions leads to more rational and efficient use of market resources, thereby supporting sustainable development; (iv) opening agricultural markets contributes to a more efficient allocation of resources and may improve environmental quality; and (v) agro-environmental policies that internalize environmental externalities contribute to a more efficient allocation of resources and improve environmental quality. It also notes that sound environmental policies directed at those unique nationally-specific environmental problems are preferable to trade restrictions. It concludes that free trade and environmental policies can work in tandem to achieve social benefit, economic growth and environmental quality.

102. Many consider that environmental problems should be dealt with at the national level by Members at their source, and not indirectly through trade restricting or distorting measures applied by their trading partners. In this regard, Principle 11 of the Rio Declaration was recalled. This Principle recognizes that "States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental

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[55]Submission by Australia, WT/CTE/W/36, 23 July 1996.

[56]Submission by the United States,WT/CTE/W/35, 23 July 1996.

and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries." Measures based on non-product-related PPMs were referred to particularly in this regard. Some expressed concern that while it might prove necessary to base environmental measures on life cycle analysis and non-product-related PPMs, these should not be applied in such a way as to differentiate "like products" at the border. Some have noted that Members have a responsibility to ensure that activities within their jurisdiction do not cause physical environmental damage elsewhere, but transboundary environmental problems should be resolved cooperatively through the negotiation of MEAs; claims that unilateral action may be necessary where it proves difficult to negotiate an MEA are unacceptable and such action would damage seriously the trading system.

103. In that context, many have noted that environmental standards differ from one country to another and trade-related measures should not be used to try to harmonize them or compensate for differences between them. Some feel this could amount to the extra-jurisdictional imposition of a country's environmental standards on its trading partners. In addition, it could cause both adverse economic and adverse environmental effects where producers are required to adapt to PPMs that are not suited to the local environmental conditions of countries in which their production is based. Some have referred to the 1995 Report on Trade and Environment to the OECD Council at Ministerial Level in which governments confirmed their commitment to *Agenda 21* and Principle 12 of the Rio Declaration, and agreed that "these principles also extend to unilateral import restrictions based on PPM-related requirements". It has been suggested by some that enhanced market access could be granted for some sectors like wood products, fisheries and agriculture, particularly to developing countries having better environmental absorptive capacities, thereby enhancing their income and engendering balanced environmental protection.

104. The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, is widely viewed as a cross-cutting issue which could be taken up in part in a more detailed way in respect of particular trade-related environmental measures addressed under other Items of the CTE work programme.

105. At the general level, some have recalled the conclusions of the OECD[57] that high levels of environmental protection can have positive effects on the competitiveness of domestic producers by encouraging them to economize on resource use and otherwise increase their efficiency, and can stimulate the development of new products, services and technologies, thereby creating new market opportunities.

106. Some others consider these opportunities may not be easy to access by producers in a large number of WTO Members, particularly small and medium scale enterprises (SMEs) in developing and least developed countries. Analysis and empirical work by UNCTAD was recalled in this regard which, it was stated, showed that compliance costs could be considerably more burdensome for developing countries. Substantial financial and technological resources as well as technical and administrative expertise, and in certain cases even material resource endowments, might be required to adapt to new regulations and standards in export markets, and these are frequently not available to developing country producers. This could take on an important dimension and lead to the creation of non-tariff trade barriers. Eco-labelling and packaging requirements and eco-taxes have been mentioned in this connection. There is, therefore, concern that environmental measures could have, and do have in the view of some, significant adverse trade effects, particularly for developing countries.

[57] *Report on Trade and Environment to the OECD Council at Ministerial Level*, Paris, 1995.

107. One view is that to mitigate and eliminate their adverse trade effects, environmental measures should be based on the criteria of sound science, transparency, and equity, and they must be compatible with the open, equitable and non-discriminatory nature of the trading system and conform to its basic provisions and disciplines. Some consider that in the design of environmental measures, use of environmental principles such as the precautionary principle and the principle of proportionality between environmental benefits and economic costs should be studied from the point of view of the effects of their application on the trade of developing countries.

108. Some consider that strengthened WTO disciplines might be justified to reduce and eliminate the adverse trade effects of certain environmental measures. In this regard, one contribution[58] suggests that work should focus on safeguarding existing market access opportunities, particularly for SMEs which account for a large share of manufactured exports in developing countries. Various WTO provisions should be reviewed from this point of view, in particular the provisions of the TBT and SPS Agreements, the Agreement on Subsidies and Countervailing Measures and the TRIPs Agreement, as well as all WTO provisions for special and differential treatment for developing countries. Further work should also address means of increasing market access for environmentally-friendly products from developing countries including the development of environmentally-sound technologies for such products and their use. One suggestion made in this regard is to examine how best to allow developing countries to benefit from differential schedules for compliance with trade-related environmental measures, such as time limited exceptions, or the development of an environmental *de minimis* clause. Another is to explore the means of providing additional technical assistance to developing countries.

109. In discussions on the environmental benefits of removing trade restrictions and distortions, the environmental benefits that are accruing from implementation of the commitments agreed in the Uruguay Round negotiations have been widely noted. Many consider the focus of further work should be trade and trade-related measures applied by Members that will remain after the Uruguay Round results are fully implemented. Measures cited by one or more Members in the CTE are tariff escalation and tariff peaks, production and export subsidies, high internal taxes particularly on tropical products, export restrictions and export taxes, the export practices of state trading enterprises, and various non-tariff barriers. Reference[59] has been made in particular to the potential environmental benefits which could accrue from the reduction and removal of remaining trade restrictions and distortions affecting sectors and products in which developing countries have a particular export interest, such as textiles and clothing, leather and leather products, footwear, forest products, fish and fish products, minerals and mining products, agricultural products, other natural resource-based products and primary commodities. Many support the need for further empirical work and analysis in these areas. These effects could be positive or negative. Positive effects, or opportunities, are not always easy to exploit and require expertise, technology and resources which may not always be available to developing countries. It also was noted that the globalization of the economy suggests the need to look for trade liberalization across the board.

110. Environmental benefits are expected to accrue in a variety of ways. Some consider they accrue most directly through the removal of trade restrictions on environmentally-friendly goods and environmental services; they will accrue also through the removal of restrictions on the transfer of environmentally-sound technologies (discussion under Item 8 reflects different views on this point); in addition, trade restrictions and distortions can lead to an inefficient allocation of resources, hold back income growth, particularly in developing countries, and artificially shift resources into activities which place additional pressure on domestic, environmentally sensitive

[58]Non-paper by India, 20 June 1996.

[59] See, *inter alia*, Non-paper by India, 20 June 1996.

resources; reducing or removing them would help to correct this. Some others also consider that to ensure direct and substantial environmental benefits, trade liberalization should be complemented by measures to improve market access, access to environmentally-sound technologies, finance and capacity building.

111. The environmental effects of subsidies, in particular in the agriculture sector, and of tariff escalation were paid particular attention in the CTE discussions.

112. Some have focused on the adverse environmental effects of the subsidization of agricultural production and exports. These are described as involving or arising from intensified land use, increased application of agro-chemicals, the adoption of intensive animal production practices and overgrazing, the degradation of natural resources, loss of natural wildlife habitats and biodiversity, reduced agricultural diversity and the expansion of agricultural production into marginal and ecologically sensitive areas. Agricultural assistance through output-related policies in many OECD countries was shown to have imposed high environmental costs in those countries at high financial expense. It also imposed high economic and environmental costs on other countries with a comparative advantage in agricultural production and trade, particularly developing countries. Empirical work by the OECD, UNCTAD, and the FAO was cited in this regard[60], and many consider it important to extend that further. A number of delegations consider that further reductions of agricultural protection and support would represent a "win-win" situation for trade and environment.

113. Some others feel it is inappropriate for the CTE to focus narrowly on the agricultural sector. They also consider that it would not be appropriate for the CTE to engage in discussions that would prejudge the agriculture negotiations. They feel that the WTO Agreement on Agriculture remains the best suited forum for the consideration of agricultural liberalization, since it already contains a built-in structure for dealing with such issues, and they express caution about drawing generalized conclusions on the environmental impact of agricultural support programmes, which they feel is a complex issue. Further analysis is needed to take account of differing geographic and environmental conditions between countries, different levels of socio-economic development, and other factors, and this should be done on a country basis case-by-case. The environmental externalities associated with agriculture need not only be negative; agriculture has a dual environmental function and it can have positive environmental effects through conservation and related practices. Abandoning farming might lead to environmental damage associated with soil erosion or biodiversity loss. Well-designed agricultural support programmes, they feel, could have beneficial effects on the environment, as well as on the linked issues of food security and sustainable development. A reference has been made in this regard to FAO work on Sustainable Agriculture and Rural Development. These Members noted that sustainable agriculture requires an integrated approach combining environmental, social and economic factors into a comprehensive framework of political and economic decision-making. They considered that strategies resulting from the understanding of these linkages should correspond to the multiplicity of functions of agriculture, including the protection of natural resources and the preservation of the landscape.

114. Many point to the potential economic and environmental benefits they feel would accrue from the reduction and removal of tariff escalation by helping to raise the value added by producers in commodity-dependent countries, increase incomes in those countries, and reduce direct pressure on natural resource exploitation. Some suggest that on similar grounds benefits could be expected to accrue also from the reduction and removal of export restrictions on primary products.

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[60]OECD, *The Environmental Effects of Trade*, Paris 1994; UNCTAD/COM/35, 25 April 1995: "Internalization of Environmental Damages in Agriculture"; FAO, 16th Regional Conference for Europe.

115. One proposal[61] focuses on the need for environmental policy to build upon prices that reflect full private costs of production. Therefore, it suggests that the first step to this end should be to identify and eliminate those governmental policies responsible for these price distortions. It proposes that the CTE address in its future work the need for fundamental, on-going reform in the agricultural sector and identify ways and means to reduce and eliminate trade restrictions and distortions there. This, it is suggested, would be a contribution to future negotiations under the Agreement on Agriculture.

116. Another proposal[62] notes that there is considerable scope to promote more sustainable agricultural policies and practices in the context of the agenda built-in to the Uruguay Round results for the continuation of the reform process in agriculture.

117. One proposal[63] suggests that there are various inter-related factors, including natural conditions, and socio-economic circumstances in each country which cause environmental problems, and the CTE should advance empirical and theoretical analysis. Agricultural trade liberalization could cause environmental problems in some Members by intensifying pressure on and the degradation of their natural resources if effective environmental policies were not in place. This proposal also suggested that in more general terms trade liberalisation without appropriate environmental policies may have negative effects on the environment.

118. Another proposal[64], which is based on the premise that there is no simple or automatic link between trade liberalization and environmental protection, notes with respect to the link between pricing policies and environmental policies, that the effect of trade liberalization on prices cannot be predicted with certainty, and that adjustment of prices is not *a priori* environmentally efficient. Such environmental efficiency would depend to a certain extent both on wider economic factors in agricultural markets and the conditions conducive to structural adjustment in producer economies. Furthermore, market mechanisms could only lead to both an economically and ecologically optimal allocation of production resources if full internalization of environmental costs were achieved. This is difficult to achieve, and is a function not only of price levels but also of political will.

119. In reaction, the difficulties involved in the internalization of environmental externalities have been noted by some. In their view, an important consideration is that internalization needs to take account of and coincide with development priorities. Other questions also have been raised, such as who would decide what and when to internalize, and whether the decision should be taken based on scientific evidence and relying on cost-benefit analysis.

120. Another proposal[65] suggests that it is not appropriate to draw the hasty conclusion that the removal of trade distorting agricultural measures will have environmental benefits, or that distorting measures necessarily have negative environmental effects when helping to correct market failures. It is therefore proposed to undertake analytical and empirical studies, on a case-by-case basis taking into account country-specific conditions, to determine the relationship between agricultural trade and the environment. This proposal also suggests that particular respect

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[61]Communication from Argentina, WT/CTE/W/24, 31 March 1996.

[62]Submission by Australia, WT/CTE/W/36, 23 July 1996.

[63]Non-paper by Japan, 24 June 1996.

[64]Non-paper by the European Community, 23 July 1996.

[65]Non-paper by the Republic of Korea, 23 July 1996.

should be given to the issues of food self-sufficiency towards food security, particularly in net food importing countries.

121. Another proposal[66] suggests that in negotiations on further trade liberalization, the WTO should ensure that environmental consequences are considered. In this respect, the WTO should be supportive of efforts to internalize environmental costs. One way to proceed in the CTE may be to identify sectors where trade liberalization could be conducted in a way so as to yield both economic and environmental gains. The energy sector was pointed out as one example where trade liberalization (*inter alia*, the reduction of subsidies and other measures) may result in such a double dividend. Further, the links between trade rules and environmental principles, in particular the polluter-pays principle (PPP) and the precautionary principle, should be examined. The CTE should also examine how to integrate concerns related to use of the life-cycle approach. It was suggested that the multilateral trading system should offer scope for incentives for the use of environmentally friendly products, and that the multilateral trading system should not encompass incentives for production and use of environmentally-damaging products.

122. Some have questioned and objected to this proposal, particularly in reference to the energy sector. One specific reaction is that any proposal regarding analysis of incentives for the use of environmentally-friendly products should take account of the complexities of the links between energy generation and use and environmental quality. National decision making on energy choices includes such variables as efficiency in production, availability of energy sources, economic costs for users and social impacts on the local population. Offering or withdrawing incentives to products, for example energy, cannot be undertaken on a selective basis.

ITEM 7 The issue of exports of domestically prohibited goods

123. This issue covers products whose sale and use are banned or severely restricted domestically on the grounds that they present a danger to human, animal, plant life or health or the environment, but which nevertheless may be exported. It is of particular concern to many developing and least-developed countries. In 1991, a GATT Working Group on Domestically Prohibited Goods and other Hazardous Substances (DPGs) produced a "draft Decision on Trade in Banned or Severely Restricted Products and Other Hazardous Substances". Consensus to adopt the decision could not be reached.[67] Taking account of the need not to duplicate or impede work done or underway in other intergovernmental fora to improve the monitoring and control of trade in DPGs, the CTE has examined what additional contribution the WTO might make in this area.

124. Since the examination of this issue by the GATT Working Group on DPGs, a number of new international agreements and conventions dealing, *inter alia*, with the monitoring and control of trade in certain DPGs have entered into force and others are under negotiation. Particular mention has been made in this regard of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the preparation under the Amended London Guidelines of an internationally legally-binding instrument for the application of the Prior Informed Consent (PIC) procedures for certain hazardous chemicals in international trade, the decision to develop a draft Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, and the draft Protocol on Bio-Safety. Multilateral rules on exports of DPGs should continue to be developed primarily through environmental instruments such as these.

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[66]Non-paper by Norway, 20 June 1996.

[67]See Report by the Chairman of the Working Group on Domestically Prohibited Goods and Other Hazardous Substances, L/6872, 2 July 1991.

125. A draft Decision on Exports of Domestically Prohibited Goods has been submitted to the CTE for consideration.[68] It draws on elements of the 1991 draft GATT Decision on this subject, including, *inter alia*, the definition of product coverage, the obligation of exporting countries to notify other WTO Members of DPGs they export if these are not already being notified under another international instrument, and the need to ensure that measures taken for the purpose of the Decision are in conformity with WTO rules. The draft Decision includes provisions for technical assistance to be provided to Members in this area, for enquiry points to be established, and it encourages exporting Members to consider whether the measures they apply to DPGs domestically should also be applied to exports.

126. Some consider that while the WTO's role should be limited strictly in this area to supplementing the activities of other specialized international organizations, it nevertheless has within its competence an important contribution to make by helping to fill any gaps which may be left by existing mechanisms in the monitoring or control of exports of DPGs and by helping to strengthen the regimes of other international instruments whose provisions are not legally-binding or which are voluntary. Two general areas of potential gaps have been suggested: DPGs not covered by other international instruments, and DPGs exported by WTO Members which are not Parties to those other international instruments. With regard to this first area, some consider that special emphasis should be placed on exports of domestically prohibited or severely restricted consumer goods, cosmetics, foodstuffs and certain pharmaceutical products. Another view is that hazardous wastes should not be dealt with under this Item since they are already fully covered by the Basel Convention.

127. Some consider that much trade in DPGs is already covered by existing international instruments and that with further improvements in their operation the issue of exports of DPGs will prove to be of decreasing importance. They feel that the identification of potential gaps in coverage of DPGs, to the extent they exist, is technical work which lies outside the WTO's competence and which could be undertaken better by, or only in consultation with, other relevant international organizations such as UNEP and WHO. They have pointed to the information contained in existing notifications by Members under the TBT and SPS Agreements about technical regulations they impose on the sale or use of products on the domestic market, and they have suggested that this may provide an important source of information on DPGs and help resolve the perceived problem. They doubt there is a further contribution which the WTO could make in this area that would fall within its competence or mandate, beyond ensuring that WTO rules do not conflict with the rules of other multilateral instruments applied in this area.

128. Ensuring the transparency of trade in DPGs has been felt by some to be an area where the WTO could contribute, but without duplicating existing transparency and notification procedures in other relevant international instruments[69] to which priority should always be given, nor in relevant WTO Agreements such as the TBT and SPS Agreements. Some have suggested that countries exporting DPGs could be required to notify the products in question, and that they could establish enquiry points to provide, on request, information about why the domestic sale or use of the products notified has been banned or severely restricted. Another suggestion is that WTO Members may limit exchange of information in this area to regulatory actions relating to DPGs. Some emphasize the importance of ensuring that one Member's notification of a DPG in the WTO would not lead to its exports being treated differently by an importing country from exports of the same product from other countries or from domestically produced goods. Some others consider

[68]Proposal by Nigeria, WT/CTE/W/32, 30 May 1996. See also Proposal by Nigeria, WT/CTE/W/14, 27 November 1995.

[69]A list of other relevant international instruments was compiled by the Secretariat in WT/CTE/W/29, 14 May 1996.

that a DPG notification programme, including prohibited but also severely restricted goods, would create a serious administrative burden and the important amount of notifications resulting from such a programme would eventually impair transparency. One suggestion is to consider to what extent an environmental data base, as examined under Item 4, could address the problem, or whether a chapter dealing with DPG regulations could be included in TPR reports.

129. One issue examined was where the responsibility for taking a decision to restrict trade in DPGs should lie: with the exporting country, the importing country, or jointly between the two? Some feel that a reasonable degree of the responsibility for controlling trade should lie with the exporter, which should consider extending its domestic sales bans and restrictions to exports or engage in mandatory labelling of DPGs. However, some express concern that this could imply endorsement of a Member applying its own health or environmental standards extra-jurisdictionally. Another view is that the decision to restrict trade in a product should lie exclusively with the importing country, but that the exporting country could be asked to cooperate in ensuring the decision was implemented effectively.

130. Providing technical assistance to help Members improve their capacity to take informed decisions about whether or not to import DPGs and to monitor their imports of DPGs more effectively has been viewed as a potentially important part of the solution to problems in this area, particularly over the longer term. It has been noted that the customs authorities of developing countries often lack adequate product testing facilities and that the absence of product standards and regulations in these countries adds to the problem, for example by enabling products to be marketed beyond their expiry dates. It has been recalled that Chapter 19 of *Agenda 21* on "Environmentally sound management of toxic chemicals, including prevention of illegal international traffic in toxic and dangerous products" recommends, *inter alia*, that capacity-building for trade in DPGs be consolidated by assisting developing countries in developing and strengthening risk assessment capabilities in order to make informed decisions about their imports. One view is that the WTO could cooperate in this regard with other organizations, such as the Amended London Guidelines and the Basel Convention, which could provide the necessary technical expertise. Another is that technical assistance of this kind does not fall within the WTO's competence or mandate.

131. One suggestion has been made that compensation and liability should be considered, linked with a dispute settlement provision, without being necessarily related to notification and transparency provisions. The rationale for a compensation and liability provision within the framework of an instrument which would focus mainly on transparency and notification has been questioned by others.

ITEM 8 The relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights

132. Issues discussed under this Item include the relationship of the TRIPs Agreement to the following: the environment generally; the generation of, access to and transfer of environmentally-sound technology (EST); environmentally-unsound technologies; indigenous and traditional knowledge; and certain MEAs in particular the UN Framework Convention on Biological Diversity (CBD).

133. Recalling the CTE's terms of reference, one view is that this Item should be approached from the perspective that WTO rules should promote sustainable development, with special consideration to the needs of developing countries. Some feel, in that regard, that the TRIPs Agreement lacks specific mechanisms to achieve the objectives of sustainable development and

environmental protection. Some others feel that effective implementation of the TRIPs Agreement enhances the protection of the environment and encourages the transfer of EST.

134. The role of the TRIPs Agreement in the generation of, access to and the transfer of EST has been described by some as the need to strike a balance between the rights and obligations of IPR holders on the one hand and IPR users on the other, and between promoting the generation of EST on the one hand and ensuring access to it and its transfer on the other. Some believe that such a balance is built into the TRIPs Agreement, for example in Article 7, and that the Agreement also authorizes the use of appropriate measures to prevent abuse of IPRs to ensure that unreasonable restraints will not be placed on trade or on the international transfer of technology.

135. Some feel that the utility of EST can be questioned if it is not disseminated and used widely and that additional rules may be necessary to limit the discretionary power of owners of technologies to restrict access to EST. It has been suggested in that regard to review those provisions of the TRIPs Agreement which deal with patents, compulsory licensing and anti-competitive practices. Some consider, furthermore, that IPR protection increases the cost of technology. Obtaining new technology at a reasonable cost is a concern in developing countries, particularly for small and medium scale enterprises (SMEs). Insufficient access to EST can adversely affect developing countries' competitiveness in export markets as well as their capacity to protect their environments. Reference has been made to *Agenda 21*, which regards access to and transfer of EST on concessional terms as essential for sustainable development. Attention has also been drawn to the importance of capacity-building to allow recipients to identify the technologies most suitable to their needs. Some feel that in the case of anti-competitive practices or if access to technologies is not being provided within a reasonable period by IP owners, such technologies should be made available through compulsory licensing. Regarding the consequences of IPR protection for access to and the transfer of EST not in the public domain, it has been suggested that the lack of adequate financial resources to facilitate access to technology is an impediment in the implementation of environmental measures, including those mandated in MEAs.

136. Some others expressed the view that by ensuring, *inter alia*, publication of new knowledge and by providing R&D returns, effective IPR systems promote innovation and technology transfer. They noted that technology must exist before its transfer can be promoted or the benefits associated with its commercialization shared. They also noted that consistent rules regarding IP actually facilitate technology transfer by providing a platform for cooperation among private and public sector entities. Moreover, the existence of an IP regime is only one of the factors which supports technology transfer; others are economic and political stability in the country of destination, the level of infrastructure and availability of skilled labour, access to financial resources, as well as domestic policies concerning investment, market access, services and environmental regulation which play a more direct role in technology transfer.

137. One contribution,[70] focuses on the relationship between IPRs and the environment, in particular the need to encourage the global use of ESTs and products which are produced with them (EST&Ps) that benefit or protect the environment. It seeks to reconcile the TRIPs Agreement with the encouragement of the global use of proprietary EST&Ps relating to the limited cases where these EST&Ps are mandated to be used under an MEA or by national authorities or where standards or other environmental measures are laid down by multilateral bodies. It proposes that the TRIPs Agreement reconcile the development or generation of EST&Ps with the easy access to and wide dissemination of them on "fair and most favourable conditions", interpreted as "preferential and non-commercial terms". It suggests that the compulsory licensing provisions in Article 31 and the term of protection provision in Article 33 should be examined in such a way as to ensure that they encourage the transfer of EST&Ps. It also suggests that an

[70]Non-paper by India, 20 June 1996.

obligation be imposed on IP owners of EST&Ps in the TRIPs Agreement to transfer such technology and sell such products on "fair and most favourable conditions" upon demand to any interested party which has an obligation to adopt these under the national law of another country or under international law. Such IP owners should be compensated through a financial mechanism for any losses incurred by them in complying with such an obligation.

138. Some consider there is no need to undertake the kind of reconciliation proposed. The experience of countries with TRIPs-consistent IP systems does not indicate that a problem exists with the dissemination of EST&Ps as a result of these systems, but that, rather, problems related to transfer of proprietary technology or to trade in products based on such technologies tends to occur as a result of impediments to foreign investment and trade in such products. No actual problem with the transfer of proprietary technology or in trade in products based on such technologies has been established and, should an actual problem be identified, the true source of the problem should be identified rather than simply presuming that the source lies in the TRIPs Agreement.

139. Concerns have been expressed by some Members about the negative effects of some technologies on the environment, in particular the effects of bio-technologies which involve genetically modified organisms whose effects are uncertain. Some have voiced concern over the patenting of micro-organisms, genes, genetic materials and genetically-engineered crops and plants, which they feel raises ethical, moral and religious problems, and over the patenting of life forms which may lead to biodiversity loss and so create environmental and development problems.

140. The view expressed by some others is that Articles 27.2 and 27.3 of the TRIPs Agreement are adequate to address real problems in this area, should any arise, and that national health and safety standards as well as MEAs can offer additional protection. Also, it is not within the competence of the WTO to seek to remedy ethical, moral and religious problems.

141. Noting that Article 27.3(b) of the TRIPs Agreement is to be reviewed in 1999, one view is that a detailed discussion of its implications in the area of trade and environment be part of the review. Another view is that the CTE does not have a role to play in this review, given that the TRIPs Council is the proper forum and has the necessary expertise for conducting a review of specific TRIPs provisions, including Article 27.3(b) as specified in the TRIPs Agreement.

142. With regard to traditional and indigenous knowledge, one view is that this knowledge has been the basis for much of the development of modern agriculture and medicine, yet these communities have to pay for patented products that are derived from their knowledge and innovation. One suggestion in this regard is that the TRIPs Agreement should exclude the possibility of patenting processes and products derived from naturally occurring biological resources, since it is doubtful these can be considered "novel" in terms of the criteria for patentability, but it should accord recognition to traditional interests and rights holders. New legislation and codes of conduct, including changes in the notion of trade secrets, may be needed to ensure that communities which are the source of traditional knowledge receive benefits from its exploitation. It has been suggested by those sharing this view that the review of Article 27 of the TRIPs Agreement should take account of the results of negotiations on "farmer rights" under the FAO Global System for Plant Genetic Resources and other developments regarding protection of traditional knowledge, both in the realm of the CBD and at the domestic level.

143. Another view is that it is inappropriate to consider amending the TRIPs Agreement because traditional or indigenous knowledge is not an IP and involves subject matter that is widely known or in the public domain. Therefore, it cannot and should not be deemed to be an IPR. Pursuant to this view, unrestricted and unpaid access to plant genetic resources for food and agriculture needs to be maintained for it is to the advantage of all countries, and that an open

exchange of such genetic material leads to better research, improved knowledge, more productive crop cultivars and more and better food. Free movement of plant genetic resources for research and breeding facilitates gene conservation, including the improvement of crop gene banks. Rather than seeking a solution in an IPR context, it was proposed that voluntary agreements involving firms, foreign governments and indigenous people could provide for benefit-sharing and technological cooperation to information providers which would represent an effective means for compensating traditional knowledge not subject to IP protection; such private contractual arrangements do not require multilateral disciplines and remove the need for an international *sui generis* system in this area.

144. In considering the relationship of the TRIPs Agreement to MEAs containing IPR-related provisions, some suggested taking a cautious approach because so little experience in the implementation of either is available so far. They feel it lies outside the CTE's competence to judge or interpret provisions of MEAs, and the CTE should not prejudge or prejudice future MEA discussions. It has been suggested that input from the private sector, the scientific community, or NGOs should be sought when relevant to facilitate work in this area.

145. With a view to ensuring the objectives and provisions of MEAs and the TRIPs Agreement are mutually supportive, some suggested an examination of Articles 7 and 8 of the TRIPs Agreement, particularly Article 8.1 which grants Members the authority to limit R&D activities or approval of technology on grounds of environmental protection. In that respect attention has been drawn to Chapter 34 of *Agenda 21* which states that technologies in the public domain should be freely transferred to further MEA objectives and the means explored to encourage the transfer of privately-owned technologies protected by IPRs. Another suggestion is to interpret Article 27.2 of the TRIPs Agreement in a way that is conducive to MEA objectives while not derogating from it. One question raised is whether the term "necessary" in Article 27.2 should be interpreted in the same way as it has been in GATT Article XX, or whether it should be given a broader interpretation in the context of MEAs. Noting that, on one hand, some MEAs, such as the Montreal Protocol either implicitly or explicitly prohibit the use of certain types of technology in favour of alternative EST, and that, on the other hand, patent holders may refuse to license EST on reasonable commercial terms, one proposal[71] has been to ensure that Article 31(b) does not hamper the actual transfer of EST by favouring a monopolistic position for patent holders of alternative technology, and by examining whether, for the purpose of Article 31(l), it would be appropriate to interpret the alternative EST technology in an MEA as an "important technical advance of considerable economic significance". This proposal explicitly mentions that it does not intend to modify the TRIPs Agreement as such, but to introduce such IPR-related matter involving an MEA and the TRIPs Agreement to the CTE with a view to clarifying potential ambiguities, if any. Another view is that the elements of Article 31 of the TRIPs Agreement adequately address the issue of remedying anti-competitive practises.

146. The relationship between the TRIPs Agreement and the CBD has been discussed. Some consider they have a different scope, subject matter and intent but there is no conflict or inconsistency between their obligations and objectives. By ensuring adequate protection for the innovator, the TRIPs Agreement promotes the CBD's objective of furthering technology transfer related to the commercialization and use of genetic resources. By setting as an objective the equitable sharing of the benefits of commercialization or other uses of genetic resources, the CBD addresses IPRs indirectly and identifies technology transfer as one form of benefit sharing its Parties should promote. The CBD does not address specific IPR systems or the particular characteristics of IPRs but it does provide that mechanisms used to promote technology transfer should recognize and be consistent with adequate and effective IPR protection, which is the standard demanded by the TRIPs Agreement. Both agreements are viewed as having the

[71]Non-paper by the Republic of Korea, 24 July 1996.

flexibility to achieve environmental objectives. The TRIPs Agreement permits Members to carry out national policies in favour of sustainable development and to take adequate measures in conformity with the CBD. Accordingly, they did not see the need for further work in this area.

147. Some feel there is a need to examine possible inconsistencies between WTO provisions and the CBD in the following areas: which agreement would prevail if a conflict arose between them, specifically between Parties and non-parties; what is the relation between the terms of access to genetic resources under the CBD (which is based on the idea of mutually-agreed terms) and the MFN and national treatment principles of the TRIPs Agreement; and what are the possible consequences of CBD Article 22 which provides that "[t]he provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity"?

148. A number of more specific questions have been raised: for example, what is the relationship between preferential access to genetic resources under Article 15 of the CBD and GATT provisions such as Articles I and XI, and what is the link between rights and obligations under the SPS and TBT Agreements and a country's policies regarding bio-safety pursuant to the CBD? Noting Article 16.5 of the CBD provides that IPRs should be implemented in a way that is supportive of and does not run counter to the objectives of the Convention, it has been asked whether Parties are entitled to use measures which limit or restrict IPR protection, or resort to compulsory licensing, on grounds that this is consistent with the CBD's objectives, especially as it relates to technology transfer. A related issue is whether Article 16.1 of the CBD, which provides for transfer of technology relevant to the conservation and sustainable use of biodiversity or technology which uses genetic resources in an environmentally-sound manner, and Article 33 of the TRIPs Agreement have consistent objectives.

149. Comparing the relevant provisions of the CBD and those of the TRIPs Agreement, one contribution[72] proposes various changes to the latter in order to accommodate the former: (i) in order to better address biotechnological inventions, Article 29 of the TRIPs Agreement on conditions on patent applicants including full disclosure of patentable inventions should be modified so as to require a clear mention of the biological source material, the known country of origin and all known information pertaining to knowledge and practices of the use of biological source material by indigenous communities in the country of origin. This part of the patent would be open to full public scrutiny immediately after filing of the application; (ii) to remedy the lack of prior informed consent mechanism in the TRIPs Agreement, a Material Transfer Agreement with the country of origin would be necessary where the inventor wishes to use biological material, and an Information Transfer Agreement (ITA) where the inventor makes use of indigenous or traditional knowledge; and (iii) an obligation on patent owners to execute ITAs for any traditional or indigenous knowledge which is already in the public domain or is a part of the recorded or otherwise publicly accessible knowledge systems. It is also proposed that the CTE examine the pros and cons of evolving a system for patenting of indigenous knowledge and local, contemporary innovations of traditional folk.

150. Some consider it contradictory to recognize the importance of EST development while at the same time calling for changes in the TRIPs Agreement which would have the effect of diminishing incentives to develop and disseminate EST, both absolutely and relative to other technologies. One suggestion is that solutions to problems faced by developing countries in obtaining EST should not be sought in the TRIPs Agreement but through the relevant MEAs. According to this view, technical issues of this sort would require at a minimum fuller study in

[72]Non-paper by India, 19 July 1996.

more appropriate fora. Those expressing this view questioned the value and feasibility of the proposal relating to patent information.

151. There have been suggestions for possible areas of cooperation between the TRIPs Agreement and MEAs which contain IPR-related obligations. One is that those obligations should be notified under the TRIPs Agreement so as to facilitate synergies with MEAs. Another is to consider channelling relevant information on the implementation of IPR-related commitments contained in these MEAs through the TRIPs Agreement's notification mechanisms. The CTE should be kept informed of developments in other fora such as the CBD and International Convention for the Protection of New Varieties of Plants, and of the developments of emerging IPR-related concepts, such as farmer's rights and plant breeder's rights in relevant international organizations. Some support closer cooperation between the WTO Secretariat and other international organizations in this area. Following a request from the Biodiversity Convention's Secretariat to assist in the preparation of a report on "Biological Diversity and Trade-Related Intellectual Property Rights: Synergies and Relationships", the CTE agreed to derestrict relevant parts of its documentation.[73]

152. One proposal suggests[74] discussion continue on a number of issues raised by the relationship between the TRIPs Agreement and environmental objectives: (i) the generation, access to and transfer of ESTs; (ii) the provision of incentives for the conservation and sustainable use of biological resources and the equitable sharing of the benefits of this use, including in relation to the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles; and (iii) the treatment of technology that may adversely affect the environment.

ITEM 9 The work programme envisaged in the Decision on Trade in Services and the Environment

153. Pursuant to the Ministerial Decision on Trade in Services and the Environment, the Council for Trade in Services, at its meeting on 1 March 1995, adopted a Decision "[a]cknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement; and [n]oting 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". It decided "[i]n order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures (i.e. measures necessary to protect the environment), to request the CTE to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The CTE shall also examine the relevance of intergovernmental agreements on the environment and their relationship to the Agreement. The CTE shall report the results of its work at the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization".[75]

154. Discussions on this Item have been only exploratory. One view is that similar issues with regard to trade and environment arise in the area of trade and services to those that arise in the

[73]WT/CTE/W/8 (8 June 1995), WT/CTE/M/3 (18 July 1995), WT/CTE/W/22 (21 February 1996), WT/CTE/M/8 (11 April 1996).

[74]Non-paper by Australia, 11 September 1996.

[75]S/L/4, 4 April 1995.

area of trade in goods, but that they might need to be approached differently in view of the differences between the GATT and the GATS provisions. Careful analysis is needed to distinguish environmental measures applied directly to trade in services from environmental measures applied to products associated with that trade in order to identify whether the issues raised should be addressed in the context of the GATS or of other WTO provisions. In this regard, some are of the view that services, being intangible, are not polluting *per se*; environmental considerations may occur only when the delivery of services is associated with trade in goods. Those considerations are already covered by the WTO provisions relevant to trade in products.

155. Given that GATS Article XIV(b) contains the same language as GATT Article XX(b), one view is that the need to modify it should be considered only after progress has been made on Item 1. It has been noted, however, that the GATS is still evolving and includes concepts that are not contained in the GATT so that conclusions reached in the area of goods trade may not apply automatically to services trade. It has been noted that there is no analog to GATT Article XX(g) in the GATS. A suggested approach is to identify restrictive measures applied to services trade, consider whether these could be justified by GATS provisions other than Article XIV(b), such as Article VI, VII and XIV(c), and examine whether Article XIV(b) is an adequate basis on which to address environmental concerns. One potential problem raised in this context is that invoking Article XIV(b) after a service supplier has invested and established in a domestic market could prove particularly disruptive and costly if the supplier is obliged to disinvest. Before the CTE conducts a separate analysis of this issue, Members have been asked to bring to its attention evidence they may have of measures which they feel may need to be applied for environmental purposes to services trade but which may not be covered by the GATS provisions and in particular Article XIV(b).

156. Concerning the relationship of relevant MEAs to the GATS, it is suggested that progress might be possible independently of progress under Item 1 and that a first stage would be to identify possible points of contact between relevant MEAs and the GATS. The importance of taking account of work in other fora, such as the Negotiating Group on Maritime Services as well as the International Civil Aviation Organization and the International Maritime Organization is emphasized. Analysis could focus on the relationship of the GATS provisions, such as Article VI, to trade measures applied pursuant to MEAs dealing with services trade, such as the Basel Convention, the London Convention on Dumping and the Montreal Protocol. Consideration should also be given to whether MEAs indicated that particular services sectors need special environmental measures.

157. With regard to the relationship between services trade and the environment, including the issue of sustainable development, one suggestion is that sectoral case studies could be conducted, taking account of work in other fora, to identify the environmental impact of the liberalization of trade in services (e.g. transport and tourism) and the impact that certain environmental legislation might have on trade liberalization (e.g. conditions applicable to services suppliers in the field of waste management). One view is that improved market access for environmental services and technology resulting from the GATS hold out "win-win" opportunities for trade and the environment. Another view is that the CTE has neither the mandate nor the capability to conduct studies on the environmental impact of service trade or its liberalization.

158. It has been suggested that particular attention should be paid to ensuring that GATS Article XXVIII(c)(ii) measures are applied on a national treatment basis to allow all services suppliers access to and use of public environmental services. Further analysis is also suggested on the trade effect of environmental subsidies and how this might be reflected in future GATS disciplines.

ITEM 10 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

159. This Item was discussed in informal consultations under both the Sub-Committee on Trade and Environment of the WTO Preparatory Committee and the CTE, as well as on a number of occasions in informal and formal meetings of the CTE.

160. Pending a decision by the General Council on conditions and criteria for observer status for intergovernmental organizations (IGOs), the CTE extended observer status on an *ad hoc* basis to fourteen IGOs.[76] The procedures were confirmed by the General Council at its meeting on 18 July 1996.[77] The WTO Secretariat was requested to keep the CTE informed about work on trade and environment underway in other intergovernmental organizations, including relevant MEA bodies.

161. There has been support for continuing to improve the transparency of the work of the WTO in the area of trade and environment and increasing public access to information through timely derestriction of the CTE's working documents and the records of its formal discussions, while emphasizing the importance attached to each Member respecting fully the confidential nature of WTO documentation that is restricted in its distribution. It is recognized that there is a need to respond to public interest in this area, to provide a clear idea of what is being discussed in the WTO and how those discussions are progressing, and to build public support for the contribution that the WTO can make to better environmental protection and the promotion of sustainable development. At its meeting on 18 July 1996, the General Council adopted a Decision on "Procedures for the Circulation and Derestriction of WTO documents".[78]

162. Different views have been expressed about the involvement of non-governmental organizations (NGOs) in the work of the CTE[79].

163. One view is that NGOs could play a constructive role by providing information and technical expertise on environmental matters, and their presence at formal CTE meetings would be a recognition of the public interest that exists in this area of the WTO's work and would help to make that work more broadly available to the public. Untransparent proceedings, it is felt by some, perpetuated a secretive image of the WTO and diminished public confidence in and support for WTO work. This leads to misunderstanding and suspicion of the deliberative processes of the trading system. A suggestion has been made to invite representatives of specialized NGOs with a direct interest in trade and the environment to make contributions to CTE meetings.

164. A second view is that it would not be appropriate to allow NGOs to participate in the proceedings of the CTE. Many feel that primary responsibility for taking account of the many

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[76]The United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the International Monetary Fund (IMF), the United Nations Environment Program (UNEP), United Nations Development Program (UNDP), Commission for Sustainable Development (CSD), the Food and Agriculture Organization (FAO), the International Trade Centre (ITC), the Organization for Economic Cooperation and Development (OECD), and the European Free Trade Association (EFTA), the UN Industrial Development Organization (UNIDO), the World Customs Organization (WCO) and the International Organization for Standardization (ISO).

[77]Decision on "Observer status for international intergovernmental organizations in the WTO". WT/L/161/Rev.1.

[78]WT/L/160, 22 July 1996.

[79]The Secretariat provided information on arrangements in place in other inter-governmental organizations for consultations with non-governmental organizations (PC/SCTE/W/2).

different elements of public interest which are brought to bear on trade policy-making, and consequently for relations with NGOs, lies at the national level. Arrangements in the WTO cannot substitute for this. Furthermore, some feel that such arrangements would unnecessarily complicate the consultative process with NGOs at the national level, and that the WTO's deliberations could be compromised if public interest groups were allowed to participate directly in its work. Also, practical difficulties have been foreseen in involving NGOs directly in CTE meetings.

165. At its meeting of 18 July 1996, the General Council adopted a Decision on "Guidelines for arrangements on relations with non-governmental organizations".[80]

III. CONCLUSIONS AND RECOMMENDATIONS

166. The WTO Committee on Trade and Environment (CTE) has initiated work on all Items of its work programme set out in the Marrakesh Ministerial Decision on Trade and Environment. The CTE's discussions were enriched by the work undertaken previously by the GATT Group on Environmental Measures and International Trade and in the WTO Preparatory Committee. Discussions have demonstrated the comprehensive and complex nature of the issues covered by the Ministerial work programme, which reflects the WTO's interest in building a constructive relationship between trade and environmental concerns.

167. The CTE's discussions have been guided by the consideration contained in the Ministerial Decision that there should not be nor need be any policy contradiction between upholding and safeguarding an open, equitable and non-discriminatory multilateral trading system on the one hand and acting for the protection of the environment on the other. These two areas of policy-making are both important and they should be mutually supportive in order to promote sustainable development. Discussions have demonstrated that the multilateral trading system has the capacity to further integrate environmental considerations and enhance its contribution to the promotion of sustainable development without undermining its open, equitable and non-discriminatory character; implementation of the results of the Uruguay Round negotiations would represent already a significant contribution in that regard.

168. The CTE's discussions have been guided also by the consideration that the competence of the multilateral trading system is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its Members. It is recognized that achieving the individual as well as the joint objectives of WTO Member governments in the areas of trade, environment and sustainable development requires a coordinated approach that draws on interdisciplinary expertise. In that regard, policy coordination between trade and environment officials at the national level has an important role to play. Work in the CTE is helping to better equip trade officials to make their contribution in this area.

169. WTO Member governments are committed not to introduce WTO-inconsistent or protectionist trade restrictions or countervailing measures in an attempt to offset any real or perceived adverse domestic economic or competitiveness effects of applying environmental policies; not only would this undermine the open, equitable and non-discriminatory nature of the multilateral trading system, it would also prove counterproductive to meeting environmental objectives and promoting sustainable development. Equally, and bearing in mind the fact that governments have the right to establish their national environmental standards in accordance with their respective environmental and developmental conditions, needs and priorities, WTO Members note that it would be inappropriate for them to relax their existing national environmental

[80]WT/L/162, 23 July 1996.

standards or their enforcement in order to promote their trade. The CTE notes the statement in the 1995 Report on Trade and Environment to the OECD Council at Ministerial Level that there has been no evidence of a systematic relationship between existing environmental policies and competitiveness impacts, nor of countries deliberately resorting to low environmental standards to gain competitive advantages. The CTE welcomes similar policy statements made in other inter-governmental fora.

ITEM 1 The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements

ITEM 5 The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

170. These two Items have proved to be closely linked. The CTE has discussed them together and drawn conclusions and recommendations on them jointly.

171. The CTE notes that governments have endorsed in the results of the 1992 U.N. Conference on Environment and Development their commitment to Principle 12 of the *Rio Declaration* that "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global problems should, as far as possible, be based on an international consensus." There is a clear complementarity between this approach and the work of the WTO in seeking cooperative multilateral solutions to trade concerns. The CTE endorses and supports multilateral solutions based on international cooperation and consensus as the best and most effective way for governments to tackle environmental problems of a transboundary or global nature. WTO Agreements and multilateral environmental agreements (MEAs) are representative of efforts of the international community to pursue shared goals, and in the development of a mutually supportive relationship between them due respect must be afforded to both.

172. The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes taken pursuant to multilateral environmental agreements is multifaceted. Finding the right balance to describe and address this relationship in the CTE has proved to be a very demanding task, particularly given the varying nature of the issues involved in each MEA.

173. Adequate international cooperation provisions, including among them financial and technological transfers and capacity building, as part of a policy package in MEAs are important and can be indispensable elements to facilitate the ability of governments, particularly of developing countries, to become Parties to an MEA and provide resources and assistance to help them tackle the environmental problems which the MEA is seeking to resolve and thus to implement the provisions of the MEA effectively, in keeping with the principle of common but differentiated responsibility. Trade measures based on specifically agreed-upon provisions can also be needed in certain cases to achieve the environmental objectives of an MEA, particularly where trade is related directly to the source of an environmental problem. They have played an important role in some MEAs in the past, and they may be needed to play a similarly important role in certain cases in the future.

174. The CTE recognizes that the evolving relationship between MEAs and the multilateral trading system is complex and that different questions may emerge. In this respect, the following points have been noted in the course of discussions in the CTE:

(i) Trade measures have been included in a relatively small number of MEAs. There is no clear indication for the time being of when or how they may be needed or used in the future. Up to now, there has been no GATT or WTO dispute concerning trade measures applied pursuant to an MEA.

(ii) A range of provisions in the WTO can accommodate the use of trade-related measures needed for environmental purposes, including measures taken pursuant to MEAs. That includes the defined scope provided by the relevant criteria of the "General Exceptions" provisions of GATT Article XX. This accommodation is valuable and it is important that it be preserved by all.

(iii) In the context of the consideration of the inclusion of specifically agreed-upon trade provisions in MEAs, mutual respect should be paid to technical and policy expertise in both the trade and environment areas.

(iv) In practice, in cases where there is a consensus among Parties to an MEA to apply among themselves specifically mandated trade measures, disputes between them over the use of such measures are unlikely to occur in the WTO.

(v) In the negotiation of a future MEA, particular care should be taken over how trade measures may be considered for application to non-parties.

(vi) Policy coordination between trade and environment policy officials at the national level plays an important role in ensuring that WTO Members are able to respect the commitments they have made in the separate fora of the WTO and MEAs and in reducing the possibility of legal inconsistencies arising.

175. In order to enhance understanding of the relationship between trade and environmental policies, co-operation between the WTO and relevant MEAs institutions is valuable and should be encouraged. The CTE recommends that the WTO Secretariat continue to play a constructive role through its cooperative efforts with the Secretariats of MEAs and provide information to WTO Members on trade-related work in MEAs. As noted in the CTE's conclusions under Item 10 of its work programme, observer status for relevant MEAs in WTO bodies, as appropriate, can play a positive role in creating clearer appreciation of the mutually supportive role of trade and environmental policies. Requests from the appropriate bodies of MEAs for observer status should be considered in this light. The CTE should also consider extending invitations to appropriate MEA institutions to attend relevant discussions of the CTE.

176. As described in Section II of this Report, views differed on whether any modifications to the provisions of the multilateral trading system are required under this Item of the work programme. This matter should be kept under review and further work under this Item should be carried out drawing on the work undertaken to date.

177. The CTE notes that both the WTO and MEA dispute settlement mechanisms emphasize the avoidance of disputes, including through parties seeking mutually satisfactory solutions.

178. The CTE recognizes that WTO Members have not resorted to WTO dispute settlement with a view to undermining the obligations they accepted by becoming Parties to an MEA, and the CTE considers that this will remain the case. While WTO Members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms

available under the MEA. Improved compliance mechanisms and dispute settlement mechanisms available in MEAs would encourage resolution of any such disputes within the MEA.

179. The CTE recognizes the benefit of having all relevant expertise available to WTO panels in cases involving trade-related environmental measures, including trade measures taken pursuant to MEAs. Article 13 and Appendix 4 of the DSU provide the means for a panel to seek information and technical advice from any individual or body which it deems appropriate and to consult experts, including by establishing expert review groups.

ITEM 2 The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

180. A number of trade-related environmental policies and measures not covered elsewhere in the work programme have been discussed in a preliminary way under this Item. Further examination and analysis of these policies and measures in the CTE will be required, including analysis of their effects on trade.

181. There has also been some discussion of the use by governments at the national level of environmental reviews of trade agreements, and of the relationship and compatibility of general trade and environmental policy-making principles. No conclusions have been drawn so far on either of these issues. Further work will be required on this Item in the CTE.

ITEM 3(A) The relationship between the provisions of the multilateral trading system and charges and taxes for environmental purposes

182. Scope exists under WTO provisions for Member governments to apply environmental charges and taxes. The CTE has undertaken so far a preliminary examination of some of these issues under this Item. Further work on this Item is needed.

ITEM 3(B) The relationship between the provisions of the multilateral trading system and requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

183. The major part of the CTE's work so far under this Item has involved examination and analysis of voluntary eco-labelling schemes/programmes, including those based on life cycle approaches, and their relationship to WTO provisions and to the Agreement on Technical Barriers to Trade (TBT) in particular. Well-designed eco-labelling schemes/programmes can be effective instruments of environmental policy to encourage the development of an environmentally-conscious consumer public. The CTE noted that Chapter IV of *Agenda 21* encouraged the expansion of environmental labelling and other environmentally-related product information programmes designed to assist consumers in making informed purchasing decisions. The CTE also noted that eco-labelling schemes/programmes have raised, in certain cases, significant concerns about their possible trade effects.

184. Increased transparency can help deal with trade concerns regarding eco-labelling schemes/programmes while it can also help to meet environmental objectives by providing accurate and comprehensive information to consumers. The CTE felt that an important starting point for WTO Members to address some of the trade concerns raised over eco-labelling schemes/programmes is by discussing how to ensure adequate transparency in their preparation,

adoption and application, including affording opportunities for participation in their preparation by interested parties from other countries. The transparency provisions contained in the TBT Agreement, including the Code of Good Practice for standardizing bodies contained in Annex 3 of the Agreement provide a reference point to the further work of the CTE in enhancing transparency of eco-labelling schemes/programmes.

185. As stated above, the CTE's discussion on eco-labelling has focused primarily on voluntary eco-labelling schemes/programmes and in particular on the transparency of such schemes/programmes. Without prejudice to the views of WTO Members concerning the coverage and application of the TBT Agreement to certain aspects of such voluntary eco-labelling schemes/programmes and criteria, i.e. those aspects concerning non-product-related PPMs, and therefore to the obligations of Members under this Agreement regarding those aspects, the CTE stresses the importance of WTO Members following the provisions of the TBT Agreement and its Code of Good Practice, including those on transparency. In this context, the CTE underlines the particular importance of ensuring fair access of foreign producers to eco-labelling schemes/programmes.

186. The CTE will conduct further work on all issues contained under this Item, including with respect to developing countries and least developed countries. Such further work could involve cooperation with the Committee on TBT and take into account the work of other international fora, for instance UNEP, UNCTAD, OECD, ITC and ISO, as appropriate.

ITEM 4 The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

187. WTO transparency provisions and mechanisms are not an end in themselves. However, they fulfil an important role in ensuring the proper functioning of the multilateral trading system, in helping to prevent unnecessary trade restriction and distortion from occurring, in providing information about market opportunities and in helping to avoid trade disputes from arising. They can also provide a valuable first step in ensuring that trade and environment polices are developed and implemented in a mutually supportive way. The CTE considers transparency to be an important aspect of all Items of its work programme where the relationship of WTO provisions to specific trade-related environmental measures is receiving attention.

188. The CTE recognizes that trade-related environmental measures should not be required to meet more onerous transparency requirements than other measures that affect trade.

189. The CTE concludes that no modifications to WTO rules are required to ensure adequate transparency for existing trade-related environmental measures. Nevertheless, the CTE should keep under review the adequacy of existing transparency provisions with respect to trade-related environmental measures, including the results of the work of the Working Group on Notification Obligations and Procedures and whether the Committees and Councils dedicated to individual WTO Agreements consider there is any need to review the transparency provisions of those Agreements in particular instances and whether compliance with the provisions is viewed as satisfactory.

190. The CTE notes that some WTO Members are dealing with some notifications differently, both in terms of their understanding of which types of environmental measures require notification, and under which WTO provisions. Such a situation needs to be improved through joint efforts by Members to clarify the understanding of the notification requirements concerned.

191. The CTE suggests that Members consider requests for additional information on measures notified under the WTO, or more generally supply information to Members, especially developing country Members, about market opportunities created by environmental measures.

192. In the meantime, the CTE recommends that the WTO Secretariat compile from the Central Registry of Notifications all notifications of trade-related environmental measures and collate these in a single database which can be accessed by WTO Members. The database could contain information where available for each notified measure: its nature/title; objective(s); product coverage; relevant WTO provisions and MEA provisions; and a description of how it operates. This database should be kept updated.

193. The CTE welcomes the efforts of other inter-governmental organizations, in particular the UNCTAD and ITC, to collect and disseminate additional information on the use of trade-related environmental measures, and recommends the WTO Secretariat cooperate with those organizations to ensure duplication is avoided.

194. The possibility of information on trade-related environmental measures being made available voluntarily by Members in their Trade Policy Reviews and of the Secretariat including such information in its TPR Reports was noted as a possible issue to be explored in consultation with the TPR Body.

ITEM 6 The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

195. It is under this Item that the CTE has discussed how the WTO can contribute to making international trade and environmental policies mutually supportive through trade liberalization and appropriate development and environmental policies determined at the national level for the promotion of sustainable development.

196. The CTE acknowledges that an open, equitable and non-discriminatory multilateral trading system and environmental protection are essential to promote sustainable development and that there is a close linkage between poverty and environmental degradation. Emphasis has been placed on the importance of cooperation in the essential task of alleviating and eradicating poverty in order to achieve sustainable development and the important role that increased trade and market access opportunities can make in this regard. It was noted that many countries remain marginal participants in world trade. In this respect, the CTE could contribute to the identification of trade policy actions which can enhance the participation in world trade of developing countries, and in particular the least developed among them, and promote environmental protection in the interest of sustainable development.

197. The possible effects of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, have been discussed. There is concern that environmental measures and requirements may adversely affect the competitiveness and market access opportunities of small and medium-sized enterprises especially in developing countries. The environmental benefits of trade liberalization, including the removal of trade restrictions and distortions, has been addressed at both a general and sectoral level and in relation to specific trade restrictions. The CTE emphasizes the importance of market access opportunities in assisting developing countries obtain the resources to implement adequate developmental and environmental policies determined at the national level, diversify their economies and provide income-generating activities for the poor. Consequently, improving market access opportunities and preservation of the open, equitable and non-discriminatory nature

of the multilateral trading system is essential for supporting countries in their efforts to ensure sustainable management of their resources. It has been recognized that trade liberalization including the elimination of trade restrictions and distortions can yield developmental and environmental benefits by facilitating a more efficient allocation and use of resources. At the same time, however, the CTE underlines that implementing appropriate environmental policies determined at the national level as part of sustainable development strategies is needed in order to ensure that these benefits are realized and that trade-induced growth will be sustainable. From this perspective, it has been recognized that the prompt and full implementation of the commitments made in the Uruguay Round will constitute an important contribution in this regard.

198. Discussions have taken place on whether and how the removal of trade restrictions and distortions, in particular high tariffs, tariff escalation, export restrictions, subsidies and non-tariff measures, has the potential to yield benefits for both the multilateral trading system and the environment. Up to now discussions have been centred on the agriculture sector, and a proposal on the energy sector has been tabled. Nevertheless, the Committee agrees that it should broaden and deepen its analysis also to other sectors, such as tropical and natural resource-based products, textiles and clothing, fisheries, forest products, environmental services and non-ferrous metals. Further work on this Item should be based on analytical work and empirical evidence and should take into account different country-specific natural and socio-economic conditions and the specificity of the sectors and measures involved.

199. Further work should also focus on the environmental benefits that may arise from enhancing existing market access opportunities for developing countries, and in particular the least developed among them, and the contribution that improved market access opportunities could make in assisting developing countries in implementing adequate environmental policies determined at the national level. In this context, particular attention should be devoted to the environmental benefits of initiatives that could enhance the trade performance of countries which remain only marginal participants in world trade, including low income commodity-dependent countries. Environmentally-friendly products from developing countries should also be considered in this regard. This work should take particular account of the needs of small and medium-sized enterprises. Further work is needed to ensure that the implementation of environmental measures does not result in disguised restrictions on trade, particularly those that have adverse effects on existing market access opportunities of developing countries.

ITEM 7 The issue of the export of domestically prohibited goods

200. The CTE recognizes that serious concerns have been expressed by some developing and least-developed country Members about the export to them of products whose domestic sale or use is banned or severely restricted because they pose a threat to human, animal or plant life or health or the environment. These Members consider that they do not have sufficient timely information about the characteristics of these products nor the technical or technological capacity to make informed decisions about importing them.

201. At the same time, progress continues to be made in other inter-governmental organizations in addressing problems created by trade in potentially hazardous or harmful products. The CTE recommends that WTO Members also consider participating in the activities of other organizations which have the relevant expertise for providing technical assistance in this field.

202. The CTE needs to continue to concentrate on what contribution could be made in this area by the WTO, bearing in mind the need for this work neither to duplicate nor to deflect attention from the work of other specialized inter-governmental fora.

203. In the meantime, the CTE: (a) recommends that the WTO Secretariat determine what information is already available in the WTO on trade-related environmental measures which relate to trade in domestically prohibited goods, including on restrictions or bans on domestic sales or use of products which are or may be exported; (b) encourages WTO Members to submit to the Secretariat any additional information they have which they feel could help it in drawing up a comprehensive picture of the situation throughout the WTO system.

204. This database can assist the further work of the CTE in this area, as well as potentially provide valuable information to individual WTO Members. The information should be installed in the database of trade-related environmental measures referred to under Item 4.

205. The CTE recognizes the important role that technical assistance and transfer of technology, on mutually agreed terms and conditions, related to domestically-prohibited goods where trade is allowed by the international community can play in this field, both in tackling environmental problems at their source and in helping to avoid unnecessary additional trade restrictions on the products involved. WTO Members should be encouraged to provide technical assistance to other Members, especially developing country Members, particularly the least-developed among them, either bilaterally or through appropriate inter-governmental organizations, to assist these countries in strengthening their technical capacity to monitor and, where necessary, control imports of domestically prohibited goods.

ITEM 8 The relevant provisions of the Agreement on Trade-related Aspects of Intellectual Property Rights

206. The CTE has discussed a wide variety of issues related to the generation, access to and transfer of environmentally sound technology and products (EST&Ps), including in the relevant provisions of some MEAs, as related to the TRIPs Agreement. The CTE recalls the reference in the preamble to the TRIPs Agreement to the need to promote the effective and adequate protection of intellectual property rights and the objectives of the TRIPs Agreement that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations.

207. The CTE noted the statement in Paragraph 34.7 of Agenda 21 that ". . . access to and transfer of environmentally-sound technology are essential requirements for sustainable development." The CTE also noted that the TRIPs Agreement has an essential role in facilitating such access and transfer. Positive measures, such as access to and transfer of technology both according to the terms and conditions stipulated in the covered MEAs and without prejudice to the requirements of the TRIPs Agreement can be effective instruments to assist developing countries to meet multilaterally-agreed targets in some MEAs and in keeping with the principle of common but differentiated responsibilities in the Rio Declaration.

208. Further work is required to help develop a common appreciation of the relationship of the relevant provisions of the TRIPs Agreement to the protection of the environment and the promotion of sustainable development, and whether and how, in comparison to other factors, these provisions relate, in particular, to the following issues: (a) facilitating the generation of EST&Ps; (b) facilitating the access to and transfer and dissemination of EST&Ps; (c) environmentally-unsound technologies and products; and (d) the creation of incentives for the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources including the protection of

knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biodiversity.

209. Some issues are under consideration by the Parties to the Convention on Biological Diversity who are also looking at the synergies and relationship between its objectives and the TRIPs Agreement. Information has been shared by the CTE regarding its work in response to requests by the Secretariat of the Convention on Biodiversity. The exchange of information between the CTE and the Convention on Biodiversity might be pursued further, as appropriate.

ITEM 9 The work programme envisaged in the Decision on Trade in Services and the Environment

210. The GATS is a new agreement which is still evolving and includes concepts which are not contained in the GATT. Preliminary discussion in the CTE to date on this Item has not led to the identification of any measures that Members feel may need to be applied for environmental purposes to services trade which would not be covered adequately by GATS provisions, in particular Article XIV(b). An invitation by the CTE to Members to submit any further information in this regard remains open.

211. Further work in the CTE on this Item is necessary before it could be in a position to draw any conclusions on the relationship between services trade and the environment, or on the relevance of inter-governmental agreements on the environment and their relationship to the GATS in the context of sustainable development.

ITEM 10 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

212. It is recognized in the CTE that there is a need to respond to public interest in WTO activities in the area of trade and environment and to build support for the contribution that can be made through the WTO towards mutually supportive trade and environment policies and the promotion of sustainable development.

213. The CTE considers that closer consultation and cooperation with NGOs can also be met constructively through appropriate processes at the national level where primary responsibility lies for taking into account the different elements of public interest which are brought to bear on trade policy-making.

214. In the Decisions of the General Council of 18 July 1996 on "Procedures for the circulation and derestriction of WTO documents" and on "Guidelines for arrangements on relations with non-governmental organizations", WTO Members have agreed to improve public access to WTO documentation and to develop communication with NGOs.

215. The adoption of WTO procedures for the derestriction of documentation will provide public access to the CTE's working documents and the records of its meetings. In this regard, it is noted that the Decision on Procedures for the Circulation and Derestriction of WTO Documents, *inter alia*, affords WTO bodies substantial freedom to make their documents available to the public in order to increase transparency. The CTE has taken decisions already to derestrict a number of the working documents prepared for it by the Secretariat. It recommends that all remaining working documents prepared during these first two years of its operations be

derestricted. The CTE encourages all Members that have submitted papers and non-papers that have not already been derestricted to agree that these be derestricted along with this Report.

216. The WTO Secretariat has laid the foundations for providing timely public access to the proceedings of the CTE through issuing periodically its *Trade and Environment Bulletin* and for enhancing its contacts with NGOs concerned with matters related to those of the CTE, *inter alia* through the organization of informal meetings with NGOs. The CTE recommends that the Secretariat continue its interaction with NGOs which will contribute to the accuracy and richness of the public debate on trade and environment.

217. Following the Decision of the General Council of 18 July 1996 on "Guidelines for observer status for international intergovernmental organizations in the WTO", the CTE has agreed to extend observer status on a permanent basis to those intergovernmental organizations which previously participated as observers on an *ad hoc* basis at CTE meetings. The CTE has extended observer status to all those intergovernmental organizations which have so requested, and the possibility exists on the basis of the General Council's Decision to consider future requests from other relevant intergovernmental organizations, including MEAs. Observer status of relevant MEAs in WTO bodies, as appropriate, can play a positive role in creating clearer appreciation of the mutually supportive role of trade and environmental policies. Requests from the appropriate bodies of MEAs for observer status should be considered in this light.

218. The CTE will continue to keep these issues under review.

Future of the CTE

219. Work in the WTO on contributing to build a constructive policy relationship between trade, environment and sustainable development needs to continue. Therefore, the CTE recommends that it continue to work, reporting to the General Council, with the mandate and terms of reference contained in the Ministerial Decision on Trade and Environment of April 1994. Its rules of procedure shall be adopted by consensus.

ANNEX I

Trade and Environment

Decision of 14 April 1994[1]

Ministers, meeting on the occasion of signing the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations at Marrakesh on 15 April 1994,

Recalling the preamble of the Agreement establishing the World Trade Organization (WTO), which states that members' "relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,"

Noting:

— the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 48th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, the Committee on Trade and Development, and the Council of Representatives;

— the work programme envisaged in the Decision on Trade in Services and the Environment; and

— the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights,

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other,

Desiring to coordinate the policies in the field of trade and environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members,

Decide:

— to direct 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 to report to the first biennial meeting of the Ministerial Conference after the entry into force of the WTO when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the Committee,

— that the TNC Decision of 15 December 1993 which reads, in part, as follows:

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[1]Source: MTN/TNC/45(MIN).

"(a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;

(b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular:

— the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and

— the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12; and

— surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;"

constitutes, along with the preambular language above, the terms of reference of the Committee on Trade and Environment,

— that, within these terms of reference, and with the aim of making international trade and environmental policies mutually supportive, the Committee will initially address the following matters, in relation to which any relevant issue may be raised:

— the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;

— the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;

— 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;

— the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects;

— the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;

— the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;

— the issue of exports of domestically prohibited goods;

— that the Committee on Trade and Environment will consider the work programme envisaged in the Decision on Trade in Services and the Environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights as an integral part of its work, within the above terms of reference;

— that, pending the first meeting of the General Council of the WTO, the work of the Committee on Trade and Environment should be carried out by a Sub-Committee of the Preparatory Committee of the World Trade Organization (PCWTO), open to all members of the PCWTO;

— to invite the Sub-Committee of the Preparatory Committee, and the 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.

ANNEX II

RESTRICTED

WORLD TRADE ORGANIZATION

WT/CTE/W/17

12 December 1995

(95-4039)

Committee on Trade and Environment

SUMMARY OF ACTIVITIES OF THE COMMITTEE ON TRADE AND ENVIRONMENT(1995) PRESENTED BY THE CHAIRMAN OF THE COMMITTEE[1]

1. As directed by the Ministerial Decision on Trade and Environment, the Committee on Trade and Environment (hereinafter "Committee") was established by the General Council at its first meeting on 31 January 1995. At that meeting, the General Council also agreed to the nomination of Ambassador J. Sánchez Arnau (Argentina) as the Chairman of the Committee.

2. The first meeting of the Committee was held on 16 February 1995 (WT/CTE/M/1). The Committee adopted a schedule of meetings and programme of work for 1995 (Annex 1). The Committee agreed that meetings would be organized such that, once discussion of the item(s) constituting the focus of the meeting had been completed, delegations could address, if they wished, the item(s) that were discussed at the previous meeting. Delegations could submit papers on any of the items at any time which would be discussed at the appropriate time according to the agreed schedule of work.

3. Other formal meetings of the Committee were held on 6 April, 21 June, 12 September and 26-27 October 1995 (WT/CTE/M/2 to 5); the items discussed at these meetings were as per the work programme decided at the meeting of 16 February 1995. With regard to item ten of the work programme, i.e. appropriate arrangements for relations with non-governmental organizations, the Committee decided to postpone the discussions pending results of discussions in the General Council.

4. At the October meeting, the stocktaking exercise was completed. As a result of this exercise, the Committee decided on its work programme through to May 1996 (Annex 2).[2]

5. The work of the Committee was assisted by documents prepared by the Secretariat (WT/CTE/W/1, 3 to 10, 12) and documents submitted by delegations (WT/CTE/W/2 and 11); Annex 3 lists the topics covered by these documents.[3]

6. The discussions in the Committee meetings were wide ranging and there was a very high level of participation by WTO Members. Forty governments are observers to the Committee. The Committee extended observer status to those intergovernmental organizations (IGOs) which had had observer status in the Sub-Committee on Trade and Environment, pending agreement by the General Council on the conditions and criteria for IGO observer status. These IGOs were: the United

[1]This summary is submitted by the Chairman of the Committee on Trade and Environment on his own responsibility.

[2]The dates of the meetings in 1996 are going to be reviewed at the meeting of the Committee on Trade and Environment on 14-15 December 1995.

[3]The Committee's work also took into consideration several background documents prepared for the EMIT Group and the WTO Preparatory Committee's Sub-Committee on Trade and Environment.

Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the International Monetary Fund (IMF), the United Nations Environment Program (UNEP), United Nations Development Program (UNDP), Commission for Sustainable Development (CSD), the Food and Agriculture Organization (FAO), the International Trade Centre (ITC), the Organization for Economic Cooperation and Development (OECD), and the European Free Trade Association (EFTA).

7. The Committee noted that the Secretariat had received several requests for information and advice from MEAs. There was no WTO procedure which would permit it to adequately reply to such requests and the establishment of new procedures went beyond the Committee's mandate and was of interest to the WTO in general. For this reason, the Chairman had referred this matter to the Chairman of the General Council who would be consulting on the issue.

8. Following a decision taken at the meeting of the Committee on Technical Barriers to Trade (CTBT) on 20 October 1995, the Committee agreed to convene joint informal meetings on eco-labelling with the CTBT. It was agreed that the Chairman would consult informally on the possibility of holding a joint meeting of the Committee and the CTBT possibly around the time of the December or February meeting of the Committee.

Annex 1

At its meeting on 16 February 1995, the Committee on Trade and Environment adopted the following schedule of meetings and programme of work:

6-7 April:
- Item 4: "the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects"
- Item 5: "the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements"
- Item 10: "appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation"

21-22 June:
- Item 8: "TRIPs"
- Item 9: "Services"
- Item 2: "the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system"

early September:
- Item 6: "the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions"

late October:
- Item 1: "the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements"
- Item 3: "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
- Stocktaking and planning program of work for 1995/1996

Annex 2

The Committee on Trade and Environment

The informal consultations made evident the following points:

That the stocktaking is more a process-related exercise than a substance-related analysis and, therefore, the result of this exercise has to be a detailed work programme to advance the CTE mandate, i.e. to produce a report:

a) identifying the relationship between trade measures and environmental measures in order to promote sustainable development;

(b) making recommendations on whether any modifications to WTO provisions are required, compatible with the open, equitable and non-discriminatory nature of the system; and

(c) complying with the mandate of the Ministerial Decision on Trade in Services and Environment.

In order to establish a more focused but well balanced work programme, the Chairman submits the following proposals:

(a) to keep all items on our agenda, but to move, whenever possible, from the discussion of agenda items to the analysis of those issues identified during the debate as the core of each item and, to that end, to organize our future work programme on the basis of the proposal submitted below;

(b) to continue the process of analysis of these issues until May 1996, when a new review of the work programme will take place;

(c) the list of issues identified next to each item is not necessarily exhaustive. Once the discussion of the identified issues is carried out by the Committee, Members would be free to raise other related issues under each agenda item at the same meeting;

(d) As part of the work programme:

(i) joint informal meetings of the CTE and the CTBT are envisaged, subject to the agreement of the CTBT, to analyse the applicability of the TBT Agreement to eco-labelling and the possible need for further disciplines for eco-labelling;

(ii) all other issues identified in the table below and items in the agenda would be discussed in the Plenary but informal open-ended meetings, back to back to the Plenary, would be convened when a detailed analysis of a topic is necessary or a paper on a specific issue is submitted for discussion;

(iii) some few studies/reports to be prepared by the Secretariat have been suggested in addition to those already in course. The Secretariat is encouraged to continue to cooperate closely with, and to take full advantage of available and forthcoming studies in, UNCTAD, UNEP and other intergovernmental institutions.

The Committee on Trade and Environment

Item on the Work Programme	*Issues*	*Studies*	*When to be discussed*
Item one: "The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements"	- ensuring the compatibility of trade measures taken pursuant to MEAs and the WTO - adequacy of WTO transparency mechanisms concerning trade measures included in relevant MEAs - see item 5		26/27 October 95 early February 96 (7/8 February 96) 26/27 October 95 early February 96 (7/8 February 96)
Item three: "The relationship between the provisions of the multilateral trading system and:			
(a) charges and taxes for environmental purposes	- environmental taxes which could be adjusted at the border and their WTO-consistency	- gather information on national environmental taxes for the study	26/27 October 95 early February 96 (7/8 February 96)
(b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling"	- applicability of the TBT Agreement to eco-labelling - adequacy, from both the trade and environmental perspectives, of WTO rules regarding eco-labelling and possible need for further disciplines and transparency		Joint Informal Meetings of the CTE + CTBT*

*Report to the CTE once work is completed.

Item on the Work Programme	*Issues*	*Studies*	*When to be discussed*
Item three (b) cont'd	- adequacy, from both the trade and environmental perspectives, of WTO rules regarding packaging, handling, and other environmental regulations, requirements and standards, including the possible need for further disciplines and transparency		26/27 October 95 early February 96 (7/8 February 96)
Item four: "The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects"	- examination of the proposal that Members should establish environmental enquiry points - see items 1 and 3		14/15 December 95 - item to be revisited in May 96, in order to determine whether and where further gaps in transparency existed
Item five: "The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements"	- see item 1 - environmental expertise in trade dispute settlement - trade expertise in environmental dispute settlement		early February 96 (7/8 February 95)
Item six: "The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions"	- the effect of environmental measures on market access - the environmental benefits of removing trade restrictions and distortions, including tariff escalation, subsidies, state trading, excessively high tariffs	- environmental measures on market access and setting up of a mechanism to survey environmental measures	mid March 96 (13/14 March 96) mid March 96 (13/14 March 96)

Item on the Work Programme	*Issues*	*Studies*	*When to be discussed*
Item seven: "The issue of exports of domestically prohibited goods"	- DPGs, and whether there is a need for a DPG Agreement		14/15 December 95
Item eight: "Trade-Related Aspects of Intellectual Property Rights and the environment"	- the relationship of the TRIPs Agreement to access to and transfer of technology and the development of environmentally-sound technology - the relationship between the TRIPs Agreement and MEAs which contain IPR-related obligations	- analytical paper on factors affecting transfer of environmentally-sound technology	end April 96 (17/18 April 96) end April 96 (17/18 April 96)
Item nine: "Services and the environment"	- sufficiency of Article XIV of GATS - possible points of contact between relevant MEAs and GATS		early February 96 (7/8 February 96) early February 96 (7/8 February 96)
Item two: "The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system"			May 96 (21/22 May 96)
Item ten: "Appropriate arrangements for relations with non-governmental organizations referred to in Article V of the WTO and transparency of documentation"			in the CTE**

**Once a decision is adopted by the General Council.

Annex 3

WT/CTE/W/1	Environmental benefits of removing trade restrictions and distortions (background paper prepared by the Secretariat for item 6)
WT/CTE/W/2	Submission by Chile on relationship between dispute settlement in WTO and in multilateral environmental agreements, with special reference to Convention on the Law of the Sea which in certain parts emphasises the provisions of the General Agreement on Tariffs and Trade (including dispute settlement)
WT/CTE/W/3	Report submitted by the Secretariat on its own responsibility to the Secretariat of the Commission on Sustainable Development for the meeting of the Third Session of the Commission on 11-28 April 1995
WT/CTE/W/4	Approaches to the relationship between the provisions of the multilateral trading system and trade measures pursuant to multilateral environmental agreements (background paper prepared by the Secretariat for item 1)
WT/CTE/W/5	Provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects (background paper prepared by the Secretariat for item 4)
WT/CTE/W/6	A description of international agreements and instruments dealing with trade in domestically prohibited goods and other hazardous substances (background paper prepared by the Secretariat for item 7)
WT/CTE/W/7	Secretariat's note on the results of the third session of the Commission on Sustainable Development
WT/CTE/W/8	Environment and TRIPs (background paper prepared by the Secretariat for item 8)
WT/CTE/W/9	Environment and services (background paper prepared by the Secretariat for item 9)
WT/CTE/W/10	Negotiating history of the coverage of the Agreement on Technical Barriers to Trade with regard to labelling requirements, voluntary standards, and processes and production methods unrelated to product characteristics (background paper prepared by the Secretariat for item 3)
WT/CTE/W/11	Communication from the delegations of Nigeria and Senegal regarding the issue of domestically prohibited goods

WT/CTE/W/12	Trade measures for environmental purposes taken pursuant to multilateral environmental agreements: recent developments (note prepared by the Secretariat)

ANNEX III

RESTRICTED

WORLD TRADE ORGANIZATION

WT/CTE/W/33

4 June 1996

(96-2090)

Committee on Trade and Environment

RESULTS OF THE STOCKTAKING EXERCISE

Adopted at the 28-29 May 1996 meeting

I. The informal consultations on the stocktaking permitted the following consensus to be reached:

1. According to the results of the first stocktaking in October 1995, the CTE has completed two full rounds of analysis of each individual Item of the agenda (Items 2 and 4 will be revisited during the May session). The Secretariat has submitted a number of background and analytical documents and the Committee has benefitted from the discussion of a number of Items on its agenda in other intergovernmental fora (UNEP, UNCTAD, CSD). On the issue of "eco-labelling" a joint informal meeting was organized with the CTBT and the opportunity was given to managers/practitioners of national/regional eco-labelling schemes/programmes to present their experience to both Committees.

2. In preparing for the Singapore Ministerial Conference, the CTE has held a general debate on all Items of its agenda. Some agenda Items have been disaggregated, some specific issues and problems have been identified. The general debate clarified and promoted understanding of some issues and also permitted the identification of divergences of view. In some cases more analytical work is required. As a result of this process, the CTE is now in a position to centre its attention on specific issues, including issues covered by proposals submitted or to be submitted by Members, keeping in mind the need for a balanced and focused approach to the whole agenda.

3. A number of proposals have been submitted to the Committee either orally or as formal or informal documents and additional proposals are anticipated.

4. Thus, the next stage of the CTE activities in preparation for Singapore needs to be devoted to the preparation of the Final Report to be submitted to the Ministerial Conference including the identification of possible agreed conclusions and recommendations in the light of the CTE mandate.

II. To that end the following work programme, to be developed in the light of the CTE terms of reference contained in the Ministerial Declaration of Marrakesh, is adopted by the Committee[1]:

[1]The CTE is awaiting the adoption of a decision by the General Council on the matter referred to in Item 10.

Date	Meeting	Items/Issues	Objective
28, 29 May	CTE formal	2 and 4 6 and 8 1 + 5 and 7	To adopt the outcome of the stocktaking. To complete second review. To revisit and to discuss proposals submitted on these Items. Presentation of new proposals.
30 May	CTE informal	1 + 5 and 7	Clarification and analysis of new proposals.
20 June	CTE formal	1 + 5 2/3/4/6/7/8	Possible presentation of new proposals on these Items. Clarifications, comments and reactions.
21 June	CTE informal	same	Discussion of proposals.
30 June			The Secretariat starts preparing the first draft of the Final Report: Introduction + Chapters 1 and 2
3-24 July	Informal consultations[2]	same	Start of the process of informal consultations to build up consensus on individual issues.
24 July	CTE formal	2/9/BTA/ packaging	(a) Items/issues revisited in view of possible presentation of proposals on them. (b) Chairman's report on results of informal consultations on specific issues/Items/proposals.
24-25 July	CTE informal[3]	1 + 5 2/3/4/6/7/8	Discussion of specific issues/Items/proposals.
30 July			The Secretariat submits the first draft of Final Report to the Chairman for review and clearance.
31 July			Distribution of the first draft of the Final Report (introduction + Chapters 1 and 2).
11 Sept	CTE formal	All Items	Statements on any issue.
11/12/13 Sept	CTE informal	same	Discussion of proposals on any Item/issue.

[2]All interested delegations will have the opportunity to be consulted on all issues under consideration.

[3]Discussions of issues under Item 3(b) relevant to the work of the CTBT would take place in a joint formal/informal meeting with the CTBT.

Date	Meeting	Items/Issues	Objective
16 Sept to 23 Oct	Informal consultations[2]	All Items	(a) Continuation of consultations on specific Items/issues/proposals. The work is oriented towards building a consensus on possible conclusions and recommendations. (b) Consultations on the draft Final Report.
10 Oct			Secretariat completes draft Final Report to the largest possible extent. Review and clearance by the Chairman.
15 Oct			Distribution of the draft Final Report (introduction + Chapters 1 and 2 + Chapter 3)
24-25 Oct	CTE formal		(a) Report by the Chairman on informal consultations on: (i) all Items/issues/proposals (ii) draft Final Report (b) Final discussion on proposals/conclusions/recommendations (c) Adoption of the Final Report.

III. The Final Report to be produced by the Committee needs to involve the following broad components:

1. An introductory section briefly sketching the CTE's establishment, describing its mandate and pointing to previous GATT work (particularly in the EMIT Group) and outlining its work programme.

2. Three chapters covering each individual agenda Item:

(a) The first one, describing the problems/issues under each agenda Item and their background, and making reference to documents submitted by the Secretariat, with a short reference to their content.

(b) The second would be the analytical component, drawing on the discussions at Committee meetings, describing the proposals and documents submitted by delegations and the debate which followed their submission.

(c) The third chapter would include the conclusions and recommendations if any.

The Final Report has to be comprehensive, balanced among Items/issues and, at the same time, among the different "schools of thought"/perceptions on specific issues. The analytical component will be the most substantial part of the report and will need to be carefully structured. At the same time, a major effort has to be made to keep the report rather short.

ANNEX IV

List of documents and non-papers prepared on Items of the work programme

Item 1: The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements

WT/CTE/W/4 + Corr.	Note by the Secretariat on Approaches to the Relationship between the Provisions of the Multilateral Trading System and Trade Measures Pursuant to Multilateral Environmental Agreements
WT/CTE/W/12	Note by the Secretariat on Trade Measures for Environmental Purposes taken pursuant to Multilateral Environmental Agreements: Recent Developments
WT/CTE/W/15 + Corr.	Note by the Secretariat on Trade Measures for Environmental Purposes taken pursuant to Multilateral Environmental Agreements: Recent Developments - FAO Code of Conduct for Responsible Fisheries
WT/CTE/W/18	Note by the Secretariat on the Convention on Biological Diversity: Recent Developments
WT/CTE/W/19	Note by the Secretariat on Trade Measures for Environmental Purposes taken pursuant to Multilateral Environmental Agreements: Recent Developments - Seventh Meeting of the Parties to the Montreal Protocol
WT/CTE/W/20	Submission by New Zealand on Item 1
WT/CTE/W/31	Submission by Japan on Item 1
WT/CTE/W/39	Submission by ASEAN on Item 1
Non-paper (19 February 1996)	Submission by the European Community on Item 1
Non-paper (20 May 1996)	Submission by Switzerland on Item 1
Non-paper (12 June 1996)	Submission by Korea on Item 1
Non-paper (23 July 1996)	Submission by Hong Kong on Item 1
Non-paper (23 July 1996)	Submission by India on Items 1 and 5
Non-paper (11 Sept. 1996)	Submission by the United States on Multilateral Environmental Agreements

Item 2: The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system

WT/CTE/W/16	Note by the Secretariat on the Negotiating History of Footnote 61 of the Agreement on Subsidies and Countervailing Measures

WT/CTE/W/37	Submission by the United States on Environmental Review of Trade Agreements at the National Level
Non-paper (23 July 1996)	Submission by India on Item 2
Non-paper (11 Sept. 1996)	Submission by the United States: Draft Decision on Environmental Reviews of Trade Agreements at the National Level

Item 3: The relationship between the provisions of the multilateral trading system and: (a) charges and taxes for environmental purposes; and (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling

WT/CTE/W/10-G/TBT/W/11	Note by the Secretariat on the Negotiating History of the Agreement on Technical Barriers to Trade with Regard to Labelling Requirements, Voluntary Standards, and Process and Production Methods unrelated to Product Characteristics
WT/CTE/W/21-G/TBT/W/21	Submission by Canada on Elements of a Possible Understanding to the TBT Agreement on Eco-labelling
WT/CTE/W/23-G/TBT/W/23	Eco-labelling Programmes. Information provided by Canada, Chile, the Czech Republic, the European Community, Norway and the United States at the informal joint meeting of the Committees on Trade and Environment and Technical Barriers to Trade held on 27 February 1996 regarding their national and regional eco-labelling programmes
WT/CTE/W/27; G/TBT/W/29	Proposal by the United States on Further Work on Transparency of Eco-labelling
WT/CTE/W/38-G/TBT/W/30	Proposal by Canada on a Draft Decision on Eco-labelling Programmes
Non-paper (18 June 1996)	Submission by the Arab Republic of Egypt
Non-paper (23 July 1996)	Submission by the European Community on Eco-labelling Programmes
Non-paper (23 July 1996)	Submission by India on Item 3
Non-paper (11 Sept. 1996)	Submission by the United States: Draft Decision on Transparency in Eco-labelling Programmes

Item 4: The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects

WT/CTE/W/5	Note by the Secretariat on Item 4

WT/CTE/W/28	Note by the Secretariat on Item 4
WT/CTE/W/34	Note by the Secretariat on the WTO Central Registry of Notifications
Non-paper (28 May 1996)	Submission by Hong Kong on Transparency: A Proposal on an Environmental Database

Item 5: The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements

WT/CTE/W/2	Communication from Chile on Item 5

Item 6: The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions

WT/CTE/W/1	Note by the Secretariat on the Environmental Benefits of Removing Trade Restrictions and Distortions
WT/CTE/W/24 + Corr.	Submission by Argentina on The Environmental Benefits of Removing Trade Restrictions and Distortions, including tariff escalation, subsidies, state trading, and excessively high tariffs
WT/CTE/W/25	Note by the Secretariat on Tariff escalation
WT/CTE/W/26	Note by the Secretariat on The effects of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them
WT/CTE/W/35	Contribution by the United States on Trade Liberalization and the Environment
WT/CTE/W/36	Submission by Australia on Trade Liberalization, the Environment and Sustainable Development (replaces the non-paper submitted on 21 May 1996)
Non-paper (20 June 1996)	Submission by India on Item 6
Non-paper (20 June 1996)	Submission by Norway on Market Access and Environmental Effects of Removing Trade Restrictions and Distortions
Non-paper (28 June 1996)	Preliminary views of Japan on Item 6
Non-paper (23 July 1996)	Submission by the European Community on Item 6
Non-paper (24 July 1996)	Submission by Korea on Item 6

Item 7: The issue of exports of domestically prohibited goods

WT/CTE/W/6	Note by the Secretariat on A description of international agreements and instruments dealing with trade in domestically prohibited goods and other hazardous substances
WT/CTE/W/11	Communication from Nigeria and Senegal under Item 7
WT/CTE/W/14	Proposal by Nigeria on Domestically Prohibited Goods
WT/CTE/W/29	Note by the Secretariat on Domestically Prohibited Goods: An assessment of the product coverage in specific international instruments
WT/CTE/W/32	Proposal by Nigeria on Domestically Prohibited Goods

Item 8: Trade-Related Aspects of Intellectual Property Rights and the environment

WT/CTE/W/8	Note by the Secretariat on Environment and TRIPs
WT/CTE/W/22	Note by the Secretariat on Factors affecting transfer of environmentally-sound technology
Non-paper (20 June 1996)	Submission by India on The Relationship of the TRIPs Agreement to the development, access and transfer of environmentally-sound technologies and products (revises the non-paper submitted on 2 April 1996)
Non-paper (23 July 1996)	Submission by India on The Relationship between the TRIPs Agreement and the Convention on Biodiversity
Non-paper (23 July 1996)	Submission by Korea on Consideration of relevant provisions of the Agreement on TRIPs
Non-paper (11 Sept. 1996)	Submission by Australia on the TRIPs Agreement

Item 9: The work programme envisaged in the Decision on Trade and Services and the Environment

WT/CTE/W/9	Note by the Secretariat on Services and the Environment
Non-paper (23 July 1996)	Submission by India on Services and the Environment

General

WT/CTE/W/3	Report submitted by the Secretariat on its own responsibility to the Secretariat of the Commission on Sustainable Development at its Third Session, 11-28 April 1995

WT/CTE/W/7	Note by the Secretariat on UNCED Follow-up: Results of the Third Session of the Commission on Sustainable Development, 11-28 April 1995
WT/CTE/W/13	Draft Rules of Procedure for the Meetings of the Committee on Trade and Environment
WT/CTE/W/17	Summary of activities of the Committee on Trade and Environment (1995) presented by the Chairman of the Committee
WT/CTE/W/30 + Corr.	Note by the Secretariat on UNCED Follow-up: Results of the Fourth Session of the Commission on Sustainable Development, 18 April - 3 May 1996
WT/CTE/W/33	Results of the Stocktaking Exercise adopted at the 28-29 May 1996 CTE meeting
Non-paper (11 Sept. 1996)	Submission by Nigeria: Preliminary comments on the draft of Sections I and II of the CTE Report to the Ministerial Conference

ANNEX V

Matrix for the Korean Approach

<table>
<tr><th colspan="3" rowspan="2">Trade measures</th><th rowspan="2">Discipline</th><th colspan="2">Criteria</th><th rowspan="2">Notification</th></tr>
<tr><th>Procedural</th><th>Substantive</th></tr>
<tr><td rowspan="2">Between Parties</td><td>Specific Measures</td><td>A</td><td rowspan="2">Qualified Codification</td><td rowspan="2">Notification subject to review</td><td>Least inconsistency</td><td rowspan="2">All Parties of an MEA</td></tr>
<tr><td>Non-specific measures</td><td>B</td><td>Least trade restrictiveness , necessity</td></tr>
<tr><td rowspan="3">Parties to non-Parties</td><td>Specific measures</td><td>C</td><td>Non-binding guidelines for MEA negotiator</td><td>MEA</td><td>GATT Art. 20 or WTO Art.9</td><td rowspan="2">Party; Notif,

Non-Party; Counter-notif.</td></tr>
<tr><td>Non-specific measures</td><td>D</td><td rowspan="2">No accommo-dation</td><td rowspan="2">-</td><td rowspan="2">GATT Art. 20 or WTO Art. 9</td></tr>
<tr><td>Unilateralism</td><td>Unilateral measures</td><td>E</td><td>Imposer; Notif. Imposed; Counter-notif.</td></tr>
</table>

SECTION VIII

COMMITTEE ON TRADE AND DEVELOPMENT

WORLD TRADE ORGANIZATION

WT/COMTD/9
4 November 1996

(96-4637)

Committee on Trade and Development

REPORT (1996) OF THE COMMITTEE ON TRADE AND DEVELOPMENT TO THE GENERAL COUNCIL

Introduction

1. The Committee on Trade and Development (CTD) held eight meetings in 1996; on 16 February (Fifth Session), 24 May (Sixth Session, continued on 7 June), 18 June (Seventh Session), 12 July (Eighth Session), 12 and 23 September (respectively Ninth and Tenth Sessions), 4 and 15 October (respectively Eleventh and Twelfth Sessions). The Twelfth Session briefly resumed on 31 October. Another meeting will take place in November. There has also been a series of informal consultations at the bilateral, plurilateral and Committee levels.

2. The Sub-Committee on Least-Developed Countries held three meetings in 1996; on 27 February (Second Session), 13 and 23 September (respectively Third and Fourth Sessions). The Second Session was chaired by Miss Anne Stoddart, and the subsequent sessions by Mr. Nacer Benjelloun-Touimi, on an interim basis in his capacity as the Chairman of the CTD.

3. The high level of activity of the CTD in 1996 reflected the importance attached by Members to proposing practical recommendations for the Singapore Ministerial Conference (SMC). As a result, it became clear in the early part of this year that the CTD work programme for 1996 would be adjusted in the light of Members' priorities in relation to the SMC. Accordingly, Members of the Committee identified four priority tasks for the Committee's work: (a) review of the implementation of provisions in the WTO Agreements and legal instruments in favour of developing country Members; (b) the preparation of guidelines for the technical cooperation activities of the WTO; (c) working towards increasing the participation of developing countries in the multilateral trading system, including the evaluation of impact of the Uruguay Round on these countries; and, (d) within these three tasks, recommend - on a priority basis - positive measures aimed at ensuring that least-developed country Members achieve their development objectives.

4. This report is divided into three sections. Section I summarizes the work done in each of these four priority areas, including the work of the Sub-Committee on Least-Developed Countries, as well as on other issues falling within the mandate of the CTD; Section II identifies priority areas for the future work of the CTD and the Sub-Committee; and, Section III includes elements that could be integrated into the Singapore Ministerial Declaration.

Section I - Work of the CTD during 1996

(a) Review of the implementation of provisions in favour of developing country Members

5. The Committee agreed to review the implementation of provisions in favour of developing country Members on the basis of contributions from Members and from the WTO Bodies responsible for monitoring the implementation of the Uruguay Round commitments. To assist in this exercise, the Chairman invited the Chairpersons of other WTO Bodies to submit information on how provisions in favour of developing countries had been dealt with in their respective Committees. On the basis of these responses, the Secretariat prepared background documentation presenting the replies received in an analytical format.

6. The work of the Committee has thus focused on a horizontal overview of the implementation of provisions in favour of developing countries. The Committee noted that, due to the fact that the WTO was newly established, the implementation process was still at an early stage and further work was required for the Committee to be in a position to fully evaluate overall progress. The Committee also acknowledged the broad scope and complexity of the concepts, principles and rules contained in the WTO instruments and that, in some instances, the means were yet to be elaborated to provide an operational content to the special provisions in favour of least-developed and other developing country Members.

7. The Committee recognized that although the implementation of the provisions in the WTO instruments in favour of least-developed and other developing country Members had been in general moving ahead in the first two years of existence of the WTO, available information pointed to a relatively low use of those provisions. Many of the provisions required action on the part of developing country Members to set in motion their application. In this respect, the Committee emphasized the importance to improve the flow of information to developing, and in particular least-developed country Members, of provisions in their favour which were dependent upon specific requests on their part.

8. Concerns were also expressed as to whether developing country Members had been able to draw full benefit from provisions in their favour by incorporating them into their trade policy and development programmes. The point was made that, even when provisions were adequately implemented, their impact on developing country Members remained to be seen. Some Members referred to the importance of the Trade Policy Review Mechanism for developing countries in this context, and to the positive effects of their participation in that exercise.

9. The Committee offered recommendations for future work on these areas (see Section II). It also emphasized the importance of maintaining the horizontal nature of its role in this area and its close relationship with work developed in other WTO Bodies.

(b) Guidelines for WTO Technical Cooperation

10. In accordance with the terms of reference of the CTD and in the light of the Marrakesh Declaration calling for increased and strengthened technical cooperation, the CTD attached considerable priority to drafting the Guidelines for WTO Technical Cooperation. In doing so, Members took into account the trading environment within which the WTO is to operate (i.e. when compared to that of the GATT), and stressed the need to adapt the technical cooperation activities of the WTO to improve its effectiveness in helping recipient country Members to integrate into the multilateral trading system.

11. The preparation of these Guidelines was carried out on the basis of the following premises: (i) technical cooperation should aim at capacity-building, in particular of human resources and institutional and administrative structures; (ii) the WTO should concentrate its assistance on its areas of competence; (iii) an effective response to the increasing needs of developing countries for technical cooperation in trade-related matters required the coordination of technical cooperation activities provided by the various international organizations; (iv) there was a need to remove any unnecessary overlap with the technical cooperation programmes of relevant international organizations and to ensure that recipient countries fully benefit from the complementary nature of their respective competencies; and, (v) Members should become more involved in the planning and monitoring of WTO's technical cooperation activities.

12. In order to assist the Committee in assessing the priority areas for WTO technical cooperation, the Committee benefited from three major inputs; namely, a Chairman's questionnaire sent to WTO Members, which served to identify the overall technical cooperation needs of Members; the contribution of the Heads of Institutions and other Bodies who addressed the Committee on various occasions, thereby helping to clarify how the technical cooperation activities could be coordinated among the relevant institutions; and, a comprehensive non-paper by Switzerland.

13. Based on these as well as on individual written and oral contributions from various delegations, the Committee adopted on 15 October a set of Guidelines for the WTO's Technical Cooperation (see Attachment 1). The Guidelines elaborate the scope of the WTO's technical cooperation; serve to ensure that the assistance provided will be adapted to the evolving needs of recipient countries and focus on capacity-building; and provide for an evaluation of the WTO's technical cooperation.

(c) Participation of developing country Members in the multilateral trading system, including the review of the impact of the Uruguay Round on developing country Members

14. During the first half of 1996, the Committee elaborated an outline for a study to be prepared by the Secretariat, which would address the reasons why some developing countries had performed better than others in integrating into the multilateral trading system. The objective of the study was to provide background material for a comprehensive discussion in the Committee on these issues and, if possible, to draw conclusions on how to facilitate the integration of developing country Members into the multilateral trading system. The study, distributed in early August (WT/COMTD/W/15), addressed both domestic (macroeconomic policies, infrastructure problems, etc.) and external factors (barriers to trade in importing markets, restrictive business practices, etc.).

15. Given the complexity of the topics addressed, sometimes divergent comments were made and different conclusions reached by Members. In particular, various views were expressed on the importance of appropriate domestic policies and of market access possibilities for the economic development of developing countries. For some Members, the main conclusion was that the different rates of growth of developing countries was primarily related to their domestic policies - that is, while market access was important to determine the export performance of countries, little could be achieved if the appropriate domestic policies were not in place (e.g. a stable economic environment and a liberal trade regime). Other Members, however, while recognizing the importance of domestic policies, felt that these did not constitute the main reason for the divergent performance of developing countries, and that trade barriers had played a more significant role than domestic policies. A number of specific comments were made with respect to the content of the study; in particular, the manner in which foreign direct investment was dealt with and to the fact that insufficient attention was paid to the importance of domestic savings for the process of economic development and the problems faced by the net-food importing countries.

16. A number of Members drew attention to the positive relationship between investment and development. In this respect, the Committee noted that both its terms of reference as well as those of the Sub-Committee on Least-Developed Countries provide the possibility for these bodies to consider measures and initiatives to assist developing and least-developed country Members in the expansion of their trade and investment opportunities from a development perspective, and that this is of relevance for the CTD's work.

17. In discussing this item, some Members reiterated the fact that a number of least-developed countries, while having liberal investment and trade regimes, were not able to take advantage of initiatives in the area of trade and investment due to supply-side constraints and difficulties in adopting adequate domestic policies. It was felt that this problem could be tackled, *inter alia*, through the provision of technical cooperation in conjunction with other international organizations aimed at building the capacity of human and other resources in these countries. The commitment to implement measures to integrate least-developed countries into the multilateral trading system (see (d) below) was also referred to on numerous occasions.

(d) Least-developed countries

18. As mentioned above, under each of the priority areas, particular attention was devoted to the difficulties of the least-developed countries. Work was initiated through a review of the problems, concerns and special measures in favour of the least-developed countries made by the Sub-Committee on Least-Developed Countries. Various background documents were provided for the review of the situation of the least-developed countries. These included summaries of the special provisions contained in Uruguay Round Agreements and legal instruments in favour of least-developed countries (COM.TD/LLDC/W/54), and in particular, those provisions which required specific action by Members (WT/COMTD/W/10). A document was also prepared and discussed outlining recent international initiatives launched in favour of least-developed countries to facilitate the expansion of their trade and investment opportunities (WT/COMTD/LLDC/W/1). The study referred to in (c) above, while not exclusively devoted to least-developed countries, provided insights into factors which might have had a bearing on their economic, and in particular trade, performance. Further, first-hand information on the work in favour of least-developed countries carried or planned for the future by other international organizations was made available to Members through presentations to the CTD and the Sub-Committee (see (e) below) by various invited speakers.

19. The review pointed to the difficult economic situation of least-developed countries and to the risks of their marginalization in the multilateral trading system. While the international community was well aware of these problems, including the need to develop domestic initiatives addressing structural problems, and had undertaken numerous initiatives in the area of trade and investment (both bilaterally and through multilateral institutions), these in general have not been sufficient to arrest the deterioration of the economic conditions of a number of least-developed countries. Consequently, the Sub-Committee identified two main contributions that the WTO could make to better integrate least-developed countries into the multilateral trading system: first, to ensure that technical cooperation provided to least-developed country Members would aim at institutional and human capacity-building: and second, preparing a WTO Plan of Action for Least-Developed Countries that would be comprehensive in nature and fully integrated with the initiatives planned or underway elsewhere.

20. As a result a Draft WTO Plan of Action for Least-Developed Countries was distributed to CTD Members at its Eleventh Session. The Plan of Action reaffirms commitments that WTO Members had already undertaken with respect to least-developed countries and proposes a coordinated strategy to assist least-developed countries and identifies many areas where practical measures could be adopted. At the Committee's Twelfth Session, the CTD considered the draft Plan of Action and forwarded it

for consideration to the General Council and submission to Ministers for adoption in Singapore (circulated in document WT/COMTD/W/20).

21. In addition, Members felt that, while the WTO Plan of Action pointed in the right direction, more was needed to increase coordination in international actions in favour of least-developed countries and efficiency with respect to the assistance offered to them. Thus, the Committee also agreed that the General Council recommend that Ministers in Singapore call for a high-level meeting in Geneva as soon as possible in 1997, in principle to be organized jointly by WTO, UNCTAD and ITC, with the participation of national aid agencies, international financial institutions and other relevant organizations, to foster an integrated approach to the trade-related aspects of least-developed countries' economic development, which will need to be observed in the implementation of the WTO Plan of Action. Special emphasis should be given to increasing efficiency in the provision of technical assistance for human and institutional capacity building.

22. Given that only a limited number of least-developed countries are represented in Geneva, the Government of Norway accepted to finance, through its Trust Fund, the participation of representatives from least-developed countries from the European capitals at the Fourth Session of the Sub-Committee on 23 September 1996 and related briefings by the WTO Secretariat on 24 September 1996. These activities were well attended by both Geneva and non-Geneva based least-developed country delegations.

(e) Trade and development activities of intergovernmental organizations

23. The Committee has actively engaged in pursuing the objective of closer institutional cooperation by inviting to its Seventh Session the Secretary-General of United Nations Conference on Trade and Development (UNCTAD), the Executive-Director of the International Trade Centre and the Chairman of both WTO's General Council and UNCTAD's Trade and Development Board. This dialogue continued at the Committee's Tenth Session, where the Chairman of the Joint International Monetary Fund (IMF)/World Bank Development Committee addressed the CTD. This intensified dialogue has provided Members of the Committee with a number of positive contributions, in particular, with respect to better appreciating the work of each of these organizations.

24. On these occasions, the Director-General of the WTO has also addressed the Committee on the results of the Uruguay Round; the Singapore Ministerial Conference; his invitation to participate in the G7 Summit; and, technical cooperation.

25. The Chairman of the Joint IMF/World Bank Development Committee and the Director-General of the WTO also addressed the Sub-Committee on Least-Developed Countries at its Fourth Session. On that occasion, Members of the Sub-Committee were informed by the Chairman of the Development Committee of the joint IMF/World Bank initiative for debt relief of highly-indebted poor countries. In his address, the Director-General of the WTO referred to some actions that WTO Members should take to enhance the development of the least-developed countries, and that these should come together in a Plan of Action for Least-Developed Countries.

(f) Other elements addressed by the Committee

26. At its Fifth Session, the Committee reviewed and took note of the activities of the WTO during 1995 in the area of technical cooperation. Members also commended Norway for its special contribution to technical cooperation activities through the establishment of a Trust Fund, and the European Communities' financing of a technical cooperation programme in favour of African, Caribbean and Pacific countries on the results and opportunities created by the Uruguay Round.

27. At its Twelfth Session, the Committee was informed of an initiative by the Secretariat to hold a Meeting of Ministers from Least-Developed Countries on 13-15 November 1996 to brief them on the Singapore Ministerial Conference. The Meeting is to be financed by contributions from the Governments of the Czech Republic, Korea and Norway.

Section II - Future Work Programme

28. In its future work, the CTD will continue to address all items included in its terms of reference. It will, in particular, continue to fulfil its mandate of keeping under review the implementation of the Uruguay Round provisions in favour of developing and least-developed country Members. In this context, the Committee will explore ways of ensuring greater disclosure of the application of the Uruguay Round provisions in favour of developing and least-developed countries[1]; and of increasing efforts to disseminate information relating to those provisions. In 1997, the Committee will also need to decide how to implement the recently adopted Guidelines for WTO's Technical Cooperation with respect to, for example, the monitoring, managing and evaluating technical cooperation activities of the WTO.

29. Members stressed that, in addressing the different items of the work programme, the Committee should attempt to make full use of the many background documents prepared by the CTD during its first two years of existence (see Attachment 2).

Section III - Elements for Integration into Singapore Ministerial Process

30. Ministers take note with satisfaction of the adoption of Guidelines for WTO's Technical Cooperation and reiterate their commitment to continue ensuring the availability of financial and human resources for technical cooperation activities as one element to facilitate the participation of developing country Members in the multilateral trading system and, in particular, reverse the trend of the marginalization of a number of least-developed country Members.

31. Ministers recognize that the implementation of the special provisions in favour of least-developed and other developing country Members, though still at an early stage, has been moving in the right direction. Ministers recognize the importance of increasing the awareness of developing country Members of the special provisions relating to them, in particular those designed to enhance trade opportunities. They note that these provisions facilitate a smoother integration of developing country Members into the rules-based multilateral trading system while they proceed with the necessary domestic adjustments.

32. Ministers adopt the WTO Plan of Action for the Least-Developed Countries transmitted by the General Council.

33. Ministers call for a high-level meeting in Geneva as soon as possible in 1997, in principle to be organized jointly by WTO, UNCTAD and ITC, with the participation of relevant institutions, to foster an integrated approach to the trade-related aspects of least-developed countries' economic development, which will need to be observed in the implementation of the WTO Plan of Action, with special emphasis on increasing efficiency in the provision of technical assistance for human and institutional capacity building.

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[1]For example, by improving the flow of information, in particular (a) from Members offering the benefits to Members potentially using them and (b) from all Members to the Committee.

ATTACHMENT 1

GUIDELINES FOR WTO TECHNICAL COOPERATION

Adopted by the Committee on Trade and Development on 15 October 1996[1]

Bearing in mind the Marrakesh Declaration of 15 April 1994 and the Decision on Measures in Favour of Least-Developed Countries, WTO Technical Cooperation is to be provided in conformity with the principles set out below:

I. OBJECTIVES AND PRINCIPLES

- Assist in the full integration of beneficiaries into the multilateral trading system and contribute to the expansion of their trade;

- Strengthen and enhance institutional and human capacities in the public sector for an appropriate participation in the multilateral trading system; whenever possible and in consultation with the government concerned, capacity building activities could include representatives of the private sector;

- Be demand-driven and adapted to recipient needs, in particular with respect to the best suited modes of delivery;

- Be complementary to and supportive of recipients' efforts to identify their own requirements;

- Keep a geographical balance, while giving priority to least-developed countries, in particular African countries, and to low-income economies;

- Cover subject matters within the competence and expertise of the WTO, in particular:

    - To improve knowledge of multilateral trade rules and WTO working procedures and negotiations; and

    - To assist in the implementation of commitments in the multilateral trading system and full use of its provisions, including the effective use of the dispute settlement mechanism;

- Be fully and closely coordinated with other assistance provided by multilateral and bilateral institutions;

- Be administered by the Secretariat and reviewed by Members, in accordance with operational directives and implementation modalities to be established by the Committee on Trade and Development.

[1]The Guidelines for WTO Technical Cooperation were circulated as WT/COMTD/8.

II. OPERATIONAL DIRECTIVES

1. Modes of Delivery

- The modes of delivery shall be chosen to fit both the requirements of the recipient country and technical cooperation programmes;

- Modes of delivery shall be assessed in the light of principles and directives to be agreed upon by the Committee on Trade and Development and on the progress in devising new means for an efficient dissemination of knowledge;

- Modes of delivery shall be elaborated with the aim of:

    - Extending assistance on as broad and cost-effective a basis as possible, e.g.:

        - Training courses of a regional or linguistic format;

        - Development of information and training material, in particular with the help of technology based aids;

    - Emphasizing in-depth and concrete training on WTO matters such as:

        - Specialized technical seminars and workshops of a regional or linguistic format;

        - Practical training programmes.

2. Long-Term Engagement

- Follow-up of individual programmes and assessment of their effectiveness;

- Development of training capabilities with particular emphasis on the training of local trainers, the use of local or regional technical expertise, and the establishment of links with academic and research institutions.

3. International Coordination

a) International and Regional Institutions Dealing with Trade-Related Matters

- Close institutional dialogue with other international organizations, in particular with ITC and UNCTAD, and with other regional institutions to ensure a coherent approach, to identify areas of competence and complementarity, to define and execute joint projects and avoid duplication;

- Dissemination of information on the WTO technical cooperation programmes, and establishment with other relevant organizations of a central inventory of programmes.

b) Bilateral Development Assistance in Trade-Related Matters

- Exchange of information with donor and recipient governments, including participation in bilateral programmes.

4. Management

a) Transparency

- Three year plan adjusted on an annual basis, including budgetary implications, to be approved by the Committee on Trade and Development and to be submitted to the appropriate bodies of WTO, according to agreed procedures and decisions of the General Council;

- Annual Secretariat reporting on programme implementation, and financial report;

- *Ad hoc* Secretariat status reports.

b) Funding

- Regular Budget of the WTO, within the limits specifically assigned by Members;

- WTO Trust Fund for technical cooperation: Voluntary contributions by Members and international financial institutions;

- International or national cost-sharing, whenever appropriate.

c) Monitoring and Evaluation

- By the Committee on Trade and Development based on annual evaluation of the results of technical assistance activities in order to ensure optimum use of resources according to appropriate evaluation criteria;

- The WTO Trust Fund shall be managed according to the recommendations contained in the decision taken by the General Council of 18 July 1996 (WT/GC/M/13) and to the Financial Regulations and Financial Rules in documents WT/L/156 and WT/L/157 of 5 August 1996.

ATTACHMENT 2

BACKGROUND DOCUMENTS PREPARED FOR
MEETINGS OF THE CTD AND OF THE SUB-COMMITTEE DURING 1995-96

WT/COMTD/W/1	-	Preliminary Information on Notifications to be required from WTO Members (First Session - April 1995)
WT/COMTD/W/1/Add.1	-	Addendum
WT/COMTD/W/2/Rev.1	-	Draft Programme of Work for 1995 - Revision
WT/COMTD/W/4	-	Credit and Recognition for Autonomous Liberalization Measures
WT/COMTD/W/4/Corr.1	-	Corrigendum
WT/COMTD/W/5	-	UR commitments undertaken by Developing Country Members
WT/COMTD/W/6	-	Regulatory Obligations and Other Implications UR Agreements
WT/COMTD/W/6/Add.1	-	Addendum
WT/COMTD/W/7	-	Technical Cooperation of the WTO Relations with other International Organizations
WT/COMTD/W/10	-	WTO Measures relating to Developing Country Members
WT/COMTD/W/11	-	Notes on the Participation of Developing Countries in the World Trading System
WT/COMTD/W/11/Add.1	-	GSP - Addendum
WT/COMTD/W/11/Add.1/Corr.1		GSP - Addendum - Corrigendum
WT/COMTD/W/12	-	Technical Cooperation with Developing Countries
WT/COMTD/W/14	-	Report on Technical Cooperation
WT/COMTD/W/14/Add.1	-	Addendum
WT/COMTD/W/15	-	Participation of Developing Countries in World Trade: Overview of Major Trends and Underlying Factors
WT/COMTD/W/16	-	Implementation of Uruguay Round Provisions in Favour of Developing Country Members
WT/COMTD/W/16/Add.1	-	Implementation of Uruguay Round Provisions in Favour of Developing Country Members
WT/COMTD/W/16/Add.2	-	Implementation of Uruguay Round Provisions in Favour of Developing Country Members
WT/COMTD/W/17	-	Textiles Monitoring Body
WT/COMTD/8	-	Guidelines for WTO Technical Cooperation
WT/COMTD/LLDC/W/1	-	Measures to Assist and Facilitate the Expansion of Trade and Investment Opportunities of Least-Developed Countries

SECTION IX

COMMITTEE ON REGIONAL TRADE AGREEMENTS

WORLD TRADE ORGANIZATION

WT/REG/2
6 November 1996

(96-4701)

Committee on Regional Trade Agreements

REPORT (1996) OF THE COMMITTEE ON REGIONAL TRADE AGREEMENTS TO THE GENERAL COUNCIL

Introduction

1. Nearly all Members of the World Trade Organization (WTO) are Parties to at least one regional trade agreement notified to the GATT or the WTO; some Members participate in other regional initiatives. The number of such agreements has increased in recent years.

2. In a meeting of the General Council held on 15 November 1995, it was proposed that a committee on regional trade agreements be established in the WTO as a means to improve the organization of the work of the WTO in this area, in particular, with respect to the replacement of more than 20 active working parties examining regional trade agreements, as well as to provide a forum in the WTO to examine the implications for the multilateral trading system of the growing number of regional trading agreements and initiatives. Should such a committee be created, the rights and obligations of Members would not be affected, and the terms of reference of the existing working parties would not be changed. The General Council, at its December 1995 meeting, agreed in principle to establish a Committee on Regional Trade Agreements, subject to agreement on its terms of reference and related matters.

3. The Committee on Regional Trade Agreements was established by the following Decision of the General Council on 6 February 1996 (WT/L/127):

> "*Having regard* to agreements[1] which are required to be notified, as the case may be, under Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994, Article V of the General Agreement on Trade in Services or the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;
>
> *Having regard* to the biennial reporting envisaged in Paragraph 11 of the Uruguay Round Understanding on the Interpretation of Article XXIV of the GATT 1994; and
>
> *Acting* pursuant to paragraphs 1 and 7 of Article IV of the Agreement Establishing the World Trade Organization (WTO),

[1]The term "agreements" in this Decision refers to all bilateral, regional, and plurilateral trade agreements of a preferential nature.

The General Council hereby *decides*:

1. To establish a Committee on Regional Trade Agreements, open to all Members of the WTO, with the following terms of reference:

(a) to carry out the examination of agreements in accordance with the procedures and terms of reference adopted by the Council for Trade in Goods, the Council for Trade in Services or the Committee on Trade and Development, as the case may be, and thereafter present its report to the relevant body for appropriate action;[2]

(b) to consider how the required reporting on the operation of such agreements should be carried out and make appropriate recommendations to the relevant body;

(c) to develop, as appropriate, procedures to facilitate and improve the examination process;

(d) to consider the systemic implications of such agreements and regional initiatives for the multilateral trading system and the relationship between them, and make appropriate recommendations to the General Council; and

(e) to carry out any additional functions assigned to it by the General Council.

2. That the Committee shall report annually to the General Council on its activities."

Officers of the Committee were appointed by the General Council on 16 April 1996. These are: Mr. Weekes (Canada) as Chairman of the Committee, and Mr. Berthet (Uruguay), Mr. Harbinson (Hong Kong), Mr. Ravaloson (Madagascar) and Mr. Willems (Belgium) as Vice-Chairmen.

4. The Committee will have held seven meetings by the end of 1996; on 21-22 May (First Session), 2-3 July (Second Session), 29-31 July (Third Session), 17-20 September (Fourth Session); 7, 10-11 October (Fifth Session); 31 October (Sixth Session); and 5-6, 8 November (Seventh Session). There has also been a series of informal consultations.

Work of the Committee during 1996

5. The Committee adopted its Rules of Procedure (WT/REG/1) and programme of work for 1996 at its Second Session. The work programme provided for all the items of its terms of reference to be addressed in a balanced manner, allowing the Committee to progress more effectively in all areas of its mandate as a result of the synergies which developed.

[2]The Committee will also carry out the outstanding work of the working parties already established by the Council for Trade in Goods, the Council for Trade in Services or the Committee on Trade and Development, within the terms of reference defined for those working parties, and report to the appropriate bodies.

(a) Examination of regional trade agreements

6. Members drew attention to the need for the Committee to assign a priority to dealing with the backlog of outstanding examinations. By the end of 1996, the Committee will have started, or continued, the examination of 21 regional trade agreements out of the 32 outstanding as of June 1996, thus working towards removing the backlog (see Attachment 1).

7. The examinations of regional trade agreements during 1996 led to questions from some Members concerning the interpretation of some of the WTO provisions pertaining to regional trade agreements, in particular, of Article XXIV of the GATT 1994, the Understanding on the Interpretation of Article XXIV of the GATT 1994 and Article V of the General Agreement on Trade in Services. In some instances, the observation was made that examinations were hampered by the lack, or late submission, of relevant information.

(b) Reporting on the operation of agreements

8. Preliminary discussions on this item were based on a checklist of points prepared by the Secretariat (WT/REG/W/3). Members were of the view that the fulfilment of the legal obligations to provide for biennial reporting on the operation of agreements could help to increase the transparency of regional trade agreements. They considered that the procedures to give effect to this obligation should be designed to operate in an efficient manner, taking into account other relevant WTO procedures.

(c) Procedures to facilitate and improve the examination process

9. The Committee requested the Secretariat to prepare a standard format for the provision of information on regional trade agreements to facilitate and standardize the provision of initial information. At its Third Session, the Committee took note of the non-binding, voluntary Chairman's Guidelines as set out in the "Standard Format for Information on Regional Trade Agreements" (WT/REG/W/6). Members considered it an important contribution to improving the procedures for examination of regional trade agreements, as it is intended to provide timely and accurate information as a substitute for the initial question and reply process. The Committee is considering the appropriate time for the submission of the Standard Format. The Standard Format has been developed for goods agreements; following a request by the Committee, the Secretariat is preparing a similar draft standard format for information on services agreements for use as appropriate.

10. The Committee is considering a joint submission by the delegations of Australia, Hong Kong and Korea (WT/REG/W/5), which proposed the adoption by the Committee of guidelines for the examination of regional trade agreements. The Committee is also considering a suggestion by Japan for the adoption of guidelines for the examination of regional trade agreements aimed at addressing the kind of problems that, in Japan's view, result from different interpretations of Article XXIV.

11. The Committee discussed a number of matters relating to the notification of regional trade agreements. With respect to the timing of notifications, the Committee is examining the possibility of establishing a means to convey preliminary information relating to regional trade agreements prior to the notification itself. The Committee also discussed two approaches to dealing with non-compliance with notification obligations; either through the Committee urging Members which are parties to regional trade agreements to comply with their notification obligations or through providing for the possibility of counter-notification. The Committee also had a preliminary discussion on the possibility of establishing a simplified examination procedure for regional trade agreements having minimal effects on international trade. With respect to the reports on the examination of regional trade agreements, the Chairman proposed a new form of reporting involving separating the report in two parts, whereby the Committee would take note of its factual part - reflecting the discussions of the Committee - and

adopt the conclusions after having considered a draft version. This remains a matter for consideration. The Committee also discussed other matters dealt with in the Secretariat document "Note on Procedures to Facilitate and Improve the Examination Process" (WT/REG/W/9).

(d) Systemic implications of regional trade agreements and initiatives for the multilateral trading system and the relationship between them

12. The Committee had a preliminary, inconclusive discussion on this issue. For this discussion, it had before it the 1995 Secretariat publication, *Regionalism and the World Trade System*, which provides an overview of the relationship between regional trade agreements and the GATT/WTO system during the past 50 years. Korea made a submission (WT/REG/W/4) dealing with what it considered to be the challenges, systemic issues, and objectives for the Ministerial Conference with respect to regional trade agreements and the WTO system; it included a work programme on regionalism for the WTO in 1997-98. In the discussion there were divergent views. Members emphasized the importance of the relationship between regional trade agreements and the WTO system. Some Members stressed the need to address the relationship between regional trade agreements and the WTO rules. Others were equally clear that conclusions could not be drawn ahead of the necessary examination of the issues. The need for Members to comply with their notification obligations with respect to preferential agreements was also noted.

13. In the course of the examination of regional trade agreements carried out at the Third Session of the Committee, Members identified a number of systemic and horizontal issues related to the relevant WTO rules. Upon the request of the Committee, these have been included in an informal checklist by the Secretariat which will be updated to include other horizontal issues of the same nature referred to in other Sessions of the Committee.

14. Following the Chairman's proposal on how the available information could be presented to assist consideration of systemic implications, the Committee requested the Secretariat to prepare material for horizontal (pilot) studies on technical barriers to trade and sanitary and phytosanitary measures as they appear in the texts of the regional trade agreements under examination. In a preliminary discussion based on the Secretariat's material (WT/REG/W/8), various views were expressed regarding the implications for the WTO. Further discussions were needed on this subject. In that context, the Chairman invited Members to submit relevant information with respect to work being done on technical barriers to trade and sanitary and phytosanitary measures in the context of regional initiatives. Interest was expressed by some Members in expanding this exercise to cover other provisions.

15. In discussing the Committee's report to the Ministerial Conference, Members emphasized the importance of the compatibility of regional trade agreements with the multilateral trading system.

16. At the Fourth Session, Korea tabled a draft decision for the Ministerial Conference. The United States has also tabled a draft recommendation. Discussions will take place shortly on both proposals.

(e) Additional functions

17. No additional functions were assigned by the General Council to the Committee on Regional Trade Agreements during 1996.

Future Work Programme

18. There exists considerable scope for the Committee to develop its work within the existing terms of reference. The Committee's future work programme will build on work begun this year. Members consider it important for Ministers in Singapore to endorse the following aspects of its future work.

19. The Committee should continue the examination of regional trade agreements as one of its priority tasks for the years ahead. The Committee should make every effort to work to remove the backlog and ensure that such a backlog does not reoccur.

20. The Committee should work towards early agreement on procedures for the effective implementation of biennial reporting on the operation of agreements, in an efficient manner, taking into account other relevant WTO procedures.

21. On procedures to facilitate and improve the examination exercise, the Committee should continue the work already initiated. This should include, *inter alia*, the development of a voluntary Standard Format for Information on Services Agreements, the development of guidelines for the examination of regional trade agreements, and the consideration of the nature and content of reports.

22. The Committee should explore measures that could help in increasing the effectiveness of notifications - with respect to their timing as well as to their contents - and examine the options available for ensuring that all regional trade and economic integration agreements involving WTO Members are notified to the appropriate WTO bodies.

23. On systemic matters, the Committee should continue its consideration building on written submissions and interventions by Members; on the evolving checklist of systemic issues identified in the context of the examination of regional trade agreements; and on horizontal comparative studies on selected elements of regional agreements and initiatives. As part of this work, the Committee should analyse, in a non-prejudicial manner, whether the system of WTO rights and obligations, as it relates to regional trade agreements, needs to be further clarified with a view to making appropriate recommendations to the General Council, in accordance with the mandate of the Committee.

ATTACHMENT 1

Status of Examination of Regional Trade Agreements

Regional trade agreements examined in 1996 (21)

Agreement	Date of Examination	Round of Examination
EC Enlargement - Goods	29/7/96	First
NAFTA - Goods	30/7/96	Second
EFTA-Hungary	17/9/96	First
EFTA-Israel	17/9/96	First
EFTA-Poland	17/9/96	First
EC-Czech Rep.	18/9/96	First
EC-Hungary	18/9/96	First
EC-Poland	18/9/96	First
EC-Slovak Rep.	18/9/96	First
MERCOSUR	20/9/96	Second
NAFTA - Services	10-11/10/96	Second
EC Enlargement - Services	11/10/96	First
EC-Bulgaria	5/11/96	First
EC-Romania	5/11/96	First
EC-Estonia	5/11/96	First
EC-Latvia	5/11/96	First
EC-Lithuania	5/11/96	First
EFTA-Bulgaria	6/11/96	First
EFTA-Romania	6/11/96	First
EFTA-Slovenia	6/11/96	First
EC-Turkey	8/11/96	First

Other regional trade agreements already notified, to start examination in 1997 (14)

(a) Regional trade agreements notified before June 1996 (8)[1]

- Central European Free Trade Agreement (FTA)[2]
- Czech Rep.-Slovenia FTA[2]
- Slovak Rep.-Slovenia FTA[2]
- Hungary-Slovenia FTA[2]
- EC-Faroe Islands FTA
- Iceland-Faroe Islands FTA
- Switzerland-Faroe Islands FTA
- Norway-Faroe Islands FTA

(b) New notifications (6)

- Czech Republic-Romania FTA. The terms of reference for the examination of the Agreement were adopted by the Council for Trade in Goods on 5 July 1996.
- Slovak Republic-Romania FTA. The terms of reference for the examination of the Agreement were adopted by the Council for Trade in Goods on 5 July 1996.
- EFTA States-Estonia FTA.[1] The terms of reference for the examination of the Agreement were adopted by the Council for Trade in Goods on 19 September 1996.
- EFTA States-Latvia FTA.[1] The terms of reference for the examination of the Agreement were adopted by the Council for Trade in Goods on 19 September 1996.
- EFTA States-Lithuania FTA.[1] The terms of reference for the examination of the Agreement were adopted by the Council for Trade in Goods on 19 September 1996.
- Establishment of the European Community, Services. The terms of reference for the examination of the Agreement were adopted by the Council for Trade in Services on 23 September 1996.

[1]Three bilateral Free Trade Agreements between Switzerland and the Baltic countries, previously notified to the GATT, were replaced by the relevant EFTA Agreements, notified to the WTO after June 1996.

[2]The Committee was informed orally of the replacement of the three bilateral Free Trade Agreements between Slovenia and Czech Republic, Hungary and Slovak Republic by the Agreement on Accession of Slovenia to the Central European Free Trade Area.

ATTACHMENT 2

Documents for the Committee on Regional Trade Agreements

WT/REG/1	-	Rules of Procedure for Meetings of the Committee on Regional Trade Agreements
WT/REG/W/1	-	GATT/WTO Documents Issued for the Examination of Regional Agreements
WT/REG/W/2	-	Draft Rules of Procedure for Meetings of the Committee on Regional Trade Agreements
WT/REG/W/3	-	Checklist of Points on Reporting on the Operation of Regional Agreements
WT/REG/W/4	-	Communication from Republic of Korea
WT/REG/W/5	-	Communication from the Delegations of Australia, Hong Kong and Korea
WT/REG/W/6	-	Standard Format for Information on Regional Trade Agreements
WT/REG/W/7	-	Checklist of Points Raised by Delegations on Procedures to Facilitate and Improve the Examination Process
WT/REG/W/8	-	Systemic Implications of Regional Trade Agreements and Regional Initiatives for the Multilateral Trading System
WT/REG/W/9	-	Note on Procedures to Facilitate and Improve the Examination Process

SECTION X

COMMITTEE ON BALANCE-OF-PAYMENTS RESTRICTIONS

WORLD TRADE ORGANIZATION

WT/BOP/R/19
5 November 1996

(96-4664)

Committee on Balance-of-Payments Restrictions

REPORT (1996) OF THE COMMITTEE ON BALANCE-OF-PAYMENTS RESTRICTIONS

1. This report has been prepared in pursuance of the Procedures for an Annual Overview of WTO Activities and for Reporting under WTO (WT/L/105).[1]

2. Since 1 December 1995 the Committee has held consultations with five Members under the Chairmanship of Mr. Peter Witt (Germany).[2]

3. During the December 1995 consultations with India, the Committee recalled India's stated aim to move, by 1996-97, to a trade régime under which quantitative restrictions are retained only for environmental, social, health and safety reasons, provided sustained improvement was shown in its balance of payments. The Committee noted the view expressed by India that, in the context of a deteriorating balance-of-payments situation, it would be neither prudent nor feasible to consider the general lifting of quantitative restrictions on imports at this stage. As there were divergent views on India's balance-of-payments situation and on the conclusions to be drawn, the Committee welcomed India's readiness to notify to the WTO all remaining restrictions maintained for balance-of-payments purposes soon after the announcement of the 1996/97 Export-Import Policy and to resume consultations in October 1996.[3] Following a request by the IMF to reschedule the consultation, the Committee agreed that this consultation would be held on 20-21 January 1997. In July 1996, India submitted a list of all its quantitative restrictions maintained for balance-of-payments purposes.[4]

4. During the consultations with Nigeria in February 1996, the Committee welcomed Nigeria's commitment to convert all measures taken for balance-of-payments purposes to price-based measures, to eliminate these and thereby to disinvoke Article XVIII: B.[5] The consultations resumed in September 1996. The Committee took note of the statement by Nigeria that technical and legislative processes had been initiated with a view to eliminating the import prohibitions based on balance-of-payments grounds as of 1 January 1997, and that positive recommendations had been made to this end, subject to final Government approval. It requested Nigeria to notify the relevant decisions to the Committee as soon as they are taken. If all measures were removed by the 1997 Budget, there

[1]The Annual Report for the Committee for 1995 is contained in WT/BOP/R/10.

[2]Since the entry into force of the WTO, the Committee has held consultations with 13 Members (Table 1).

[3]WT/BOP/R/11, 23 January 1996.

[4]WT/BOP/N/11, 23 July 1996.

[5]WT/BOP/R/13, 1 March 1996.

would be no need for further consultation; if not, the Committee would resume its consultation with Nigeria in February 1997.[6]

5. During the June 1996 consultations with Slovakia, the Committee welcomed the decision of the Government of Slovakia, dated 25 June 1996, committing itself to eliminate the surcharge with effect from 1 January 1997, and to disinvoke the provisions of Article XII of GATT 1994 at the same time.[7] Slovakia reduced its import surcharge from 10 to 7.5 per cent, effective 1 July 1996.

6. Consultations were held with Tunisia in June 1996. The Committee recognized that Tunisia's balance-of-payments situation was fragile. It noted Tunisia's clarification of the only remaining restrictions for which it claimed balance-of-payments justification and the agreement of Tunisia to provide a notification of these restrictions to the WTO within one month. This list supplied by Tunisia is contained in WT/BOP/N/10.[8] The Committee discussed whether these restrictions could be justified for balance-of-payments purposes. Opinions differed as to whether this balance-of-payments situation constituted a threat of a serious decline in Tunisia's monetary reserves. Some Members, considering that these residual measures represented the final stage in phasing out quantitative restrictions, stated that Tunisia needed the five years envisaged in its Plan to complete this process. Others recalled that, under the Understanding on Balance-of-Payments Provisions of the GATT 1994, the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes and GATT Article XVIII:9, preference should be given to price-based measures, and that measures should be applied to control the general level of imports, without sector-specificity; on these grounds, they requested Tunisia to lift the quantitative restrictions promptly. Bearing in mind all these factors, the Committee agreed to resume the consultations with Tunisia in June 1997 on the basis of a new macroeconomic analysis by the IMF.[9]

7. During consultations in September 1996, Hungary confirmed its firm intention to eliminate the surcharge and disinvoke balance-of-payments provisions by 1 July 1997, at the latest.[10] Hungary notified the WTO that it was reducing the 8 per cent import surcharge, introduced in March 1995, to 7 per cent on 1 July 1996 and to 6 per cent on 1 October 1996.[11]

8. The consultations scheduled with Turkey and Poland in June and July, respectively, were cancelled following commitments on the part of these Governments to disinvoke the balance-of-payments provisions by 1 January 1997.[12]

9. In accordance with the conclusions of the Committee in November 1995, the Philippines notified the WTO that it had liberalized its restrictions on agricultural products.[13]

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[6]WT/BOP/R/18, 16 October 1996.

[7]WT/BOP/R/15, 7 July 1996.

[8]WT/BOP/N/10, 10 July 1996.

[9]WT/BOP/R/14, 8 July 1996.

[10]WT/BOP/R/17, 16 October 1996.

[11]WT/BOP/N/12, 6 August 1996.

[12]WT/BOP/R/16, July 1996; WT/BOP/N/7, 19 June 1996; WT/BOP/N/8, 27 June 1996.

[13]WT/BOP/N/9, 3 July 1996 (cf. BOP/312/Add.1/Rev.1, 1 November 1994).

10. In accordance with the conclusion of the Committee in November 1995, Sri Lanka notified the WTO that it had removed import restrictions on four tariff lines (potatoes, red onions, "B" onions and peppers).[14]

11. A report on other business conducted by the Committee is contained in document WT/BOP/R/16.

12. In accordance with the annual notification requirement, contained in paragraph 9 of the Understanding, the Committee adopted a notification format (WT/BOP/14) on 21 October 1996.

13. Pending a final decision by the General Council, the Committee has granted ad hoc observer status to the following intergovernmental international organizations: ACP, EFTA, EBRD, OECD, UNCTAD and World Bank.

14. From 1997, four Members are expected to be consulting under Article XVIII:12(b): Bangladesh, India, Pakistan and Tunisia. Nigeria and Sri Lanka will also continue consultations if any measures justified on balance-of-payments grounds remain in force.

[14]WT/BOP/N/13, 30 September 1996.

Table 1
BOP CONSULTATIONS CONDUCTED SINCE THE ENTRY INTO FORCE OF THE WTO

Member	Last Consultation	Follow up
Bangladesh	March 1995	The next consultations will be held in the spring of 1997.
Brazil	October 1995	Following consultations with the Committee, Brazil withdrew the provisions for import quota on motor vehicles introduced in June, with effect from 27 October 1995.
Egypt	June 1995	Egypt disinvoked Article XVIII:B with effect from 30 June 1995.
Hungary	September 1996	The 8 per cent import surcharge introduced in March 1995, has been reduced to 7 per cent as of 1 July 1996 and 6 per cent as of 1 October 1996. Hungary confirmed its firm intention to eliminate the surcharge by 1 July 1997, at the latest.
India	December 1995	The consultation will resume on 20-21 January 1997.
Israel	June 1994	Israel disinvoked the balance-of-payments provisions as of 15 December 1995.
Nigeria	February/September 1996	Nigeria committed itself to convert all balance-of-payments measures to price-based measures and to disinvoke Article XVIII:B.
Pakistan	November 1994	The next consultation will be held on 18-19 November 1996.
Philippines	November 1995	The Philippines undertook to disinvoke Article XVIII:B subject to the liberalization of remaining restrictions by 31 December 1997. Restrictions on agricultural products were lifted in March 1996.
Poland	June 1995	Poland informed the Committee in June 1996 that it would eliminate the 3 per cent surcharge and disinvoke Article XII by 1 January 1997.
Slovakia	June 1996	Slovakia informed the Committee in June 1996 that it would eliminate the surcharge, lowered from 10 to 7.5 percent as of 1 July 1996, and disinvoke Article XII by 1 January 1997.
South Africa	May 1995	South Africa disinvoked the balance-of-payments provisions with effect from 1 October 1995.
Sri Lanka	November 1995	Members questioned the balance-of-payments justification of remaining restrictions on eight food items and recommended that Sri Lanka not have recourse to Article XVIII:B. In September 1996, Sri Lanka notified the elimination of restrictions on four tariff lines.
Tunisia	June 1996	Opinions differed as to the justification of balance-of-payments grounds for quantitative restrictions on motor vehicles. The consultations are to resume in June 1997.
Turkey	June 1995	Turkey informed the Committee in June 1996 that it would reduce its remaining duties to bound levels and disinvoke the balance-of-payments provisions as of 1 January 1997.

SECTION XI

COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION

WORLD TRADE ORGANIZATION

WT/BFA/29
4 November 1996

(96-4640)

Committee on Budget, Finance and Administration

ANNUAL REPORT (1996)

1. In accordance with the procedures for an annual overview of WTO activities and for reporting under the WTO adopted by the General Council on 15 November 1995, a report on the activities of the WTO Committee on Budget, Finance and Administration in 1996 is hereby submitted.

2. It will be recalled that the Committee met on a number of occasions and has presented reports to the General Council on a regular basis.[15] This report will then cover the major areas the Committee has dealt with in the course of the year to date.

I. ON-GOING RESPONSIBILITIES

3. The Committee monitored on a regular basis the financial and budgetary situation of the Organization, the receipt of contributions including the implementation of the related schemes and measures pertaining to receipt of contributions, and examined the Final Position of the 1995 Budget and the Director-General's Financial Report on the 1995 Accounts and Report of the External Auditor. It also dealt with the Director-General's budget proposals for 1997.

II. MAJOR AREAS OF ACTIVITIES

A. External Auditors

4. The Joint WTO/GATT Committee recommended that a call for competitive tenders for the external audit of the accounts of the Organization be made in 1995. After approval of the terms of reference for the competitive bids, the Secretariat sent out a call for tenders the same year. The Committee formed a working group in 1996 with the Secretariat to examine the candidatures of nine national courts of audit. On the basis of a report presented by the working group, the Committee recommended to the General Council to extend the on-going contract with the Austrian Court of Audit for one year to include the audit of the 1996 accounts and to nominate the Netherlands Court of Audit for auditing the WTO accounts effective as from the audit of the 1997 accounts for a three year term.

B. General management of, and overhead costs on, Trust Funds

5. The WTO Committee had, on several occasions, examined the question of general management and overhead costs of Trust Funds. In 1996, in document WT/BFA/21, it recommended to the General Council that a standard overhead rate of 13 per cent on trust fund expenditures be charged. The recommendations on the general management of Trust Funds were contained in document WT/BFA/26.

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[15]Reports: WT/BFA/20 covering the meeting of 29 January 1996; WT/BFA/21 covering the meeting of 29 February 1996; WT/BFA/22 covering the meeting of 26 March 1996; WT/BFA/24 covering the meeting of 2 May 1996; and WT/BFA/26 covering the meeting of 27 June 1996. In addition, the Committee sent a specific recommendation to the General Council in document WT/BFA/19.

C. Relationship between the International Trade Centre (ITC) and the WTO

6. The Committee monitored the implementation of the decision taken in 1995 to consult with United Nations Headquarters on a new arrangement on budgetary issues related to the functioning of the ITC. In 1996, the Committee examined the proposed 1997 budget for the ITC which for the first time was expressed in Swiss francs and followed the presentation of the WTO budget.

D. New WTO Members

7. In the course of 1996, the Committee formulated recommendations to the General Council on assessments to the budget and advances to the Working Capital Fund upon the accession to the WTO of the following new Members: (i) Angola, (ii) Benin, (iii) Chad, (iv) Ecuador, (v) Fiji, (vi) Gambia, (vii) Grenada, (viii) Haiti, (ix) Papua New Guinea, (x) Qatar, (xi) Rwanda, (xii) Saint Kitts and Nevis, (xiii) Solomon Islands, and (xiv) the United Arab Emirates.

E. Conditions of service of WTO staff

8. While not in the formal framework of the Committee, two working groups under the General Council chaired by the present and former Chairmen of the Committee took up the matter of conditions of service again in 1996. One dealt with salaries and the other with pensions. The result of these discussions and consultations provided the basis for the draft decision providing for the establishment of WTO - specific conditions of service tabled by the Chairman of the General Council in September 1996.

SECTION XII

COMMITTEES AND COUNCILS UNDER THE PLURILATERAL TRADE AGREEMENTS

WORLD TRADE ORGANIZATION

WT/L/190
17 October 1996

(96-4315)

REPORT (1996) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT (1994 AGREEMENT)

I. General

1. This report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments in the implementation and operation of the Agreement during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this first Report is January-September 1996, but the report also reflects, where necessary, the preparatory work of the Interim Committee on Government Procurement prior to the Agreement's entry into force. The Committee on Government Procurement held three meetings in 1996: on 27 February, 4 June and 20 September (GPA/M/1-3). The Interim Committee on Government Procurement held six meetings in 1994 and 1995 (GPA/IC/M/1-6). Its report to the Committee was circulated in document GPA/IC/9.

3. The following WTO Members are Parties to the Agreement: Canada, the European Communities and fifteen Member States, Israel, Japan, Korea, Netherlands with respect to Aruba[1], Norway, Switzerland and the United States. Seven WTO Members have observer status: Australia, Colombia, Iceland, Liechtenstein, Singapore and Turkey. Two non-WTO members have observer status: Chinese Taipei and Latvia.

II. Implementation of the Agreement

Modifications of Appendices to the Agreement

4. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article.

5. Prior to the entry into force of the Agreement, the United States and Norway made rectifications of a purely formal nature pursuant to the relevant Decision of the Interim Committee (GPA/IC/M/1, Annex 2). The United States rectification to its Appendix II regarding State Publications with effect as of 23 December 1994 was accompanied by a list of such publications (GPA/IC/W/10) and Norway's rectification with effect as of 15 December 1994 related to the change of names of entities in Appendix I, Annex 1 (GPA/IC/W/8).

[1] As of 25 October 1996

6. At the time of the signature of the Agreement in Marrakesh in April 1994, the European Communities and the United States negotiated a bilateral agreement extending their mutual benefits under the Agreement, the relevant details of which, including the intended modifications, were circulated to the Interim Committee on 15 June 1994. At its meeting of 7 December 1995 the Interim Committee accepted that the European Communities and the United States had met the procedural requirements, in terms of the relevant Decision of the Informal Group on Negotiations (GPA/IC/3), necessary for the incorporation of modifications to the respective Annexes to Appendix I, which were subsequently submitted on 22 December 1995 (GPA/IC/10).

7. After the entry into force of the Agreement, Japan and the United States notified modifications to Appendix I which followed their bilateral agreement reached on the enlargement of the coverage of the Agreement (GPA/W/1 and GPA/W/2). Consequential modifications to Appendix I entered into force on 25 February 1996. Following the bilateral agreement reached between Norway and the United States, further modifications to Appendix I entered into force on 17 August 1996 (GPA/W/22 and GPA/W/23). Discussions currently being held between some other Parties may result in further expansion of the coverage of the Agreement.

8. The Committee also discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover sub-central government entities and enterprises in all ten Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. At the last two meetings of the Interim Committee, Canada linked the tabling of its schedule at the sub-central level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of access through circumscribing the use of small business and other set-aside exceptions under the Agreement (GPA/IC/M/5-6). Canada maintained this position at the first three meetings of the Committee held in 1996 (GPA/M/1-3). Some other Parties expressed their disappointment over the situation, stressed the need for Canada to honour its commitments and considered that the problems raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Accession

9. At its first meeting on 27 February 1996, the Committee concluded the accession process of two additional WTO Members to the Agreement, which had been initiated prior to the entry into force of the Agreement, by adopting the Decisions on the accession of Liechtenstein and the Kingdom of the Netherlands with respect to Aruba on the basis of the reports of the Interim Committee (GPA/IC/6 and GPA/IC/7), and inviting these Members to accede to the Agreement on the terms for accession attached to the respective Decisions (GPA/2 and GPA/3). The Kingdom of the Netherlands for Aruba has deposited its instrument of accession on 25 September 1996 (WT/Let/111 and GPA/7). Liechtenstein has not yet deposited its instrument of accession.

10. Singapore applied for accession in November 1995. Following bilateral consultations held between Singapore and Parties in 1996, the Committee adopted, at its meeting on 20 September 1996, a Decision inviting Singapore to accede on the terms attached to that Decision (GPA/6). Singapore has not yet deposited its instrument of accession.

11. Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5). At its February and June 1996 meetings, the Committee was informed of the bilateral consultations held between the delegation of Chinese Taipei and Parties to the Agreement on Chinese Taipei's revised

offer in view of its wish to conclude this process in the latter part of 1996. At its September meeting, the Committee was informed of further improvements that Chinese Taipei had made to its offer.

Decisions on Procedural Matters

12. At its first meeting on 27 February 1996, the Committee on Government Procurement adopted the following Decisions on procedural matters: Participation of Observers in the Committee; Accession to the Agreement; and Interim Procedures on the Circulation of and on the Derestriction of Documents, Pending Definitive Procedures (GPA/1). These Decisions, which concern, *inter alia*, possibilities for Members of the WTO not Parties to the Agreement to participate as observers in the Committee, to receive Committee documents and to accede to the Agreement, were transmitted to the General Council for the information of all Members of the WTO (WT/L/146). At its September meeting, the Committee agreed to align its procedures on circulation and derestriction of documents with those adopted by the General Council on 18 July 1996 (WT/L/160/Rev.1).

13. At its meeting on 27 February 1996, the Committee adopted a Decision on modalities for notifying threshold figures in national currencies (GPA/1). All Parties have notified thresholds in their respective national currencies for the periods 1996-97 and the methods employed for determining them (GPA/W/12 and Addenda 1-6).

14. At its meeting on 4 June 1994, the Committee adopted a Decision on Procedures for the Notification of National Implementing Legislation, including responses to a checklist of issues (GPA/1/Add.1). This sets a time-limit of 31 December 1996 for such notifications.

Establishment of a Practical Guide to the New Agreement

15. Pursuant to its discussion on the desirability, the structure and presentation of a practical guide to the Agreement directed towards the private sector, the Interim Committee considered it appropriate to postpone active consideration of the establishment of such a guide in view of its linkages with various other outstanding issues, such as the procedures for notifying national implementing legislation and the use of information technology in procurement procedures.

Loose-leaf System for Updating Appendices

16. The Committee agreed, at its meeting on 4 June 1996, to establish a loose-leaf system, with legal effect, to ensure that the Appendices to the Agreement are kept up to date. The Committee requested the Secretariat to produce and distribute an updated set of Appendices, with a view to providing a starting point for the loose-leaf system. The Committee agreed to make this loose-leaf system, once established, available to the public at large through the Internet.

Statistical Reporting

17. Article XIX:5 requires Parties to collect and provide on an annual basis statistics on their procurements covered by the Agreement. With a view to ensuring that such statistics are comparable, Article XIX:5 requires the Committee to provide guidance on the methods to be used. The Interim Committee established a Working Group on Statistical Reporting to propose 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.

18. Based on the report of this Working Group (GPA/IC/8), the Committee agreed, at its first meeting on 27 February 1996, that the rules of origin of products used for the purposes of statistical

reporting in Article XIX:5 of the Agreement should be the same as those applied under Article IV, which were those used in the normal course of trade. As for the requirement to report statistics on the origin of services, the Committee postponed application of this requirement until practicable rules for determining the origin of services had been defined. At its meeting on 4 June 1996, the Committee adopted classification systems for goods and services to be used in statistical reporting under the Agreement (GPA/4). Some Parties asserted that the objective of establishing statistics, i.e. to provide information and enable review as regards obligations of Parties, might be more appropriately met through alternative means.

Other Matters

19. In accordance with the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 of the WTO Agreement), the Committee notified the Dispute Settlement Body (DSB) of special or additional rules or procedures on dispute settlement in the Agreement on Government Procurement, namely Article XXII, paragraphs 2 through 7 (GPA/5).

III. Work under the Built-In Agenda

Information Technology

20. Article XXIV:8 of the Agreement calls on Parties to consult regularly in the Committee on developments in the use of information technology in government procurement and, if necessary, to negotiate modifications to the Agreement itself. In preparation for the implementation of the future responsibilities of the Committee in regard to these provisions, the Interim Committee gathered information on the use of information technology in government procurement in the various Signatories in reply to a questionnaire (GPA/IC/W/4/Rev.1) as well as through discussion in the Interim Committee (GPA/IC/M/1-6). This information raised a number of policy issues concerning, on the one hand, issues both of access to procurement opportunities on on-line databases and electronic tendering or commerce and, on the other hand, questions both of cooperation between and coordination of national systems (GPA/IC/W/18). The work on information technology has focused on the need to ensure that access to procurement opportunities through the use of information technology takes place on a non-discriminatory basis and also on considering what modifications, if any, may be necessary to the Agreement to enable the benefits of information technology to be harnessed. The United States, the European Communities and Norway submitted communications identifying a number of areas that might require examination to accommodate the developments in information technology (GPA/IC/W/36, GPA/W/13 and GPA/W/14). In addition the Secretariat prepared a compilation of issues relating to the implications of the developments of information technology which also identified options for carrying forward the work in this area (GPA/W/15). The Committee's discussion of these options at its second meeting on 4 June 1996 had the following outcome. First, the Secretariat revised the questionnaire on information technology (GPA/IC/W/4/Rev.1) as proposed in document GPA/W/15 (GPA/W/24). Second, the Secretariat prepared a factual note on the aspects of the Agreement that it had been suggested might need to be re-examined in the light of information technology, setting out the relevant provisions of the Agreement and drawing attention to any pertinent information on their negotiating history (GPA/W/25). Third, the delegation of the United States provided information on the pilot project launched in the APEC framework on access to national databases (GPA/M/3). Fourth, the European Community, in coordination with Norway, would prepare a paper identifying, *inter alia*, the technical issues relating to information technology that might need to be examined by experts. The Committee is determined to pursue its work on information technology expeditiously, so as to ensure that the benefits of information technology are harnessed while at the same time protecting and, where possible, enhancing non-discriminatory access.

Three-year Review

21. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. At the Committee's meeting on 4 June 1996, suggestions were made that, with a view to facilitating accession by the widest possible number of countries and to adjusting the Agreement to newly-emerging technologies, such negotiations should be initiated in 1997 and could include the following main elements: (i) expansion of the coverage of the Agreement, notably extending it to sectors not presently covered; (ii) increased security of market access under the Agreement; (iii) elimination of discriminatory measures and practices; and (iv) simplification and improvement of the Agreement. Some Parties expressed the view that further experience with the operation of the Agreement should be gained before initiating negotiations aimed at increased coverage.

IV. Issues to be brought to the attention of the Ministerial Conference

22. The Committee has agreed to undertake an early review, starting in 1997 with an examination of modalities, with a view to the implementation of Article XXIV:7 (b) and (c) of the Agreement. The review will, in particular, cover the following elements:

- expansion of the coverage of the Agreement;

- elimination of discriminatory measures and practices which distort open procurement; and

- simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology.

23. This review shall seek the expansion of membership of the Agreement by making it more accessible to non-Parties.

24. Members of the Committee note the work under way under the Council for Trade in Services on government procurement and the proposals for the Singapore Ministerial for a multilateral work programme on government procurement. The Parties to the Agreement on Government Procurement intend to support and actively contribute to any multilateral work on government procurement that may be decided upon by the Ministerial Conference, without prejudice to their own efforts to improve and extend the Agreement on Government Procurement and to encourage more WTO Members to become Parties to it.

WORLD TRADE ORGANIZATION

WT/L/193
11 November 1996

(96-4775)

Committee on Trade in Civil Aircraft

REPORT (1996) OF THE COMMITTEE ON TRADE IN CIVIL AIRCRAFT

1. This report is submitted under Article 8.2 of the Agreement on Trade in Civil Aircraft (hereinafter the "Agreement") and Article IV.8 of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter the "WTO Agreement"). It sets out the activities of the Committee since November 1995.

2. On 8 November 1996 there were 22 Signatories to the Agreement: Canada, the European Communities, Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, United Kingdom, Egypt, Japan, Macau, Norway, Romania, Switzerland and the United States. Greece has signed the Agreement subject to ratification. Bulgaria accepted the Agreement on 1 November 1996. The Agreement shall enter into force for that country on 1 December 1996. The other countries with observer status in the Committee are: Argentina, Australia, Bangladesh, Brazil, Cameroon, Czech Republic, Finland, Gabon, Ghana, India, Indonesia, Israel, Malta, Mauritius, Nigeria, Poland, Singapore, the Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia and Turkey. In addition, China, the Russian Federation and Chinese Taipei have observer status in the Committee. The IMF and UNCTAD are also observers.

3. The Committee on Trade in Civil Aircraft (hereafter the "Committee") held three meetings in the period under review: on 7 June, 19 July and 8 November 1996.

4. At the meeting of 7 June 1996 (TCA/M/2), the Chairman reported on the consultations he had carried out since the previous meeting of the Committee and summarized his view of the situation of the Agreement. He characterized this situation as creating a climate of legal uncertainty, in contradiction to the object and purpose of the WTO Agreement. He concluded that, as it proved very difficult to amend the Agreement, the alternative for Signatories was either (i) to terminate or suspend the application of the Agreement; or (ii) to try in good faith to make it function as it stood. In that context, the Chairman tabled an informal proposal consisting of two decisions. The first one related to the meaning of certain institutional provisions of the Agreement and confirmed the legal effects of the entry into force of the WTO Agreement. The second one provided that the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes would apply to dispute under the Agreement. Signatories agreed to examine the proposal and to meet again rapidly to take a decision on these matters. Under "Other Business", the Chairman informed the Committee that Mr. Latrille could no longer serve as Vice-Chairman of the Committee, and that he himself would soon no longer be able to serve as Chairman. Consultations were under way regarding the election of a new Chairman and Vice-Chairman.

5. At the meeting of 19 July 1996 (TCA/M/3), the Chairman concluded that his proposal was not acceptable to all Signatories and that there were no alternatives that would be readily acceptable to all. Under "Other Business", one Signatory referred to the negotiations initiated under Article 8.3 in 1992. In its view, three options were available: (i) terminate the negotiations; (ii) conclude the

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negotiations by incorporating in the Agreement the results on which consensus had been reached or (iii) define a new mandate for those negotiations. The same Signatory also suggested that Article 8.8 of the Agreement be amended pursuant to Article 9.5 to preserve the current relationship between the Agreement and the other agreements annexed to the WTO Agreement while allowing the Agreement to be formally revised to take into account the existence of the WTO.

6. At the meeting of 8 November 1996 (TCA/M/4), Mr. Hidetaka Saeki was elected as Chairman of the Committee on Trade in Civil Aircraft. The Committee discussed the informal proposal tabled by the Chairman on 7 June 1996 as well as the suggestion made by one Signatory to amend Article 8.8 of the Agreement. While no agreement could be reached on either of the proposals, Signatories agreed to continue discussions aimed at reaching a solution promptly. Signatories also reviewed the proposal made under Article 8.3 at the meeting of the Committee of 19 July 1996. Various views were expressed by Signatories but no agreement could be reached.

7. The Sub-Committee of the Committee on Trade in Civil Aircraft, established on 16 July 1992 to conduct negotiations under Article 8.3 and composed of 32 participants: Australia, Austria, Belgium, Brazil, Canada, China, Czech Republic, Denmark, Egypt, European Communities, Finland, France, Germany, Greece, Ireland, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovak Republic, Spain, Sweden, Switzerland, Chinese Taipei, United Kingdom and the United States, did not hold any meeting during the period under review.

8. Signatories reiterated their commitment to continue the work on technical revision with a view to reaching a successful conclusion in the negotiation to adapt the Aircraft Agreement to the WTO structure. They also reiterated their intention to work to resolve outstanding issues under Article 8.3.

WORLD TRADE ORGANIZATION

WT/L/178
11 October 1996

(96-4172)

INTERNATIONAL DAIRY COUNCIL

Report to the Singapore Ministerial Conference

The International Dairy Agreement (IDA) entered into force on 1 January 1995. The two main functions of the Agreement are (i) the maintenance of minimum export prices for specific dairy products listed in the Agreement, and (ii) to provide, with the International Dairy Council, a forum for exchange of information on the world market situation and outlook for dairy products. As of 17 September 1996, the following were Parties to the Agreement: Argentina, Bulgaria, the European Communities, Japan, New Zealand, Norway, Romania, Switzerland and Uruguay. Other governments and intergovernmental organizations are represented at meetings by observers.

The International Dairy Council held meetings on 20-21 March 1995, 17 October 1995 and 17 September 1996. In accordance with Article IV:1 of the IDA, the Council reviewed at its meetings the situation and outlook in the world market for dairy products on the basis of notes prepared by the Secretariat (IDA/W/1, IDA/W/7 and IDA/W/12), as well as the questionnaires submitted by Parties. In 1995, the Council also: (i) adopted Rules of Procedure (IDA/1); (ii) adopted formats for Questionnaires 1-5 (IDA/4); and (iii) issued a standing invitation to the United Nations Economic Commission for Europe (ECE), FAO, OECD and UNCTAD to participate in its meetings in an observer capacity.

At its October 1995 meeting, the Council noted that the limited membership in the Agreement, and in particular the non-participation of some major dairy exporting countries, made the operation of the minimum price provisions of the IDA untenable. In light of this situation, the Council decided to suspend the operation of the Annex to the Agreement thus suspending minimum prices for all dairy products therein until 31 December 1997. Noting that the task of the Committee on Certain Milk Products was directly related to the implementation of the provisions of the Annex, the Committee was also suspended.

In view of the fact that certain Parties expressed doubts about the continued usefulness of the current Agreement in light of the Uruguay Round results, the Council, at its meeting in September 1996, invited the Chairperson to undertake informal consultations on the future of the Agreement.

The reports of the meetings of the International Dairy Council are contained in IDA/2, IDA/5 and IDA/7.

WORLD TRADE ORGANIZATION

WT/L/179
11 October 1996

(96-4173)

INTERNATIONAL MEAT COUNCIL

Report to the Singapore Ministerial Conference

The International Bovine Meat Agreement entered into force on 1 January 1995. As of 11 June 1996 the following were Parties to the Agreement: Argentina, Australia, Brazil, Bulgaria, Canada, Colombia, the European Communities (15), Japan, New Zealand, Norway, Paraguay, Romania, South Africa, Switzerland, the United States and Uruguay. Other governments and intergovernmental organizations are represented at meetings by observers.

The International Meat Council held meetings on 21-22 June 1995 and 11 June 1996. At its first meeting, the Council: (i) adopted the Rules of Procedure (IMA/1) and agreed to hold one regular meeting in June of each year; (ii) adopted the formats for the questionnaires on domestic policies (IMA/2) and statistical information (IMA/3); (iii) agreed that observer governments would be requested to reply to the statistical and policy questionnaires on a voluntary basis; and (iv) issued a standing invitation to the United Nation's Economic Commission for Europe (ECE), FAO, the International Trade Centre (ITC), OECD and UNCTAD to participate in its meetings in an observer capacity.

In accordance with Article IV:1 of the International Bovine Meat Agreement, the Council reviewed at its meetings the world supply and demand situation and outlook in the bovine meat sector on the basis of notes prepared by the Secretariat (IMA/W/1 and IMA/W/7, refer) as well as the questionnaires submitted by Parties. Parties also had a general exchange of views on the functioning of the Agreement in the light of past experience under the Arrangement Regarding Bovine Meat and the Uruguay Round outcome. At its meeting in June 1996, the Council invited the Chairman to undertake informal consultations on various issues, including the future of the Agreement.