

# WORLD TRADE ORGANIZATION

RESTRICTED

WT/ACC/SPEC/SAU/4/Rev.1

2 October 2000

(00-3991)

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## Working Party on the Accession of the Kingdom of Saudi Arabia

### DRAFT REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE KINGDOM OF SAUDI ARABIA TO THE WORLD TRADE ORGANIZATION

#### Revision

#### INTRODUCTION

1. On 13 June 1993, the Government of the Kingdom of Saudi Arabia (hereinafter referred to as Saudi Arabia) requested accession to the General Agreement on Tariffs and Trade (GATT 1947). At its meeting on 21 July 1993, the GATT 1947 Council of Representatives established a Working Party to examine the application of the Government of Saudi Arabia to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession. Membership of the Working Party was open to all contracting parties indicating the wish to serve on it. In pursuance of the decision of the General Council of the World Trade Organization (WTO) of 31 January 1995, the GATT 1947 Accession Working Party was transformed into a WTO Accession Working Party. The terms of reference and the membership of the Working Party were reproduced in document WT/ACC/SAU/2/Rev.6.

2. The Working Party met on 2 and 3 May, 6 and 8 November 1996, 29-30 May, 2 and 4 December 1997, 17 and 19 November 1998, 22 September 1999 and ... under the Chairmanship of Mr. J. Weekes (Canada).

#### DOCUMENTATION

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Régime of Saudi Arabia (L/7489) and the questions submitted by members on the foreign trade régime of Saudi Arabia, together with the replies thereto, (L/7645 and Add.1; WT/ACC/SAU/3; WT/ACC/SAU/6, Add.1-3 and Add.3/Corr.1; WT/ACC/SAU/8 and Corr.1; WT/ACC/SAU/10; WT/ACC/SAU/13, Add.1, Add.1/Corr.1 and Rev.1; WT/ACC/SAU/29, Add.1-4, and Corr.1 and 2; and, WT/ACC/SAU/35 and Corr.1). The Government of Saudi Arabia also provided the Working Party with the following information:

- Customs Law and Implementing Regulations;
- Customs Tariff;

- Guide to the Licensing of Foreign Investment in Saudi Arabia;
- Law for the Protection and Encouragement of National Industries;
- Trade Marks Law and Regulations;
- The Patents Law;
- The Law for the Protection of Copyrights;
- Law and Regulations for Commercial Agencies;
- Import Statistics, 1993;
- Information on Non-Oil Exports To Gulf Cooperation Council States;
- Decree No. 142 of 199/11/1413: General Objectives and Strategic Principles of the Sixth Development Plan;
- Law for the Protection and Encouragement of National Industry;
- Saudi Industrial Development Fund Law;
- **Foreign Investment Regulations;**
- ~~Investment of Foreign Capital Regulation;~~
- Rules for the Coordination of Industrial Establishments in the Gulf Cooperation Council States;
- **Banking Banks Control Law (Articles 1-4);**
- Ministerial Resolution by the Ministry of Communications concerning Applications for Licences by Maritime Companies and Firms for Carrying on Maritime Carriage (Articles 1-7);
- Ministerial Resolution No. 4104/20/M dated 4.11.1408 (H) concerning the Implementing Regulations to the Private Medical Establishments Law (Articles 1-2);
- Implementing Regulations to Regulation of Technical Institutes and National Occupational Centres (Articles 1-9);
- Resolution from His Royal Highness the Minister of Defence and Aviation concerning the --Regulation of Tourism and Travel Agencies and Companies engaged in Air Transport (Articles 1-4 and 13);
- Ministerial Order No. 264 of 16.9.1402(H): Organization of the Practice of the Profession of Engineering Consultancy (Party I and III);
- Law of Certified Accountants (Articles 1-2) and Ministerial Order No. 595 of 13.11.1395 Enacting the Implementing Regulations of the Accountants Law;
- Ministerial Order No. 1190 of 16.2.1402 Pertaining to the Regulation of Carrying on the Profession of Legal Consultancy (Articles 1-2. 4-7);
- Law concerning the Carrying on of the Profession of Pharmacy and Trading in Medicaments and Medical Preparations (Articles 1.5);
- List of banned items;
- Rules and Procedures before the Board of Grievances;
- Royal Decree M/10 of 3.3.92(H) and Council of Ministers Resolution No. 1 172 of 25.2.92(H);
- SASO Standards No. 457 and No. 702;
- List of Saudi Standards (1-802);
- Regulated Product Categories Applicable Standards;
- Catalogue of Saudi Standards (1997);
- Government Purchases Law and Implementing Regulations;
- Council of Ministers Resolution No. 124 of 29.5.1403;
- Standard Rules for Giving Priority in Government Purchases to National Products and Products of National Origin of Gulf Cooperation Council States;
- Companies Law;
- Law of Arbitration and Implementing Regulations to the Law of Arbitration;
- Response to Questionnaire on Import Licensing Procedures;
- Information on Foreign Investment by Sectors;
- Information on Recent Foreign Investments Granted Licences;
- Information on Saudi Industrial Development Fund Loans;

- Information on Saudi Agriculture Bank Loans;
- Information on Agricultural Subsidies Disbursed through the Agriculture Bank;
- Information on Agricultural Domestic Support;
- Information on the Application of Import Licensing;
- Information on the Technical Barriers to Trade;
- Information on Sanitary and Phytosanitary Measures;
- Information on Preferential Trading Arrangements;
- ICCP - Comprehensive Procedures and Guidelines.

#### INTRODUCTORY STATEMENTS

4. The representative of Saudi Arabia stated that over the last 25 years, Saudi Arabia had become a modern State with a strong economy increasingly based on the private sector with a sophisticated infrastructure. At the same time, government initiatives had been used to influence economic activity when necessary, in order to ensure the protection of the Islamic values of Saudi Arabian society. Economic development of Saudi Arabia had largely depended on the utilisation of its large oil and gas reserves. Saudi Arabia was the largest producer of oil in the world and one of the world's largest producers of natural gas. The availability of these resources had given rise to an economy typical of oil-rich developing countries - characterized by a major concentration of exports on a single product and a high propensity to import.

5. The representative of Saudi Arabia informed members of the Working Party that within its traditional market economy system, Saudi Arabia had established indicative planning for economic and social development, based upon Islamic values and principles, to guide development in a coordinated and balanced direction. The first and second plans stressed the construction of a modern infrastructure, the improvement of government services, and the development of human resources. The third and fourth plans emphasized the diversification of the economy and improvement in health, education, training and other social services. Over the past two decades non-oil GDP had increased five-fold and private investment had increased seven-fold. Infant mortality rates had dropped by over 75 per cent and the ratio of physicians per person had improved by more than 90 per cent. School enrolment had risen from a little over 500,000 to more than 3 million and Saudi Arabia had among the lowest pupil-teacher ratios in the world.

6. He further added that Saudi Arabia had also improved its trade with other nations of the world. Amongst developing countries, it ranked sixth in the world in the value of traded goods, of which a large proportion was petroleum exports. Of the top 40 trading countries in the world, Saudi Arabia ranked sixth in the growth of trade over the period 1977-1992. Saudi Arabia maintained one of the least restrictive exchange and trade systems in the world - there were no exchange restrictions and did not impose trade restrictions for balance-of-payments reasons. Trade restrictions were only

imposed for religious, health, and security reasons. In addition to the underlying objectives of the preservation of Islamic values and the provision of national security, there were a number of other broad goals that the five-year plans aspire to achieve. These include diversification of the economy, improvement of living standards, regional development within Saudi Arabia, strengthening of the role of the private sector, broadening the linkages between Saudi Arabia and other nations, development and sustenance of the physical infrastructure, protection of the environment and development of human resources. The main focus of the current five-year plan was the acceleration of the process of economic diversification with the ultimate goal of having a fully developed economy. While oil was a vital part of the Saudi economy, the goal was to use petroleum as a resource for diversified industrial growth and reducing the country's dependence on the world oil market. The rapid growth of the Saudi population also necessitated the establishment of a diversified economy capable of creating the necessary employment opportunities and sustaining a relatively high standard of living for a population which was projected to more than double in the next 20 years.

7. The representative of Saudi Arabia stated that the diversification of the economy could only be achieved through much broader private sector participation in the economy. The private sector had already begun to pursue a wide range of business opportunities unrelated to government expenditures and this trend was expected to accelerate as private sector management, production and marketing capabilities strengthened and the competitive atmosphere improved. Institutional support for private sector-led growth and diversification would be provided by the Government, through liberalisation and facilitation of investment, rapid development of the Saudi Arabia's banking and financial sector and financial markets, as well as a widening range of business services. Saudi Arabia also recognized the need to build a technology base. Whilst Saudi Arabia had kept up to date with global scientific and technological developments, this had largely been through the import of sophisticated technology owned by foreign partners. Saudi Arabia still needed to improve its indigenous technological capabilities to the level of that existing in developed countries. The Government planned to assist through the expansion and improvement of educational courses and facilities related to science and technology at all levels, as well as improvement of the overall structural support for private sector initiatives. In addition, Saudi Arabia was aware of the need to impart to its citizens the knowledge and skills that would enable them to participate effectively in all social, economic and cultural activities, as well as to further develop vocational and technical education so that the country's skilled manpower needs could be met.

8. In their opening remarks, members of the Working Party welcomed Saudi Arabia's decision to accede to the WTO and to implement the WTO Agreements expeditiously through the establishment of institutional arrangements and the amendment and adoption of the required

legislation and regulations. It was noted that Saudi Arabia had played and was expected to continue to play a significant role in contributing to maintain economic and financial stability and growth, both in the region and globally. Saudi Arabia's accession would reinforce the universality of the WTO and strengthen the multilateral trading system. Noting that Saudi Arabia wished to avail itself of certain transitional arrangements, some Members supported this request while other Members stated that such requests would have to be considered and decided case by case on the basis of substantiated needs.

9. The Working Party reviewed the economic policies and foreign trade regime of Saudi Arabia and the possible terms of a draft Protocol of Accession. The views expressed by members of the Working Party and the various aspects of Saudi Arabia's foreign trade regime, and on the terms and conditions of Saudi Arabia's accession to the WTO, are summarised below in paragraphs 10 to 144.

## ECONOMIC POLICIES

### Privatization

10. Some members of the Working Party requested that Saudi Arabia explain how foreign companies were permitted to participate in the privatization of Saudi industries. In response, the representative of Saudi Arabia stated that according to the Council of Minister's Resolution No.60 dated 1/4/1418 H, regarding the Government's objectives of privatization, one of those objectives was "the encouragement of national and foreign capital to undertake domestic investment". The Ministerial Committee on Privatization formed by the above Resolution was required to approve the implementation programme for each project planned for privatization by the Government. The programme included a study on the participation of foreign investment according to the circumstances and nature of each project.

### Investment Regime

11. Some members of the Working Party requested clarification whether there were any formal requirements setting a minimum level of Saudi Arabian participation in any business venture. The representative of Saudi Arabia stated that **a new law on foreign investment – Foreign Investment Regulations – had been promulgated by Royal Decree No. M/1 of 9 April 2000 (5.1.1421H). Under the new Foreign Investment Regulations, a foreign investment may take one of the two following forms: (1) enterprises owned by foreign and national investors, (2) enterprises wholly-owned by foreign investors. A project, whether wholly-owned by foreign investors or a joint-venture, licensed in accordance with F.1. Regulations, shall enjoy all benefits, incentives and securities available to a national project. Foreign investment is permissible in all activities,**

except a short negative list (which is being finalized). Under the new Regulations, a foreign investor is entitled to re-transfer, outside the Kingdom of Saudi Arabia, the proceeds from the sale of his shares or the excess funds from the liquidation or the profits earned by the enterprise or to dispose of it in any other legal manner. Further, the investor is entitled to transfer the required funds to settle any contractual obligations related to the project. Article 11 of the new Foreign Investment Regulations provides legal safeguards against confiscation or expropriation of foreign investment. It is not permissible to confiscate foreign investments, wholly or partially, except by a court order. In addition, it is not permissible to expropriate the ownership of foreign investments, wholly or partially, except for the public interest, and on payment of reasonable compensation in accordance with the regulations. ~~there was no law that specifically dealt with the topic of foreign joint ventures. The Investment of Foreign Capital Regulation covered foreign investment in general, including foreign capital in joint ventures. Although Saudi regulations did not require local participation, under the Investment of Foreign Capital Regulation, at least 25 per cent Saudi participation was required in order to qualify for tax exemptions. Some sectors were open to foreigners only if they formed a joint venture with Saudi Arabian companies, such as foreign participation in the maritime transport sector. The only conditions in the Investment of Foreign Capital Regulation were that the capital be invested in development enterprises, other than extraction of petroleum and mining, and that the foreign capital be accompanied by foreign technical expertise. Foreigners could not participate in the provision of certain services like security guarding, commercial agencies, customs clearing agencies, transaction follow up clerks to government departments, and real estate agencies. In addition, foreign investment was prohibited in security underwriting and commodity brokerage services, including currency exchange operations, as well as in technical institutes. Foreign accountants, lawyers or pharmacists were required to work out of the office of a Saudi licensed accountant, lawyer, or pharmacist, respectively. Other professional service suppliers were required to have a contract with a Saudi service provider before being allowed to establish a commercial presence. In addition, various sectors were reserved to the State: such as basic telecommunications, railways, mass transit, postal service, public administration, and public broadcasting. Investors in a Saudi Arabian business would only be granted a licence to commence a second business once the first project was successfully established.~~

12. Some members of the Working Party requested clarification of the encouragements offered by Saudi Arabia to foreign investors to invest in Saudi Arabia in order to support the inflow of technology and expertise, in particular whether technology transfer was in any way a condition for investment approval in all or certain areas. The representative of Saudi Arabia replied that **under the new Foreign Investment Regulations of 9 April 2000, technology transfer was not a condition for investment approval. Further, a project whether wholly-owned by foreign**

investors or a joint venture shall enjoy all benefits, incentives and securities available to a national project. A foreign investor has to approach only one authority – the General Investment Authority – to obtain a licence. The GIA has to decide on the investment application within 30 days from the date all required documents were submitted. The GIA has to decide on the investment application within thirty days from the date all required documents were submitted. The GIA will also serve as the enquiry point on laws, regulations and procedures relating to foreign investment. The new Foreign Investment Regulations and the implementing regulations provide that foreign investment ventures have the right to own real estate necessary to exercise their licensed activities or to accommodate their employees, in accordance with regulations of property ownership for non-Saudis. Further, it is provided that foreign investors shall have the right to bring and sponsor their non-Saudi employees (subject to the numerical limits). ~~the Investment of Foreign Capital Regulation provided that any investment of foreign capital required a licence issued by the Ministry of Industry and Electricity upon the recommendation of an inter agency Committee. If the Committee rejected the licence application for an investment of foreign capital, the concerned foreign investor could appeal the decision to the Minister of Industry and Electricity. There were two requirements for grant of a licence. The first was that the proposed investment be made in "development enterprises" (not including enterprises for the extraction of petroleum and minerals). The Ministry of Industry and Electricity, upon the motion of the inter-Ministerial Investments Committee, had issued a Ministerial Order (Number 952 of 1400) which determined that the following groups of enterprises were considered development enterprises for the purposes of the Investment of Foreign Capital Regulation:~~

- ~~\_\_\_\_\_ Productive industrial development projects,~~
- ~~\_\_\_\_\_ Productive agricultural development projects,~~
- ~~\_\_\_\_\_ Health development projects,~~
- ~~\_\_\_\_\_ Services and~~
- ~~\_\_\_\_\_ Contracting.~~

~~The second requirement for grant of a licence was that the investment be accompanied by foreign technical expertise. The conditions that foreign capital be accompanied by foreign technical expertise aims at encouraging technology transfer to Saudi Arabia. Accordingly, the provision of technology did not in and of itself guarantee approval under the Investment of Foreign Capital Regulation. Technology transfer was not a restriction on foreign investment. In fact, Saudi Arabia encouraged the inflow of foreign capital by all means.~~

**13. Foreign Investment Regulations allow foreign investors to buy local or foreign investment ventures or shares in them, provided that general conditions as for new investments**

are met. **A foreign investor can apply more than one licence for different activities, provided that he is not the owner of or a shareholder in a venture which is in financial default. The Regulations lay down that the amount of capital to be invested in a licensed project must not be less than ten million Saudi Riyals for industrial ventures and not less than five million Saudi Riyals for other ventures.**

14. Some members of the Working Party asked whether the government had awarded licenses to 100 per cent foreign-owned operations. In response the representative of Saudi Arabia stated ~~that there was no level of foreign ownership required for a licence to be granted under the Investment of~~ **under the new Foreign Investment Regulations of 9 April 2000, there was no limit on foreign investment. Under the now repealed Foreign Capital Investment Regulations (replaced by the new Foreign Investment Regulations) 137 licenses had been issued for wholly foreign-owned projects out of 1,354 licenses for foreign investment. In response to further questions, he noted that under the new Foreign Investment Regulations of April 2000, Foreign Capital Regulation.** Moreover, even if there was such a requirement, neither the GATT 1994 nor the Uruguay Round Agreement on Trade-Related Investment Measures prohibit requirements regarding the level of foreign ownership. He noted that of the 1,354 licences issued for foreign capital investment in Saudi Arabia, 137 had been for enterprises wholly owned by foreign entities. ~~In response to further questions, he noted that~~ **“national treatment” was given to foreign investors. He further stated that the Foreign Investment Regulations were fully consistent with the GATT 1994 and with the WTO Agreement on Trade-Related Investment Measures, and reiterated that Saudi Arabia did not apply any TRIMs prohibited by the WTO Agreement on Trade-Related Investment Measures.**

15. **In response to a question, the representative of Saudi Arabia stated that foreign companies holding commercial registration in Saudi Arabia can directly import goods, for their own use or as inputs, without going through a commercial agent.**

16. In response to questions from some members of the Working Party concerning whether the Government of Saudi Arabia planned to liberalize its stock market and open it to non-Saudi investors, the representative of Saudi Arabia stated that Saudi Arabia ~~had no plans~~ **is gradually changing its regulations to change its regulations** concerning participation of foreigners in the securities stock market. **Although** direct share trading in Saudi Arabia was restricted to Saudi **and GCC** nationals, **there are no restrictions on participation by foreign investors in the Government Bonds and Treasury Bills market and in investing in Saudi mutual funds.** ~~Non-Saudi Gulf Cooperation Council (GCC) nationals were allowed to participate in the share market but only to the extent to which the original allocation of shares was subscribed by non-Saudi GCC nationals.~~ There were non-GCC nationals that held shares of joint stock companies which were traded in the share market



but those non-GCC nationals were required to receive permission from concerned authorities, such as the Saudi Arabian Monetary Agency and the Ministry of Commerce, prior to selling their shares. In its continuous review of the development of the financial market, the Kingdom of Saudi Arabia had allowed the establishment of a close-ended fund (SAIF) listed on the London Stock Exchange **through which** ~~Through that fund~~ international investors could participate in the Saudi ~~Stock Exchange~~ shares market. **In November 1999, Saudi Arabia has made further changes to its regulations and now permits foreigners to invest in open-ended mutual funds managed by banks that invest in the Saudi stock market.**

17. Some members of the Working Party asked whether Saudi Arabia planned to remove its restrictions on foreign investment in exploration and extraction of hydrocarbons. The representative of Saudi Arabia replied that there were no plans to eliminate restrictions on foreign investment in the petroleum sector. **However, Saudi Arabia has removed restrictions on foreign investment in gas projects by foreign firms are being reconsidered.**

#### FRAMEWORK FOR MAKING AND ENFORCING POLICIES

18. The representative of Saudi Arabia explained that the Basic Law of **Government Rule**, instituted by Royal Decree No. A/90 dated 27 Shaaban 1412 AH, set down the law concerning political authority within Saudi Arabia. Article 56 of the Basic Law of Rule stated that the King was the Chairman of the Council of Ministers and was assisted by Ministers in the performance of his duties. The Basic Law also stated that the Law of the Council of Ministers laid down the powers of the Council regarding internal and external policies, the organization and coordination of the various Government authorities; and the conditions to be satisfied by, the powers of, the method of responsibility and all affairs of the Ministers. **According to Article 17 of the Consultative Council Law**, resolutions passed by the Consultative Council were forwarded to the Chairman of the Council of Ministers, who passed them to the Council of Ministers for consideration. When the points of view of both Councils were in agreement they were enacted after being approved by the King. In case of a difference of opinion, the King approved what he considered appropriate. **Article 70 of the Basic Law of Government and Article 20 of the Council of Ministers Law provide that** laws, treaties and international agreements and concessions were enacted and amended by Royal Decrees after having been considered by the Consultative Council **and the Council of Ministers respectively**. In general, no initials could be affected on any agreement or obligation until approved by the Council of Ministers. In conclusion, he added that the Kingdom of Saudi Arabia would do whatever was required, whether through Royal Decree, Council of Ministers Decree or Ministerial Orders to bring

its trade regime into conformity with its WTO obligations. ~~in those cases where conformity did not already exist.~~

**19. The representative of Saudi Arabia stated that Saudi Arabia provided for a wide range of judicial, arbitral and administrative procedures with respect to trade matters. For example, with regard to matters under the jurisdiction of the Customs Directorate, such as classification and valuation, there was an administrative system for appealing rulings. Disputes pertaining to Article VII related to valuation of customs purposes were under the authority of the standing Committee within the Customs Department. Similar dispute settlement systems had been established with regard to sanitary and phytosanitary requirements, licensing, standards, and intellectual property rights. Ministries and/or Agencies involved had established internal standing committees of senior officials to review initial administrative decisions. All decisions made by these “standing Committees” were appealable to the head of Ministry or Agency concerned.**

**20. He further stated that if the decision was maintained by the head of Ministry or Agency concerned, these decisions were subject to Appeal to the Board of Grievances, under Article 8(a) of the Board of Grievances Law of 17.1 1402 AH. The Board of Grievances was an independent tribunal to which appeals were made from all governmental administrative decisions, relevant to the WTO provisions, and addressed the obligation in Article X:3 of the GATT to provide right of appeal of administrative decisions to an independent tribunal. The jurisdiction of the Board included appeals against all administrative decisions of Government Departments and Government officials, and its decisions were binding on the government office concerned. It was composed of a President, Vice-Presidents and Members. The President was appointed by and reported to the King. The Vice-Presidents and Members were appointed by Royal Decree on the recommendation of the President. There were no time frames fixed for the hearing of appeals or handing down of decisions, but the Board supplied written judgements to all parties to any appeal, which included the reasons for the decision. Article (47) of the Board of Grievances Law provided for the publications of the Judicial decisions.**

**21. He also noted that the Board’s decisions could be challenged and appealed to the Appeal Court (Scrutiny Commission) within the Board of Grievances, which would either confirm or reverse appealed decisions. In all cases, the Appeal Commission’s decisions were final and enforceable.**

**22. The representative of Saudi Arabia confirmed that from the date of accession, Saudi Arabia’s laws would provide for the right to appeal administrative rulings on matters subject to**

**WTO provisions to an independent tribunal in conformity with WTO obligations, including but not limited to Article X:3(b) of the GATT 1994. The Working Party took note of this commitment.**

23. In response to further questions, the representative of Saudi Arabia stated that Article 70 of the Basic Rule of Law provided that international agreements entered into force as domestic laws following their ratification by Royal Decree and enactment by the Consultative Council and Council of Ministers. **As a general rule, should Saudi Arabia's laws or other acts be found to contradict international treaties or agreements, the provisions of the international treaties or agreements, such as the WTO would apply. He noted, however, that like other countries, Saudi Arabia could not use international treaties to overturn fundamental religious/legal principles, such as legalizing the consumption of alcohol and pork. To bring its Laws and Regulations into conformity with WTO Agreements, Saudi Arabia will draft new Laws and amendments to existing Laws in relevance to the various substantive provisions of the WTO Agreements, such as RIPS, Customs Valuation, SPS, TBT, Import Licensing, including transparency provisions.**

24. [The representative of Saudi Arabia stated that if Saudi Arabia's laws or other acts should be found to contradict international treaties or agreements, the provisions of the international treaty or agreement, such as the WTO, would apply. **It should be noted, however, that like other countries, Saudi Arabia may not use international treaties to overturn fundamental religious-legal matters, such as legalizing the consumption of alcohol and pork.** The representative of Saudi Arabia confirmed that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions. He confirmed that the provisions of the WTO Agreement, including Saudi Arabia's Protocol, would be applied uniformly throughout its customs territory and other territories under Saudi Arabia's control, including in regions engaging in border trade or frontier traffic[, special economic zones,] and other areas where special regimes for tariffs, taxes and regulations are established. [He added that when apprised of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts.] The Working Party took note of these commitments.]

25. The representative of Saudi Arabia confirmed that from the date of accession Saudi Arabia would ensure that its laws and regulations relating to the right to trade in goods and all fees, charges or taxes levied on such rights would be in full conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994 and that it would also implement such laws

and regulations in full conformity with these obligations. The Working Party took note of this commitment.

#### POLICIES AFFECTING TRADE IN GOODS

**26. [The representative of Saudi Arabia confirmed that there were no substantive requirements to register with the Ministry of Commerce in order to import, although there was a requirement to obtain Commercial Registration for the carrying on of business, whether manufacturing, retailing, trading, or professional. Any company, whether Saudi or foreign, which was commercially registered in the field of import trade could import goods without the need to get any further permission or authorization, except for items which require an import licence. A firm that wished to be legally eligible to import goods, should formally incorporate the activity of importing within its “scope of business”. The procedures followed in commercial registration provided that sole proprietorships filled in a form specifying the requirements to be met by the applicants, then paid a SR 1000 registration fee for a registration valid for five years (for mother companies; only SR 500 was required for subsidiaries). Companies apply to the General Directorate of Companies for the appropriate forms required to draft articles of incorporation. Once such forms have been duly prepared, they are checked and authenticated by a notary public. Having been authenticated and legalized these documents are published in the official gazette (Umm Al-Qura). The companies deposit required capital amounts in the bank. The package is then referred to the commercial registrar which, in turn, issues to applicants certain forms to be filled in. These are then forwarded to the respective bank where fees are paid. After printing and formal signing, the commercial registration is issued. He also noted that “commercial registration” is a separate procedure and different from registration as a “commercial agent”. Registration as a commercial agent is not necessary for the right to import or export.]**

**27. [The representative of Saudi Arabia confirmed that from the date of accession Saudi Arabia would ensure that its laws and regulations relating to the right to trade in goods and all fees, charges or taxes levied on such rights would be in full conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994 and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of this commitment]**

Application of Internal Taxes

28. In response to questions from members of the Working Party, the representative of Saudi Arabia stated that Saudi Arabia did not impose a value added tax nor an excise tax upon imported products. **The representative of Saudi Arabia confirmed that in case internal taxes were introduced, Saudi Arabia would abide by its commitments under Article III of GATT 1994.**

29. A member of the Working Party asked whether Saudi Arabia would abide by the non-discrimination provisions of Articles I and III of GATT 1994 in relation to internal taxation from the date of accession. **The representative of Saudi Arabia replied that Saudi Arabia commits to abide by those provisions from the date of accession. The Working Party took note of this commitment.**

30. In response to further questions he noted that Saudi Arabia applied an income tax to the income of foreign ~~investors residents~~. **However, salaries, wages and profits from portfolio investment are not subject to income tax.** Saudi nationals paid a "Zakat" tax on the value of assets. Some members of the Working Party requested further information on the "Zakat" tax applied to Saudi Arabian citizens in lieu of the income tax applied to foreigners. These members noted that it appeared that the "Zakat" and income taxes were applied in such a manner that foreign investors typically carried a higher total tax burden than Saudi Arabian citizens. The representative of Saudi Arabia stated that the base for the collection of the Zakat was broader than the base for collection of income tax from foreign partners. The Zakat base included capital, statutory reserves, circulated profits, adjusted profit, partners credit accounts of one year or longer (treated as capital), loans from partners (treated as capital and additional financing for the company) and long term loans from other sources for the purpose of capital base expansion. Since it was a religious tax, no exemptions were possible. ~~Zakat was applied at a flat rate of 2.5 per cent.~~ Thus the Zakatable amount included other items over and above a share of profits, such as a share of capital, reserves and provisions, circulated profits and credit current account reduced by the share in the amount paid to acquire fixed assets. In contrast, **the tax base for foreign investors included one item only, namely, net profit. Hence, foreigners were not liable to tax until the capital invested started to earn profit while the Saudi Zakatpayer becomes liable after the passage of one year. The ratio had no limits for Saudi citizens and could exceed 100 per cent. Zakat was applied at a flat rate of 2.5 – 5 per cent, except for rain fed agricultural products and irrigated agricultural products for which the rate was 10 per cent and 5 per cent respectively. While Zakat iwa payable even in cases where there was a loss, tax was payable only when there was a net profit. Further, losses could be carried forward over a number of years.**

### Import Regime

31. In response to **a specific question** ~~questions~~, the representative of Saudi Arabia stated that the **application of** secondary and tertiary boycotts ~~on products of Israeli origin~~ had been **terminated**. ~~removed in law and in practice.~~

### Customs Tariff

32. The representative of Saudi Arabia provided members of the Working Party with information on the Customs Tariff applied in Saudi Arabia.

33. The representative of Saudi Arabia stated that taking into account its own needs and the interests of members of the Working Party, his Government had offered substantial bindings in its tariff. [Following the completion of bilateral negotiations with WTO Members, the schedule of concessions and commitments on market access for goods of Saudi Arabia will be reproduced in Part I of the Annex to the Protocol of Accession of Saudi Arabia.]

### Other duties and charges

34. The representative of Saudi Arabia confirmed that from the date of accession Saudi Arabia would levy no duties and charges on imports other than ordinary customs duties and fees and charges for services rendered. Any such charges applied to imports after accession would be in accordance with WTO provisions. The Working Party took note of this commitment.

35. [The representative of Saudi Arabia further confirmed that Saudi Arabia would not list any other charges in its Goods Market Access Schedule under Article II:1(b) of the GATT 1994, binding such charges at "zero".]

### ~~Import Licensing, Quantitative import restrictions, including prohibitions, quotas and licensing systems~~

36. In addition to information contained in the Memorandum on the Foreign Trade Regime, the representative of Saudi Arabia provided a detailed description of the import licensing procedures prevailing in Saudi Arabia in document WT/ACC/SAU/30, and a list of restricted (banned and controlled) items in Saudi Arabia, together with the justification for the measures in document WT/ACC/SAU/29/Add.3. He also noted that additional information could be obtained from the concerned department or division of the respective Ministry or from the Information Centre of the Ministry. The information could also be obtained from the Chamber of Commerce and Industry. He

also noted that any person with a Commercial Registration (i.e. registration to do business), whether an individual or an entity, could apply for import licence.

37. Some members of the Working Party requested information on the proportion of Saudi imports subject to licensing. In response, the representative of Saudi Arabia stated that no statistics were available to answer that question.

38. In response to further requests for information, the representative of Saudi Arabia noted that decisions to not grant an import licence could first be appealed to the Minister of the concerned Ministry or to the head of the Agency concerned. Any subsequent appeal would be to the Board of Grievances. The Board of Grievances was composed of a President, Vice-Presidents and Members. The President was appointed by and reported to the King. The Vice-Presidents and Members were appointed by Royal Decree on the recommendation of the President. There were no time frames fixed for the hearing of appeals or handing down of decisions. The Board of Grievances did supply written judgements to all parties to any appeal. Those judgements included the reasons for the decision.

39. The representative of Saudi Arabia confirmed that in addition to the Ministry of Agriculture, Ministry of Commerce, ~~Chivalry Club~~, Ministry of Health, Ministry of Information, Ministry of Interior, Ministry of Industry and Electricity, and Ministry of Petroleum and Natural Resources, the Ministry of Education (Department of Museums and Archaeology), the Ministry of Post, Telegraph and Telephone (PTT), and the National Commission for Wild Life Conservation and Development (NCWCD) **and the Chivalry Club** all had responsibilities concerning the approval of import licences. He also confirmed that there were no substantive requirements to register with the Ministry of Commerce in order to import, although there was a requirement to obtain Commercial Registration for the carrying on of business, whether manufacturing, retailing, trading, or professional. Any company, whether Saudi or foreign, which was commercially registered in the field of import trade could import goods without the need to get any further permission or authorization, except for items which require an import licence.

40. In response to further questions, he noted that the Chivalry Club would ~~automatically~~ grant an import licence for the importation of non-Arabian horses, **after clearance by the Department of Animal and Plant Quarantine**, within 30 days of receipt of a complete application. In this connection, some members of the Working Party requested additional information on the time limits for grant of other import licences. These members noted, in particular, that Article 3.5(f) of the Agreement on Import Licensing provided that ordinarily an import licence must be granted within 30 days of receipt of a complete application. These members noted that for some categories of goods, import licences took longer than 30 days, in particular, radio communication apparatus (one to two

months) and network equipment (six to twelve months). These members noted that the importation of such products was also subject to approval by the Frequency Department of the Department of Post, Telegraph and Telephone. In response, the representative of Saudi Arabia stated that the Frequency Department ordinarily completed its review in one week. If a product met the frequency and necessary technical specifications, the Licensing Committee would ordinarily decide whether to grant an import licence within 30 days.

41. In response to requests for information concerning the fees payable for obtaining an import licence, the representative of Saudi Arabia stated that there were no fees payable for the obtaining of an import licence. Companies or persons wishing to import merchandise for display at a trade fair were granted import licences that permitted the importation of all necessary samples, subject to the condition that the samples not be offered for direct sale.

42. Some members of the Working Party requested information on the precise laws and regulations governing the time limits for issuing an import licence. In response, the representative of Saudi Arabia stated that there were no laws or administrative orders governing the issuing of import licences. Average time periods for the issuing of import licences were around 30 days. In the event of an unsuccessful application for an import licence, the person requesting the licence could appeal the refusal to the Board of Grievances.

43. Some members of the Working Party asked whether petroleum and natural asphalt were subject to import licensing and requested that Saudi Arabia provide the justification pursuant to the relevant provisions of the WTO Agreement for the maintenance of import licensing on those products. In response, the representative of Saudi Arabia stated that petroleum and asphalt were subject to import licensing. The need for those controls was under review. He stated that Saudi Arabia would ensure that by the time of accession, the regime relating to those products was in conformity with WTO obligations.

44. In response to questions from some members of the Working Party, the representative of Saudi Arabia stated that the import of fire extinguishers required a licence from the Ministry of Interior. He also noted that high quality photocopiers required an import licence from the Public Security Department of Forgery. This was because such photocopiers could produce extremely high quality reproductions of documents, making it hard to differentiate between the original and the photocopies of paper currency and official documents, certificates, passports, maps and stamps. He also noted that burglar or fire alarms required an import licence to prevent misuse by criminals or terrorists. For this reason import licences were only issued to government enterprises, public enterprises and firms or individuals who had a contract with the government to supply such security



devices from inside the Kingdom or abroad. Some members of the Working Party requested additional information on the justification for the import licensing requirements for security reasons. The representative of Saudi Arabia stated that those goods were subject to import licensing requirements for security reasons. The measures were necessary in order to prevent import and the misuse of the items by persons who could pose a security risk. The Ministry of the Interior was the agency that determined whether the importer posed a security risk or not. The list of items subject to import licensing was under review, and in this context he noted that the requirement for import licensing of fire fighting equipment had recently been lifted. That equipment could now be imported without a licence, following a customs examination to determine compliance with Saudi or international standards.

45. Some members of the Working Party requested information on the system for licensing the importation of agricultural machinery. The representative of Saudi Arabia stated that the import licensing system for import of agricultural equipment was operated in order to administer a system of subsidies paid to importers of such equipment. The import licence was required even if the importer did not intend to apply for a subsidy payment.

46. Some members of the Working Party requested further details of import restrictions on long life pasteurized milk in packing exceeding 1 litre, (tariff item 0401.00.00). In response, the representative of Saudi Arabia stated that the Kingdom of Saudi Arabia ~~would~~ removed the ban on long life pasteurized milk ~~upon its accession to the WTO~~, and the ban ~~would be~~ was replaced by tariffs. He stated that the import ban on dates ~~would be~~ was removed and converted to tariffs.

47. In response to questions from some members of the Working Party, the representative of Saudi Arabia provided an Action Plan for the Implementation of the Import Licensing Agreement in document WT/ACC/SAU/40.

48. ¶The representative of Saudi Arabia confirmed that Saudi Arabia would, from the date of accession, eliminate and shall not introduce, re-introduce or apply quantitative restrictions on imports, or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreement. Any further amendments to the import licensing regime after accession would be fully in accordance with all relevant provisions of the WTO, including the Agreement on Import Licensing Procedures. Saudi Arabia would replace non-automatic import licensing with automatic import licensing for "milk for industrial use" within three years from the date of accession. He further confirmed that any discretionary authority permitting officials of the Kingdom of Saudi Arabia to suspend imports and exports or licensing requirements that could

suspend, ban, or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO, in particular Articles XI, XII, XIII, XVIII, XIX, XX and XXI of the GATT 1994, and the Agreements on Agriculture, Application of Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade. The Working Party took note of these commitments.}

#### Customs Valuation

49. Some members of the Working Party stated that the system of valuation described in the Memorandum on the Foreign Trade Regime, in Annex 4 to document WT/ACC/SAU/4 and in document WT/ACC/SAU/18 did not appear to fully comply with certain requirements of the Customs Valuation Agreement. Some members requested that a number of areas of the customs valuation regime receive further elaboration so that they were in conformity with the WTO Agreement on Implementation of Article VII of the GATT 1994, its Interpretive Notes, and relevant decisions and declarations. In particular, members noted that in addition to problems related to transparency or predictability, Saudi Arabia's valuation system relied on the "nearest equivalent value" as an alternative to transaction value. This could give customs officials excessively wide discretion in their determination of customs value of the imported goods. In response, the representative of Saudi Arabia stated that although there were currently some shortcomings in the system of customs valuation prevailing in Saudi Arabia, steps were being taken to bring the regime into conformity as soon as possible.

50. Some members of the Working Party requested information on how Articles 1:1(a)-(d) and Article 1:2 of the Customs Valuation Agreement concerning the use of transaction value, and related party transactions were applied in Saudi Arabia. In response, the representative of Saudi Arabia stated that the present system did not contain provisions giving effect to those provisions of the Customs Valuation Agreement. In response to further questions, concerning Articles 2-7 of the Customs Valuation Agreement dealing with methods of valuation alternative to transaction value etc. he noted that in general there were no similar provisions in current Saudi Customs valuation law. There existed a valuation alternative to transaction value, e.g. the use of price lists for automobile imports. To determine the customs value for new vehicles, the Customs authorities used the price paid or payable as shown on the invoices. However, the customs value of used vehicles was derived from applying a schedule of depreciation to the original new price. He noted in this connection that certain members of the WTO were using the Price Lists for certain agricultural products.

51. [Members responded that they did not see major barriers in this area to Saudi Arabia's implementation of the Agreement upon accession. Draft regulations had already been prepared, the

legislative process described in the action plan was well underway, and it seemed excessive that training and studying the implications of using the Agreement to value imports should require extensive transition. Members also observed that the establishment of a computerized data base was not necessary for maintaining a WTO-consistent valuation system.]

52. In response to further requests for information concerning the valuation of imported products, the representative of Saudi Arabia stated that when the value declared in the invoice was not acceptable to the Customs Department, such as when the declared value was considered to be too low, the Customs Department referred to the values of identical or similar goods imported previously. Although Saudi Arabia currently did not use the values of the identical or similar goods in the same order specified in the Customs Valuation Agreement, this did not mean that the price was selected arbitrarily. Although the valuation system currently in use did not provide to the importer certain knowledge of how the valuation of his goods was determined, in most instances the system relies on the transaction value mentioned in the invoice. He further noted that as far as other valuation methods were concerned, the importer may not have precisely knowledge of how the valuation of the goods was determined.

53. In connection with Articles 8 (specifications of permissible additions to the price paid or payable) and 14 (incorporation of the Interpretative Notes of the Agreement in domestic legislation) of the Customs Valuation Agreement and Decision 3.1 (concerning the treatment of interest charges) and Decision 4.1 (concerning the valuation of carrier media bearing software), the representative of Saudi Arabia stated that Saudi Arabia's valuation system did not have provisions similar to the Agreement. Concerning Article 10: confidential treatment of information; although the Customs Regulations and Rules of Implementation did not contain a specific provision regarding maintaining confidentiality of information, a comparable provision was contained in 12/H of Chapter 2 of the Civil Service Law issued by Royal Decree 49 dated 10/7/1397H. This required a government employee, who learnt of confidential information in his job, not to disclose that information, even after he left government service. This, of course, included Customs Department employees.

54. Concerning Article 11 of the Customs Valuation Agreement and the right of appeal to a judicial authority; the representative of Saudi Arabia stated that appeal rights for a relevant person before an independent judicial body (i.e the Board of Grievances) was guaranteed by Royal Decree 190 dated 16 Dhu Al-Hujah 1409H. This applied to the Customs Department. The requirements of Article 12 concerning publication of laws, regulations, and decisions were satisfied by provision 65 of Royal Decree No. 425 dated 5/3/1372H, which required that such information be published in the official newspaper ~~newspaper~~ **gazette** Um Al-Qura along with all other government notices such as changes in

rates of duty. The representative of Saudi Arabia also noted that as Saudi Arabia was not presently applying the Agreement on Customs Valuation, it had no provisions corresponding to Article 14 and to Decisions 3.1 and 4.1. These would be incorporated in Saudi law on customs valuation when Saudi Arabia would implement the Agreement.

55. Some members of the Working Party thanked the representative of Saudi Arabia for this information, and asked when Saudi Arabia would bring its valuation system into line with the Agreement on Customs Valuation. In response the representative of Saudi Arabia stated that Saudi Arabia had begun the process of adopting the provisions of the Agreement on Customs Valuation and the incorporation of them into the Customs Rules and Regulations. Although Saudi Arabia wished to adopt the provisions of the Agreement on Customs Valuation as swiftly as possible, it would not be possible to implement the Agreement from the date of Accession. Saudi Arabia would need a transition period.

56. In document WT/ACC/SAU/28, the representative of Saudi Arabia proposed that the provisions of paragraphs 1 and 2 of Article 20 of the Agreement on Customs Valuation should be available to the Kingdom of Saudi Arabia. In response to requests that any requests for a transitional period be accompanied by a justification, the representative of Saudi Arabia stated that a transitional period would be needed to allow adequate time to prepare new laws, new regulations, new guidelines and administrative procedures for implementing the complex provisions of the Customs Valuation Agreement. Saudi Arabia would also need adequate time to train the Customs staff, the importers and the customs clearing agents in the implications and application of the new laws, regulations and procedures made in accordance with the Customs Valuation Agreement.

57. Concerning the use of minimum values for customs purposes, the representative of Saudi Arabia stated that Saudi Arabia would wish to make a reservation under paragraph 2 of Annex III to the Agreement on Customs Valuation to continue the use of minimum values for a handful of products now under this system. This would be necessary, because although Saudi Arabia would ultimately discontinue the system, it would need a transitional time for this purpose as it would have to study carefully the implications of the change, and to devise procedures for checking practices which necessitate the use of minimum values. The flexibility required would be needed for two years from the date Saudi Arabia starts applying the provisions of the Customs Valuation Agreement. In the interim, Saudi Arabia would undertake a careful study in the first year of implementation to devise procedures for discontinuing the minimum values.

58. The representative of Saudi Arabia also noted that Saudi Arabia would seek a reservation under paragraphs 3 and 4 of Annex III to the Customs Valuation Agreement. The justification for that

request was that because the Customs Administration of Saudi Arabia had not reached the level of sophistication and expertise of developed countries, it would not be possible for it to apply the relevant provisions of the Customs Valuation Agreement before that date. The reservation would continue to be applicable for an indefinite period. In the interim, once Saudi Arabia started to apply the Customs Valuation Agreement, it would undertake studies to consider if it was feasible to lift the reservations.

59. In response to requests for a precise indication of the transition periods needed by Saudi Arabia to ensure full conformity with the requirements of the WTO Agreement, the representative of Saudi Arabia stated that Saudi Arabia would need a transition period to implement the provisions of the Agreement on Customs Valuation. In document WT/ACC/SAU/38, the representative of Saudi Arabia provided members of the Working Party with a detailed plan on the work programme underway in the Kingdom designed to achieve full compliance with the WTO Agreement on Implementation of Article VII of the GATT 1994 within five years from the date of its accession to the WTO. At a later stage, and in document WT/ACC/SAU/38/Rev.1, the representative of the Kingdom of Saudi Arabia presented a revised document describing the steps taken so far and the work planned to bring the Kingdom into full conformity with the Customs Valuation Agreement. He noted that work was progressing smoothly and that the Kingdom would only require a small transition period. ~~of approximately two years, i.e. the Agreement would be implemented in full from 1 January 2002.~~

60. {The representative of Saudi Arabia stated that the Kingdom of Saudi Arabia would implement the provisions of the WTO Agreement concerning customs valuation in full from 1 January 2002, ~~{the date of accession to the WTO without recourse to any transition period}~~, including the Agreement on the Implementation of Article VII of the GATT 1994. **He also stated that the Kingdom of Saudi Arabia reserved the right to request a further transition period if needed.** In this regard, the Customs Law and implementing regulations would fully reflect the requirements of Annex I of the Interpretative Notes of the Agreement on the Implementation of Article VII of the GATT 1994 and Decision 4.1 on the Valuation of Carrier Media Bearing Software for Data Processing Equipment. The Working Party took note of this commitment.}

#### Rules of Origin

61. In response to requests for information, the representative of the Kingdom of Saudi Arabia stated that **certificates of origin attested by the Saudi Embassy or Consulate were necessary for importation of preferential trade items. Where no Saudi Embassy or Consulate existed, such certificate would be attested by the Chambers of commerce in the exporting country. Other**

**requirements included minimum content from within the preferential system.** From 1996 all imports of expensive textile products had been required to have the origin of the goods printed or stamped thereon with indelible print. This requirement was introduced to protect consumers against misleading or deceptive practices. A textile product was deemed to be "expensive" depending on an analysis of factors such as the quality the brand name, texture, design and the price relative to other fabrics. **Rules of origin for non preferential trade did not exist, but any future rules would be implemented in accordance with the WTO Agreement.**

62. {The representative of Saudi Arabia stated that, from the date of accession, Saudi Arabia's preferential and non-preferential rules of origin would comply fully with the WTO Agreement on Rules of Origin. The requirements of Article 2(h) and Annex II, Paragraph 3(d) of the Agreement would also be fully implemented prior to accession. He also stated that in any event, from the date of accession, the Customs authorities would provide an assessment of the origin of the import upon the request of an exporter, importer or any person with a justifiable cause. Any request for such an assessment would be accepted even before trade in the goods concerned began. Any such assessment would be binding for three years. The Working Party took note of these commitments.}

#### Anti-dumping, Countervailing and Safeguards

63. Some members of the Working Party **raised concerns regarding the law for the Protection and Encouragement of National Industry. The representative of Saudi Arabia stated that the law would be reviewed to ensure consistency with WTO requirements by the date of accession. Members also** noted that Saudi Arabia did not currently have any trade remedies legislation permitting the imposition of anti-dumping or countervailing duty nor the imposition of safeguard measures **although it was in Saudi Arabia's interests to develop such legislation.** Those members requested that Saudi Arabia undertake to not impose such measures until appropriate WTO consistent legislation had been enacted.

64. The representative of Saudi Arabia stated that after its accession to the WTO, Saudi Arabia would not impose anti-dumping, countervailing or safeguard measures until appropriate WTO consistent legislation had been enacted. **The Working Party took note of this commitment.**

65. {The representative of Saudi Arabia said that Saudi Arabia would not apply any anti-dumping, countervailing or safeguard measure to imports from WTO Members until it had notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI, on Subsidies and Countervailing Measures and on Safeguards. He confirmed that Saudi Arabia would ensure that such legislation would be in full conformity with the

relevant WTO provisions, including Articles VI and XIX of the GATT 1994 and the Agreement on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. After such legislation was implemented, Saudi Arabia would only apply any antidumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions. The Working Party took note of these commitments.}

## EXPORT REGULATIONS

### **Export Restrictions**

66. Some members of the Working Party enquired whether the Kingdom of Saudi Arabia maintained any export controls. In response, the representative of Saudi Arabia stated that Saudi Arabia maintained export bans on the exports **of some items such as** of date seedlings, breeding horses, ~~wheat and wheat flour~~. Some members of the Working Party asked whether Saudi Arabia intended to remove those bans prior to its accession to the WTO. In response, the representative of Saudi Arabia stated that there were no bans on the export of wheat and wheat flour, unless the wheat and wheat flour had been subsidized. He further added that Saudi Arabia banned the export of date seedlings and breeding horses because the local breeds and varieties of these two items were pure and rare. He added that upon accession to the WTO, Saudi Arabia would do whatever was required under applicable WTO rules.

67. {The representative of Saudi Arabia confirmed that from the date of accession Saudi Arabia would ensure that its laws, regulations and requirements relating to the right to export and all fees, charges or taxes levied on such rights would be in full conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994 and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of this commitment.}

68. {The representative of Saudi Arabia also confirmed that any export control requirements remaining in place on the date of accession would be fully consistent with WTO provisions, including those contained in Articles XI, XVII, XX and XXI of the GATT 1994. The Working Party took note of this commitment.}

### Export Duties

69. Some members of the Working Party requested information on export duties applied by Saudi Arabia. Those members noted that the export duties applied by Saudi Arabia appeared to be imposed only for revenue purposes and would have trade distorting effects. In response, the representative of

Saudi Arabia stated that Article XI of the GATT 1994 expressly permitted the imposition of export duties, and did not restrict the right to impose such duties. **Export duties applied only to untanned hides and skins, falling under HS No. 4101, 4102 and 4103. The rate of export duty was Saudi Riyals 2000 per ton.**

70. Some members of the Working Party requested information on the pricing of certain feedstock, in particular, methane, ethane, butane, propane and natural gas or liquified petroleum gas. In response, the representative of the Kingdom of Saudi Arabia noted that pricing for methane and ethane was quite different **from** to the pricing of butane and propane and natural gasoline. Methane and ethane in the Gulf region had no international reference price. There were no exports of methane and ethane from Saudi Arabia, due to the **high** costs of liquefying, transporting and regasifying such gases. Previously, methane and ethane had been burnt as waste products. Recently, it had been decided to make methane and ethane available to all interested users (whether Saudi or non Saudi) at a price of ~~US\$0.5~~ **US\$0.75** per million BTU. Methane and ethane were used by many industries and sectors, including power companies, desalination plants, cement manufactures and petrochemical plants.

71. He further noted that for butane, propane, natural gas or **gasoline NGLs ~~LPG~~**, the Council of Ministers Resolution of December 1992 set the price of those gases lower than the export price. This was done to take account of the costs associated with **NGLs ~~LPG~~** exports to world markets including refrigerating, storage, mooring and marketing. The gases were available to all industries and all users within the Kingdom whether Saudi or non-Saudi enterprises. All other energy prices including naphta were priced at arms length. There were no specific discounts. Butane, propane and natural gas was made available to industrial consumers in Saudi Arabia at a price 30 per cent lower than the lowest export price charged for those product. He noted that **heavy** naphta was not subject to any discount and was priced at the prevailing international price.

72. He further noted that there was no discrimination between wholly owned or partly owned Saudi or totally foreign owned enterprise in terms of access to those gases. Once a project had been licensed in Saudi Arabia, whatever the composition of its ownership, it was entitled to available supplies of those raw materials at the prices indicated. Users were free to use those domestically available materials or resort to other materials if they so decided.

73. In response to questions from some members of the Working Party, the representative of Saudi Arabia noted that the discounted prices for certain feedstocks were only available to users resident in the Kingdom. He added that no other support, subsidies or pricing had been approved or



sanctioned for actual projects involving the creation of production capacity for refined petroleum and petrochemical products.

**74. The representative of Saudi Arabia confirmed that Saudi Arabia did not maintain subsidies including export subsidies which met the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures and that it would not introduce such prohibited subsidies in the future. The Working Party took note of this commitment.**

#### INTERNAL POLICIES AFFECTING TRADE IN GOODS

##### Industrial Policy, Including Subsidies

75. In response to requests for information concerning interest free loans provided by the Saudi Industrial Development Fund, the representative of Saudi Arabia stated that ~~companies with wholly-owned foreign companies shareholders~~ were eligible for a loan of up to 50 per cent of the project cost ~~if Saudi nationals held 50 per cent of the shares. If the Saudi share was less than 50 per cent, then financing would be granted at a proportionally reduced level.~~ The representative of Saudi Arabia stated that the loan programme conducted by the Saudi Industrial Development Fund was entirely consistent with the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures. The loans were not contingent upon export performance nor were they contingent upon the use of domestic over imported goods. The decision to provide a loan was made on the basis of the facts appropriate to that particular case within the parameters of the Saudi Industrial Development Fund Law. Article 2 of the Law provided that the Fund could provide medium or long term loans to (1) new industrial enterprises established in Saudi Arabia, and (2) existing private industrial enterprises for the extension of their activities or the replacement of their equipment and introduction of modern methods thereto. Article 4 of the Law stated that the Fund should carry out a full evaluation of the economic benefits of the enterprise required to be financed, taking into consideration the soundness of its management in order to ascertain the benefit of the industrial enterprise from economic, financial and technical aspects. In addition, the Fund was required to examine whether the financing required for the whole of the enterprise had been reasonably obtained and whether the volume of the Fund's aid represented a reasonable percentage of the total financing needs of the enterprise, and the Fund was required to obtain sufficient financial guarantees for the financing given by the Fund.

**76. The representative of Saudi Arabia confirmed that any subsidy programmes would be administered in conformity with the Agreement on Subsidies and Countervailing Measures and**

**that all necessary information on programmes be notified, if such exist, would be provided to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon entry into force of Saudi Arabia's Protocol of Accession. The Working Party took note of this commitment.**

Technical Barriers to Trade

77. The representative of Saudi Arabia provided the Working Party with information on technical standards and its International Conformity Certification Programme (ICCP) in documents WT/ACC/SAU/21, 26, 29, 34, 36, 37 (Revised Comprehensive Procedures and Guidelines concerning the ICCP) and WT/ACC/SAU/41 (Action Plan for the Implementation of the TBT Agreement).

78. In response to questions from some members of the Working Party, the representative of Saudi Arabia stated that importers in Saudi Arabia were required to comply with Saudi law which required all products, imported as well as domestic, to be in conformity with Saudi standards. Unless specified otherwise, compliance with Saudi standards was an implied condition of any contract between buyer and seller. Saudi Arabia's standards were internationally harmonized to the most feasible degree possible, and Saudi specific standards were only adopted in cases where the international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued because of Saudi Arabia's fundamental climatic, geographical or technological problems, as allowed under TBT Agreement Article 2.4. Consequently, Saudi Arabia considered that the use of a preshipment inspection scheme to verify conformity to Saudi standards met the criteria of the PSI Agreement Article 2.4 and footnote 2.

79. In response to questions concerning the conformity of Saudi technical standards with the international norms, the representative of Saudi Arabia stated that deviation of Saudi requirements from other national standards due to Saudi Arabia's fundamental climatic, cultural and national security specific conditions rendered ISO 9001 alone inadequate to provide sufficient confidence in the quality, safety and conformity of goods. In this connection, he noted that Saudi Arabia was a member of ISO, IEC, OIML and CAC. All Saudi standards were notified to all other members of those international organisations. A high percentage of Saudi standards used international standards and other widely accepted national standards as references. He provided members of the Working Party with a list of SASO standards that had been based upon CODEX standards, together with a complete list of the 1,323 Saudi standards including a cross-reference to the international standards adopted in their entirety as SASO standards (in document WT/ACC/SAU/34).

80. In response to further questions he noted that type testing was the ideal additional assuring factor, particularly when it was the most widely used and accepted method to verify the conformity of the design as required under Module H. Nevertheless, in lieu of type testing, the ICCP would accept Module H plus additional documentation which demonstrated that the Saudi requirements were typically known, understood and taken into account by the manufacturer in all phases within this system, from contract review through design, production, inspection, testing and acceptance.

81. Some members of the Working Party stated that the recent exemption of GCC members from the ICCP and its implied recognition of equivalency of all GCC members' inspection, enforcement, and compliance to relevant elements of GCC and/or SASO standards raised questions under Article 4 of the SPS Agreement and the transparency provisions of the WTO. Those members asked whether GCC member states were obliged to adopt the GCC standards in full or in part. In response, the representative of Saudi Arabia stated that GCC Members were not exempted from the ICCP. He added that Article 5.4 of the Regulations of the "Standardization & Metrology Organization for GCC Countries" stipulated that mandatory Gulf Standards were adopted by consensus of all members, while voluntary or guideline standards were adopted by majority. Some members of the Working Party also requested a list of GCC member countries that had officially adopted and incorporated SASO developed standards, by product category, (in full or in part) into their national standards. In response, the representative of Saudi Arabia provided a list of SASO standards which had been adopted as GCC Standards and thereby incorporated as national standards in other GCC Countries in Annex III to WT/ACC/SAU/29.

82. Some members of the Working Party requested a list of the standards deemed to be equivalent to Saudi standards. In response, the representative of Saudi Arabia stated that the Saudi Arabian Standards Organization had published the list of standards, and in this connection referred to the information in document WT/ACC/SAU/15. He further noted that Saudi Arabia's standards were internationally harmonized as far as possible. Certain Saudi standards had a corresponding ISO or IEC equivalent which was indicated in the published list of SASO standards. Other Saudi standards used international standards or other recognized national standards as a reference. He noted that a predetermination of the equivalency of such standards was not feasible, due to the diversity and incorporation of the national requirements and deviations of various countries. The registration process under ICCP provided a mechanism for the case by case evaluation and determination of equivalency of the standards to which compliance was declared by exporters, or recognition of the relevant elements in the standards that partially satisfy the requirements of the Saudi standards. As additional standards were evaluated progressively, a data base was established and referred to in any successive assessment of equivalency.

83. Some members of the Working Party requested that the Government of Saudi Arabia publish draft standards in a single official journal or other publication that available to the general public, and other interested parties. In response, the representative of Saudi Arabia stated that this would be done. Some members also requested further information on the manner in which SASO developed technical standards. In response, the representative of Saudi Arabia stated that standards considered to be vital for the legitimate objectives of safety, health, ... etc. and which were of concern to a wide spectrum of interested parties and economic sectors were referred to "technical committees". However, recent policy within SASO had been to refer most standards to technical committees irrespectively. All parties concerned with the subject matter of the draft standard were normally represented on the relevant "technical committees" as active members; they include pertinent governmental, academic, industry and trade sectors. For this reason, only one draft circulation period was necessary to provide adequate opportunity for comments by other interested parties. In case of development of draft standards by SASO's technical staff, the first draft circulation period provides the opportunity for comments raised by all concerned parties to be taken into consideration in the preparation of the second draft. He also provided the Working Party with a copy of the procedures for the development of SASO standards in Annex IV to document WT/ACC/SAU/29.

84. Following further comments on the draft Comprehensive Guidelines and Procedures concerning the ICCP, some members of the Working Party asked whether Saudi Arabia envisaged making further changes to the ICCP prior to WTO accession. In response, the representative of Saudi Arabia stated that after careful analysis and consideration of the comments made by WTO Members, further revisions were made, as set out in documents WT/ACC/SAU/34, 36, and 37. Saudi Arabia did not foresee the need for any exemption or transition periods in relation to any WTO provisions in connection with the ICCP. Nevertheless, Saudi Arabia reserved the right to seek such exception at any time during its accession negotiations, should the need arise.

85. In response to further questions, the representative of Saudi Arabia stated that customs valuation was not assessed under the ICCP. He noted also that appeals procedures were included as an Appendix to the ICCP Guidelines and following the suggestions of WTO Members had been revised to include recourse to independent review procedures in accordance with Article 4 of the PSI Agreement.

86. Some members of the Working Party asked whether testing laboratories and conformity assessment bodies could be accredited by the authorities administering the ICCP. In response, the representative of Saudi Arabia stated that Saudi Arabia recognized conformity assessment bodies in other countries via acceptance of accreditation as an indication of adequate competence, and hence as

an eligibility criteria for approval. In other countries that did not have accreditation bodies, recognition of conformity assessment bodies was achieved by extending invitations to all trading partner countries to nominate their own laboratories for approval under their governments' responsibility. Any required formalities were kept to the minimum level necessary to achieve the objectives of the Programme. In fact, the procedures were fully streamlined as evidenced by the virtual non-existence of delays or complaints by exporters.

87. He later added that the approval procedure was very simple and straight forward. Laboratories seeking SASO approval were required to complete the "SASO/ICCP Laboratory Application Form" (which was supplied to members of the Working Party in document WT/ACC/SAU/34). He noted that the form provided SASO with information about the accreditation that the laboratory already had and the type of ICCP Regulated Products that it had the capabilities to test in whole or in part. The information was evaluated and verified and the laboratory was approved accordingly. In countries that did not have Nationally Recognized Laboratory Accreditation Bodies that accredited laboratories in accordance with ISO Guide 25, a higher degree of scrutinizing was conducted in order to gain assurance at the laboratory's competence. There were no costs involved for laboratories seeking SASO approval.

88. Some members of the Working Party requested additional information on the possible cancellation of certificates of conformity in the event that products enjoying the benefit of a certificate of compliance were found to be non-compliant. The representative of Saudi Arabia stated that in such a case Saudi Customs would withhold the certificate of compliance number, and suspend the certificate of compliance. Thereafter, Customs would notify SASO and the manufacturer. An expedient investigation was then carried out and appropriate action taken on the basis of the findings. Depending on the severity, frequency, and cause of the discrepancy, appropriate action could include suspension or withdrawal of the Type Approval Licence. The action taken was always proportionate to the seriousness of the facts at hand on a case by case basis. Suspension (which may be temporary) or withdrawal of the Licence was only a possibility in extreme cases, such as fraud or material inaccuracy.

89. Some members of the Working Party asked whether certificates granted by other national or international certification bodies were taken into consideration by the ICCP Regional Licensing Centers. In response, the representative of Saudi Arabia stated that test reports or certificates issued by accredited bodies for the regulated product under another national or international conformity assessment or certification scheme could be submitted by exporters as documents substantiating their compliance. Full recognition was duly given to those reports/certificates in so far as they satisfy the

Saudi requirements. Where the full Saudi requirements were met, the role of the ICCP Regional Licensing Center would be limited to evaluation, verification, administration, issuance and validation of the confirming Statement of Registration or Type Approval Licence. The SASO Country Office would still carry out the required PSI associated with Registration and issue the final Certificates of Conformity. For products holding SASO Type Approval Licence, certificates of conformity could be issued by the manufacturers themselves. This applied to all products and countries.

90. In response to the above explanations and clarifications provided by the representative of Saudi Arabia, members of the Working Party requested that Saudi Arabia provide a description of the steps being taken to ensure full implementation of the Agreement on Technical Barriers to Trade. In response, in document WT/ACC/SAU/41, the representative of Saudi Arabia provided the Working Party with a comprehensive Action Plan for the Implementation of the WTO Agreement. The representative of Saudi Arabia noted that the Action Plan cross-referenced the various requirements of the TBT Agreement, and described the existing provisions or practices in Saudi Arabia and also described any planned improvements, including the enactment of implementing legislation. The Action Plan also made clear that any remaining gaps in legislation and practice would be addressed through the issuing of a Comprehensive Directive by the SASO Board of Directors (chaired by the Minister of Commerce). That Comprehensive Directive would be issued sufficiently in advance of the accession of Saudi Arabia so that it would be in full conformity with the requirements of the TBT Agreement upon accession (if not earlier).

91. {The representative of Saudi Arabia stated that Saudi Arabia would comply with all obligations under the WTO Agreement on Technical Barriers to Trade from the date of accession without recourse to any transition period. The Working Party took note of this commitment.}

#### Preshipment Inspection

92. Some members of the Working Party stated that the ICCP program mentioned above operated as a PSI scheme. They noted that although most of the requirements of the Agreement on Preshipment Inspection appeared to have been complied with, some elements of the ICCP continued to raise concerns. Some members of the Working Party expressed concern that the *ad valorem* fee charged for conformity assessment was not consistent with the requirements of Article VIII of the GATT 1994. In response, the representative of Saudi Arabia stated that Article VIII of GATT 1994 aimed to ensure that fees did not include incremental charges imposed by Governments on top of the cost of services rendered. The ICCP fees were paid in their entirety by exporters directly to the entities contracted by SASO to cover actual inspection, registration licensing and certification services rendered only. No part of the fees was paid or allocated to SASO or any other Government Body, and

thus no protection to domestic industry was afforded nor taxation levied. He added that the fees charged were not required to equate exactly with the exact cost of services rendered; a degree of reasonable approximation was allowed. Global PSI Programmes were utilised by 33 WTO Members, and *ad valorem* was the consistently predominant fee scheme prior to the PSI Agreement. Since the PSI Agreement did not specifically address the issue of fees, this implied the acceptance, versatility and legitimacy of the prevailing *ad valorem* method, and affirmed its consistency with the original GATT 1994 Article. Otherwise, the 33 WTO Members would be in direct violation of the WTO Agreement.

93. He further added that the application of *ad valorem* PSI fees by WTO user Members of PSI Programmes has not been raised as the subject of dispute at the WTO to date. He added that the PSI Agreement further acknowledged that Governments normally contracted PSI Programmes to PSI Entities as Saudi Arabia had. Fees required by all reputable PSI Entities (IFIA members) for delivering professional global PSI services were based on the *ad-valorem* scheme. Saudi Arabia was not operating in a vacuum and could not unilaterally impose on the PSI industry an entirely odd scheme contrary to the practice prevailing throughout that industry. Nevertheless, Saudi Arabia had succeeded in introducing reasonable modifications to the fixed *ad valorem* method by adopting a cost responsive graduated percentage of FOB fee structure which was amongst the lowest in the world coupled with shipment aggregation, resulting in a much higher degree of approximation of the cost of services as well as higher equitability. Saudi Arabia had further made adjustments to situations where a disparity existed between the cost of PSI services and the percentage of FOB value of the product e.g. the fees for inspection of cars had a maximum ceiling of US\$48.00 per car.

94. He further added that if a consensus of WTO Members determined that the *ad valorem* scheme was not appropriate, and if an amendment was made to the existing PSI Agreement prescribing an alternative fee scheme, Saudi Arabia would be ready to follow the course of prevailing international practice and comply accordingly. He also noted that any unfavourable consideration of its ICCP Regime on grounds of its inspection fee structure would be discriminatory in nature, in light of the WTO's acceptance of some Members' application of the fixed *ad valorem* scheme.

95. ¶The representative of Saudi Arabia stated that from the date of accession to the WTO Saudi Arabia would ensure that the requirements of the Agreement on Preshipment Inspection were met in full. He further confirmed that Saudi Arabia would ensure that the operations of any preshipment inspection companies retained by Saudi Arabia met the requirements of the WTO Agreement, including the establishment of charges and fees consistent with Article VIII of the GATT 1994, and would comply with the due process and transparency requirements of the WTO Agreements, in

particular Article X of the GATT 1994, and the Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.}

#### Sanitary and Phytosanitary Measures

96. In response to requests for information, the representative of Saudi Arabia supplied detailed information on the Saudi Arabian Sanitary and Phytosanitary regime in document WT/ACC/SAU/17. In addition, he also submitted information on the shelf life of food products in document WT/ACC/SAU/27.

97. The representative of Saudi Arabia stated that the legal basis for sanitary and phytosanitary requirements in Saudi Arabia was the Royal Decree number M/10 on 3/3/1392 H developed by the competent standardization body (i.e. Saudi Arabian Standards Organization, SASO). Saudi standards covered sanitary requirements for food products by means of the following measures:

- (i) measures following the standards and guidelines of Codex Alimentarius;
- (ii) measures not covered by the standards and guidelines of Codex Alimentarius were based upon scientific studies or the most appropriate measures of other WTO Members.

98. In addition, the representative of Saudi Arabia stated that the veterinary quarantine bylaw issued by Decree of the Council of Ministers number 208 dated 26/1/1396 H covered sanitary and veterinary requirements and measures pertaining to animals and animal products conforming to the ruling of the International Zoosanitary Code specifying the regulations recommended for international trade with regard to animals and animal products issued by the Office International des Epizootics. He noted also that the agricultural quarantine bylaw issued by the Decree of the Council of Ministers number 207 dated 26/1/1396 H set out requirements and phytosanitary measures conforming to the rules issued from ICCP initially based on FAO publications. Periodic preventive health circulars issued by the Ministry of Health pursuant to the weekly epidemiological circular issued by the WHO were also concerned with sanitary and phytosanitary measures.

99. In response to further requests for information, the representative of Saudi Arabia stated that sanitary and quarantine measures for animal health, living plants and seeds, measures for the prevention of epidemic diseases spread and the control on the use of veterinary medicines and pesticides were administered by the Ministry of Agriculture and Water, as well as the Ministries of Commerce and Municipalities. Sanitary measures for fresh vegetables and fruits were governed by SASO standards and applied by the Ministry of Agriculture and Water. When no approved



international standards applied to these products, the Kingdom of Saudi Arabia approved the standards applied in EC States and Members of the WTO. Standards concerning sanitary measures for food commodities (meat, meat products and processed foods) were imposed by SASO but applied by the Ministries of Industry and Commerce on the locally made products, and by the Ministry of Commerce on imported products. The Ministry of Municipalities participated in internal control of products in the markets which were mainly controlled by the Ministry of Commerce. Measures relating to effects on the human health and its relation with animal sanitary and phytosanitary and food safety were imposed by the Ministry of Health through the issuing of periodic preventative circulars to inform and caution other concerned bodies about relevant risks.

100. He further noted that sanitary measures of Saudi Arabia were consistent with the SPS Agreement and also with the recommendations and guidelines issued by international and regional organizations. Saudi Arabia was a permanent and active member in the international organizations on plant and animal regulations, including FAO and the International Office of Epizootics (IOE). Saudi Arabia's SPS measures did not arbitrarily or unjustifiably discriminate between different countries where identical or similar conditions prevail. Also they did not discriminate between the territory of Saudi Arabia and other countries where identical or similar conditions prevailed. Saudi Arabia's SPS measures were not applied in a manner which constitutes a disguised restriction on international trade.

101. In response to requests for information on the transparency of Saudi Arabia's SPS measures, the representative of Saudi Arabia stated that Saudi Arabia's SPS measures were published in advance. The Kingdom of Saudi Arabia had an established system for informing governments and other standards organizations of changes, and full sets of guidelines detailing all requirements were freely available to any interested parties. Saudi Arabia's SPS measures and requirements were notified to the Embassies in the Kingdom and to **Saudi** Chambers of Commerce.

102. Some members of the Working Party stated that the information on Saudi Arabia's sanitary and phytosanitary measures gave a good overview of the regime. They sought confirmation that measures were based on risk assessments carried out in accordance with Article 5 of the SPS Agreement. In response, the representative of Saudi Arabia confirmed that Saudi Arabia's SPS measures conformed to all standards, guidelines or recommendations issued by the international bodies specifically designated by the SPS Agreement i.e. Codex Alimentarius Commission, International Office of Epizootics and International Plant Protection Conventions. **Saudi Arabia was a member of all three organizations.** (~~Saudi Arabia was a member of all three organizations~~). In accordance with Article 3.2 of the SPS Agreement, these SPS measures were fully consistent with the SPS Agreement. For SPS measures related to risk assessment not covered by the above three

international bodies (such as microbiological risks and shelf life of food products), Saudi Arabia relied on scientific studies, guidelines and recommendations either carried out by itself in limited cases or by specialized internationally accepted research institutes, universities or scientific references. The appropriate level of protection adopted by Saudi Arabia was consistent with the guidelines and recommendations issued by these internationally recognized bodies and Saudi Arabia had thus taken into account the objective of minimizing negative trade effects. He confirmed that Saudi Arabia's SPS measures were based on risk assessment in accordance with Article 5 of the SPS Agreement.

103. Some members of the Working Party identified certain possible areas of inconsistency with the requirements of the SPS Agreement, such as the Council of Ministers Resolution No. 207 (26.1.1396H) "Agricultural Quarantine Regulations" requirement in Article 6 that products be free of all weed seeds, regardless of whether such weed seeds were quarantine significant, in accordance with relevant international guidelines. Some members also noted that the Council of Ministers Decree No. 208 (26.1.1396H) "The Statutory Instrument of the Veterinary Quarantine", Article 3 stated that "no animal may be admitted ... from any country that was infected with any epidemic disease ...". These members were of the view that this requirement was inconsistent with Article 6 of the SPS Agreement. In response the representative of Saudi Arabia stated that upon accession, the Kingdom of Saudi Arabia would comply with the relevant WTO obligations. In response for further information concerning the importation of seeds, he noted that there was no fee charged for the inspection of seeds. The seeds were first subject to a visual examination to check for impurities and to ensure that the phytosanitary information in the import documents was correct. Thereafter samples of the seeds were sent to laboratories to check for aflatoxins.

104. Some members of the Working Party stated that certain laws, such as the "Approval of Importing Alfalfa and Vegetable Seeds from Non-Arab Countries", and "Approval of Importing Flower and Forage Crop Seeds from Non-Arab Countries" appeared to only apply to "non-Arab" countries, which suggested problems in relation to the consistency of these regulations with the principle of most-favoured-nation treatment. In response to further questions, the representative of Saudi Arabia noted that all regions of a particular country were subject to the same sanitary and phytosanitary requirements. Some members of the Working Party stated that position appeared inconsistent with the SPS Agreement's requirement that, in applying SPS measures, WTO Members recognize "regional conditions" affecting human, animal and plant health risks. In response, to these and further concerns expressed by Working Party members about particular regulations and practices in the Saudi Arabian SPS regime, the representative of Saudi Arabia stated that those regulations would be reviewed.

105. Some members of the Working Party noted that the time limits relating to shelf life in Saudi Arabia appeared to be unduly short. In response, the representative of Saudi Arabia stated that all Saudi Arabia's shelf life determinations were scientifically based on investigations carried out by Saudi Arabia itself and on international and other countries' national standards, scientific studies and reports conducted/issued by specialized internationally reputable research institutes and universities, and international scientific references. The final determination of shelf life was based on studies for which "the stated storage conditions" most closely resembled Saudi Arabian conditions. These conditions had been thoroughly investigated and surveyed by Saudi Arabia in the report entitled "Proceedings of Symposium on the Transportation, Handling & Storing of Food Products in the Kingdom, Part I and II dated 26-28 February 1989". In this connection, he noted that Codex defined "Use-by-Date" as "the date which signifies the end of the estimated period under any stated storage condition after which the product probably will not have the quality attributes normally expected by the consumers. After this date, the food should not be regarded as marketable". He further added that the term "unacceptable to the consumer" and "unfit for human consumption" respectively corresponded to, and were self evident from the above definition. He further added that Saudi Arabia relied for the determination of the shelf life of food products on available scientific studies by specialized, and internationally recognized bodies and on references, based on research conducted for academic or industrial/commercial purposes. The fact that part of this research was conducted by manufacturers demonstrated that Saudi Arabia took into consideration differences in manufacturing and packaging processes. This wide spectrum of scientific basis did not affect Saudi Arabia's right to engage in shelf life determination as an SPS measure for perishable food products and as a TBT-technical regulation appropriate to Saudi Arabia's climatic conditions for shelf stable food products.

106. In response to further questions he noted that manufacturer determined shelf life that was followed in other countries were neither uniform nor could be considered as official SPS measures by governments. Nevertheless, shelf life periods of perishable food products were not imposed unilaterally, but rather adopted in accordance with the same open process applicable to standards, i.e. through technical committees entrusted with the preparation of the standard whose diversified membership includes representatives of the industrial and commercial sectors. These members had the opportunity to influence the decision on shelf life determination and insure its responsiveness to the needs of the industry, not to mention the period afforded for consultation and comment by any interested parties. In addition, SASO administrative procedures and directives provided the opportunities for manufacturers to submit at any time the scientific basis for their own determined shelf to SASO for evaluation. If those manufacturers could demonstrate objectively that their shelf life periods were appropriate to Saudi Arabia's level of SPS protection as well as the food quality criteria, Saudi Arabia would revise its shelf life standards accordingly.

107. In response to further questions, the representative of Saudi Arabia noted that the same shelf life periods were applied to domestic and imported food products alike. In the case of shelf stable products, the TBT Agreement granted Saudi Arabia the right to take into account the effect of the country's specific climatic and infrastructural conditions (i.e. transportation, storage and handling conditions). However climatic conditions were the major factor considered by SASO in determining shelf life. In rare cases covering particular products where non-concurrence or differences were found between the internationally recognized studies and references, the tendency had been to rely more heavily on the shorter shelf life periods determined by these studies as an indirect compensation for not specifically accounting for the infrastructural factors. With the improvement of the infrastructural factors, a more relaxed attitude would be adopted.

108. **[The representative of Saudi Arabia confirmed that Saudi Arabia would eliminate shelf-life requirements (cross referenced to the relevant standard) for shelf-stable products upon accession, and would establish within one year regulations and procedures in line with international norms for “highly perishable refrigerated” food products to gradually replace remaining shelf life requirements on these products with a scientific regulatory framework. The Working Party took note of this commitment.]**

109. Some members of the Working Party noted that the Agreement on Sanitary and Phytosanitary Measures required that WTO Members accept the sanitary and phytosanitary measures of other members, subject to confirming objectively that those measures were adequate to achieve the importing country's level of sanitary and phytosanitary protection. In response, the representative of Saudi Arabia stated that upon accession, Saudi Arabia would accept the certification of exporting countries in accordance with the requirements of the Agreement on Sanitary and Phytosanitary Measures.

110. Some members of the Working Party requested that Saudi Arabia identify all areas of inconsistency and provide a timetable for bringing the Saudi Arabian regime into conformity with the requirements of the SPS Agreement. In response, the representative of Saudi Arabia stated that an internal review had already been commenced into Saudi Arabia's SPS regime guided by the comments of the WTO Working Party in this respect. At a later stage, the representative of Saudi Arabia provided members of the Working Party with a comprehensive Action Plan for the Implementation of the SPS Agreement in document WT/ACC/SAU/42. It was anticipated that all legislation and practice would be in full conformity with the requirements of the SPS Agreement by the date of accession, if not earlier.

111. {The representative of Saudi Arabia stated that Saudi Arabia's sanitary and phytosanitary standards system would be in compliance with WTO provisions under the Agreement on the Application of Sanitary and Phytosanitary Measures as of the date of accession to the WTO, and that Saudi Arabia would apply all measures of the Agreement on the Application of Sanitary and Phytosanitary Measures in a least trade distortive manner from the date of accession without recourse to any transition period. The representative of Saudi Arabia further confirmed that, no rules stricter than those laid out by international organizations such as OIE would be applied. The Working Party took note of these commitments.}

#### Trade Related Investment Measures

112. Some members of the Working Part congratulated Saudi Arabia on its generally very liberal investment regime and asked whether there were any measures in place in Saudi Arabia that were inconsistent with the requirements of the Agreement on Trade Related Investment Measures (TRIMS). In response, the representative of Saudi Arabia stated that there were no measures in place in Saudi Arabia that were inconsistent with the requirements of the Agreement on Trade Related Investment Measures (TRIMS). He noted that in particular, there were no measures in place in Saudi Arabia that were of the kind described in the "Illustrative List" in the Annex to the Agreement on TRIMS. Some members of the Working Party enquired whether Saudi Arabia imposed any transfer requirements in relation to technical or management know-how or upon foreign investors. In response, the representative of Saudi Arabia stated that no precise requirements on such transfers had been specified.

113. {The representative of Saudi Arabia stated that Saudi Arabia would not maintain any measures inconsistent with the TRIMs Agreement and would apply the TRIMs Agreement from the date of accession without recourse to any transition period. The Working Party took note of this commitment.}

#### State Trading and State Ownership

114. Some members of the Working Party asked the representative of Saudi Arabia whether there were any enterprises operating within the Kingdom of Saudi Arabia that enjoyed any exclusive or special privileges within the terms of the definition set down in Article XVII of GATT 1994. In response, the representative of Saudi Arabia stated that the Saudi Arabian Oil Company (Saudi Aramco) and the Grain Silos and Flour Mills Organization (GSFMO) **were state trading enterprises and** made purchases and sales solely in accordance with commercial considerations and acted in a manner consistent with the general principles of non-discriminatory treatment enshrined in Article XVII

of GATT 1994. Saudi Arabian Oil Company (Saudi Aramco) was established by a royal decree in 1987. It was responsible for most of the production and export of crude oil and natural gas in the Kingdom. It was also responsible for the refining and marketing of products within Saudi Arabia and entered into joint venture refineries with others. Although owned by the government, it was run on a commercial basis **by an independent board of management and directors** ~~and had a board of directors~~, chaired by the Minister of Petroleum and Mineral Resources. The board consists of members from the company's executive management, government officials, private sector and international companies. The general policy of the Corporation was determined by the Supreme Council **for Petroleum and Mineral Affairs** ~~of the Corporation~~ which was presided over by the President of the Council of Ministers or his designated representative. Ten further members from the private sector and government officials were appointed by royal order.

115. The Grain Silos and Flour Mills Organization (GSFMO) was established by a Royal Decree in 1973 in order to support the development of the domestic agricultural sector, particularly wheat production for national security reasons. GSFMO was charged with forming a grain storage, flour production and animal feed processing conglomerate as well as with creating a stable market for grains in order to safeguard farmers from price fluctuations. It was the only organization allowed to import grains, flour, and animal feed. **GSFMO used to be the only organization to import wheat and barley, however, the import regime of these products had now been liberalized.**

116. {The representative of Saudi Arabia confirmed that after accession to the WTO, Saudi Arabia would observe WTO provisions, in particular, Article XVII of the GATT 1994, the WTO Understanding on that Article, and Article VIII of the GATS regarding state trading, with respect to the State-owned enterprises and other enterprises and entities with special or exclusive privileges identified above, in particular abiding by the provisions for notification, non-discrimination, and the application of commercial considerations for trade transactions. The Working Party took note of these commitments.}

#### Free Zones

117. In response to questions, the representative of Saudi Arabia stated that the Kingdom of Saudi Arabia maintained no free zones.

**118. The representative of Saudi Arabia stated that Saudi Arabia had no free zones or free economic zones and stated that if any were established, Saudi Arabia would administer them in compliance with WTO provisions, including those addressing subsidies, TRIMS and TRIPS, and that goods produced in these zones under tax and tariff provisions that exempt imports and**

**imported inputs from tariff and certain taxes and charges would be subject to normal customs formalities when entering the rest of Saudi Arabia including the application of tariffs and any taxes and charges. The Working Party took note of these commitments.**

Agricultural policy

119. The representative of Saudi Arabia provided information on its agriculture sector, including tables on domestic support and export subsidies in document WT/ACC/SAU/19 and WT/ACC/SPEC/SAU/1/Rev.4. Saudi Arabia also engaged in negotiations on domestic supports and export subsidies. In this connection, the representative of Saudi Arabia also described the special flexibilities Saudi Arabia would require in the support of its agriculture sector in document WT/ACC/SAU/28. The commitments reflecting the results of these negotiations are annexed to the Protocol of Accession of Saudi Arabia to the WTO.

120. Some members of the Working Party requested that Saudi Arabia provide detailed information on the role of the Saudi Agricultural Bank, in particular in the area of its mandate with regard to providing agricultural loans and subsidies. In response, the representative of Saudi Arabia stated that the Saudi Arabian Agricultural Bank (SAAB) was founded by the Royal Decree No. 58 issued on 3/12/1382. It was a government financial institution specializing in providing funding to the agricultural sector in order to assist in the development of agriculture, and improve agricultural productivity through the deployment of state of the art scientific and technical methods. The Bank granted loans through 13 branches, with 57 offices throughout the Kingdom in order to facilitate provision of services to farmers in their regions. The Bank grants farmers, agricultural projects, fishermen, bee keepers and farm cooperatives two types of agricultural loans free of interest. **However, there are unseen costs borne by agricultural investors in order to acquire a loan from SAAB. These costs were reflected in the number and amount of loans shown in the table below. The time needed to process the application and approve the loan is long due to bureaucracy that usually found in government agencies. Therefore, the opportunity costs for agricultural loans is very low.**

Year	No.	Total loans Amounts (thousands SRs)
1992	4374	775,150
1993	4429	930,561
1994	3822	670,556
1995	2642	412,589

~~He recalled, in this connection, that the charging of interest was prohibited in Saudi Arabia due to religious reasons. The opportunity costs for agricultural loans were equal to the average rates of~~

medium term commercial loans during the period 1993-1995. Short term agricultural loans with maturity of one year were being granted for seasonal crop farming and marketing and therefore include costs of seasonal production such as seeds, fertilizers, ploughing and cultivation. Mid term loans of up to ten years maturity to fund fixed costs such as buildings and other installations as well as farm equipments such as engines, irrigation pumps and agricultural machineries, were also available in addition to the funding to specialized agricultural projects. During the period 1992-1995, the Bank had granted the following loans:

Year	Short term loans		Medium term		Total loans	
	No	Amount (thousand SRIs)	No	amount (thousand SRIs)	No	amount (thousand SRIs)
1992	213	2168	4161	772982	4374	775150
1993	158	1589	4271	928972	4429	930561
1994	145	758	3677	669798	3822	670556
1995	71	575	2571	412014	2642	412589

Source: Saudi Arabian Agricultural Bank, Thirty Second Annual Report 1415/1416 H, 1995

US\$1 = SRIs 3.75

121. He added that the Bank had also been responsible for the disbursement of a package of agricultural subsidies incurred by the government towards reduction of agricultural expenditures in order to increase the average return on agricultural production. These subsidies included: engines, irrigation pumps, agricultural machinery, poultry equipments, dairy production equipment, in addition transport costs from the country of origin of high breed cows imported to the Kingdom were also paid.

The following table shows total agricultural subsidies disbursed through the bank during the period 1992-1995 :

Year	Total subsidies (Thousand SRIs)
1992	677,902
1993	248,624
1994	355,434
1995	not available

Source: Saudi Arabian Agricultural Bank, Thirty second Annual Report, 1415-1416 H, 1995

US\$1 = SRIs 3.75

122. In response to further questions, the representative of Saudi Arabia stated that in pursuance of the current Development Plan Saudi Arabia would distribute land in areas where large quantities of renewable water resources were available. Investment would be encouraged in large agricultural projects that depend on renewable water resources, using modern irrigation systems that consume low quantities of water. Domestic production of vegetables and fruits grown in green-houses would be encouraged, as would the fishing industry using advanced technology. The Plan foresaw that wheat production would be gradually reduced, from more than 4 million tons before 1994, to



2.8 million tons in 1994, 2 million tons in 1995 and 1.3 million tons in 1996. The production of barley would be reduced from 2 million tons in 1994-1995 to one million tons in 1996. Imported and domestically produced barley was purchased by the Grains, Silos, Flour and Milling Organization and then sold to livestock producers at the fixed price of US\$74.67 per ton. The same programme of the present subsidies would be continued during the Sixth Plan period in order to promote or encourage implementation of the previous programs.

123. Some members of the Working Party asked whether there was any support to the dairy sector. In response, the representative of Saudi Arabia stated that there was no specific support for the dairy sector.

124. In response to questions concerning the provision of irrigation water for crop production, the representative of Saudi Arabia stated that irrigation water for crop production was provided by private farmers, and not by the Government. He noted that there were no subsidies associated with the running of irrigation equipment.

125. Some members of the Working Party requested that the representative of Saudi Arabia clarify the role of the Grains, Silos, Flour Milling Organization (GSFMO) in the export and subsidisation of wheat. In response, the representative of Saudi Arabia stated that since 1995 the GSFMO had not exported wheat or barley. Export controls were maintained for subsidized wheat and barley through export licences. In response to further questions, he added that the exportation of date palm seedlings, barley, corn maize and soy beans was conditional upon the repayment of subsidies intended for the support of domestic production.

### **Trade in Civil Aircraft**

126. **Some members of the Working Party asked that Saudi Arabia enter a commitment to accede to the Agreement on Civil Aircraft from the date of entry into force of its Protocol of Accession. In response, the representative of Saudi Arabia stated that Saudi Arabia had no present intention to accede to the Agreement on Civil Aircraft.**

### **Trade Related Intellectual Property Regime**

127. In addition to the Memorandum on the Foreign Trade Regime, the representative of Saudi Arabia provided the Working Party with a Supplementary Memorandum on Trade Related Intellectual Property Rights (WT/ACC/SAU/5). The representative of Saudi Arabia provided the Working Party with the text of the Trademarks Regulations, Patents Law, and the Law for the Protection of Copyrights (L/7645/Add.1).

128. Some members of the Working Party congratulated Saudi Arabia on its generally high level of protection of intellectual property rights. They noted that Saudi Arabia had taken significant steps towards making its trade regime fully consistent with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), but that some problems remained. Some members asked that Saudi Arabia take immediate steps to address problems in its intellectual property regime, and asked also that Saudi Arabia commit itself to full implementation of the TRIPS Agreement without a transitional period. In particular, some members of the Working Party expressed concerns in relation to the protection of copyrights; the duration of patent protection; protection of plant varieties; length of time before compulsory licensing and working requirements were applied; protection for sound recordings and audiovisual works; protection for broadcasts and satellite transmission; explicit protection for computer software programs; implementation of Articles 1-21 of the Berne Convention; and the protection of well-known marks.

129. With reference to copyright, some members of the Working Party considered that Saudi Arabia's laws did not fully reflect its obligations under the Universal Copyright Convention. In addition, the provisions of the Saudi laws did not provide protection for sound recordings. Saudi Arabia had not yet joined the Berne, Paris, or Geneva Phonograms Conventions. Membership in such multilateral intellectual property agreements demonstrated a strong commitment to protection and supports local enforcement. Other apparent deficiencies included the fact that there were no laws that protect broadcasts and satellite transmissions, and that the term of protection for audiovisual works was 25 years, not 50 years as called for in the TRIPS Agreement. Saudi Arabia's laws also appeared to lack sufficient legal penalties to deter piracy, e.g., substantial fines or prison sentences. In response, (in document WT/ACC/SAU/28) the representative of Saudi Arabia stated that Saudi Arabia's intellectual property regime would be brought into full conformity with the requirements of the Agreement on TRIPS five years from the date of Saudi Arabia's accession to the WTO. In document WT/ACC/SAU/39, the representative of Saudi Arabia provided members of the Working Party with a detailed plan on the steps being taken to ensure full implementation of the TRIPS Agreement by the end of the transitional period requested.

130. In response to questions from members of the Working Party, the representative of Saudi Arabia stated that ongoing reviews of the WTO conformity of Saudi law had so far revealed that there were some areas of incompatibility that would need to be rectified either through amendment of existing legislation or enactment of new laws. It would also be necessary to introduce the administrative machinery to ensure the enforcement of TRIPS standards. In this regard, he noted that Saudi Arabia's Copyright Law conformed to the requirements of the Universal Copyright Convention and the Arab Copyrights Convention, as well as to most provisions of Article 9 to 14 of

the TRIPS Agreement. Saudi Arabia would amend its Copyright Law, as necessary, to implement the TRIPS Agreement Articles 9 to 14. Copyright holders could prevent others from offering the right holder's works for rental without authorization. The Copyright Law was enforced on domestic and imported products. To the extent that the Copyright Law did not meet the TRIPS Agreement requirements, Saudi Arabia would introduce necessary changes to meet its TRIPS Agreement obligations. Saudi Arabian law and practice in relation to Copyrights would be in full conformity with the requirements of the Agreement on Trade Related Aspects of Intellectual Property Rights from the end of the needed transition period.

131. Concerning patents, the representative of Saudi Arabia noted that in general, patentable subject matter in Saudi Arabia was consistent with the requirements of Section 5 of the TRIPS Agreement. Processes (methods of manufacturing) were patentable, and were protected from infringing use. Plant varieties protection were not currently patentable, even though the TRIPS Agreement required the protection of plant varieties (Article 27(3)). Patent holders in Saudi Arabia were accorded the rights mentioned in Article 28 of TRIPS. A patent holder was required to make full industrial use of the patent in Saudi Arabia within two years. Although the current Patent of Inventions Law conferred a term of protection of 15 years with the possibility of a five year extension, the representative of Saudi Arabia stated that it was foreseen that the period of protection for nationals of WTO Members, could be automatically granted a five year extension after the elapse of the initial 15 year protection period. Concerning compulsory licensing, the representative of Saudi Arabia noted that the Agreement on TRIPS required the granting of compulsory licences no earlier than three years from the date of the patent. The current Patent Law permitted the grant of a compulsory licence after two years of the patent date, with a possibility of extension of two additional years. It was clear that there was no complete conformity. The ongoing review of Saudi Arabian Patent Law had revealed that in comparison with Article 27(3) of the TRIPS Agreement, the exclusion of patentability contained in paragraphs (a) and (b) of Article (8) was in accordance with 27 (1) of the TRIPS Agreement which limits the patentable inventions to those which were related to products or processes; paragraph (c) of Article (8) was in full compliance with subparagraph (b) of Article 27(3) of the TRIPS Agreement except that paragraph (c) did not exclude "Micro-organisms" from "Plants and animals" and did not include "non-biological processes" as processes excluded from "biological processes for the production of plants and animals"; and that paragraph (d) of the Patent Law was in full compliance with sub-paragraph (a) of Article 27(3) of the TRIPS Agreement. In relation to Article 9 of the Patent Law, the Shariah was considered the "umbrella" of the legal system of Saudi Arabia. All laws of Saudi Arabia should be in consistent with the Shariah. Article 9 could therefore be considered to be in accordance with the TRIPS Agreement (Article 27(2)). Banning patents over

products contrary to the Shariah did not economically damage international patent holders of such products since the marketing of such products was prohibited.

132. In response to requests for information concerning the protection of trademarks in Saudi Arabia, the representative of Saudi Arabia stated that the Trademarks Law complied with Article (15) of the TRIPS Agreement in distinguishing the essential element of the trademark which could be capable of protection. Actual use of trademark was not a precondition for registration. The nature of goods or services did not constitute an obstacle for registration, unless the goods or services were inconsistent with the Shariah. He also noted that internationally well known trademarks were protected in Saudi Arabia. In particular, the Trademarks Law provided that a trademark could not be registered when "...marks (were) identical to or similar to internationally known marks even if they were not registered in the Kingdom". If registration of a trademark was accepted, the competent department then published the registration. Any interested party could object to the acceptance of a trademark's registration within ninety days from the date of publication of the registration. The owner of a registered trademark was considered as the only right holder of all rights conferred under Article 16 of the Agreement on TRIPS. The exceptions to the rights conferred by a trademark set out in Article 17 of the TRIPS Agreement were also reflected in the Trademarks Law. The requirements of Article 20 and 21 of the TRIPS Agreement were also reflected in the Trademarks Law. As required under Articles 22 to 24 of the TRIPS Agreement, geographical indications were protected under the Trademarks Law, geographical names could not be registered as a trademark under Saudi Arabia's Trademarks Regulations if their use caused a misunderstanding as to the source of products or services, or their origin. Due to the religious prohibition of alcoholic beverages, geographical indications of origin of wines and spirits were not protected in Saudi Arabia. Foreign non-residents with which Saudi Arabia enjoyed reciprocal agreements could register trademarks through an official attorney. Some members of the Working Party noted that the period of protection for a trademark when the requirement of use was not fulfilled was five years, two years more than the period required by Article 19 of the Agreement on TRIPS. These members noted also that the initial and renewable period of period of protection for trademarks where the requirement of use was fulfilled was ten years, three years more than the period required by Article 18 of the Agreement on TRIPS. The representative of Saudi Arabia stated that following WTO accession, all nationals of WTO Members would be able to register trademarks in Saudi Arabia and would enjoy national treatment.

133. In response to requests for information concerning the protection available for industrial designs, the representative of Saudi Arabia responded that industrial designs would be protected by a Proposed Industrial Designs Law which would be implemented by The King Abdulaziz City for Science and Technology (KACST).

134. In response to requests for information concerning the protection available for layout designs, the representative of Saudi Arabia noted that Layout Designs of Integrated Circuits were not covered by current laws. This issue was under review and the protection provided would be consistent with WTO obligations.

135. Some members of the Working Party requested information on the protection available for undisclosed information. The representative of Saudi Arabia stated that although undisclosed information was currently protected by the Companies Law, Labour Law and Banks Control Law, work was underway to prepare an Unfair Competition Law that would deal comprehensively with this issue. That law would be implemented by the Ministry of Commerce. He added that anti-competitive practices would be covered by the law as well.

136. Some members of the Working Party noted the steps being taken by Saudi Arabia to eliminate some problems in the area of enforcement, in particular the piracy of intellectual property. It was clear that much of the necessary legislation was in place, but that was experiencing difficulty in fully implementing and enforcing the new laws. These members of the Working Party urged Saudi Arabia to work towards full conformity with the Agreement on TRIPS from the date of Saudi Arabia's accession to the WTO. In response to comments concerning the enforcement of border measures, the representative of Saudi Arabia stated that border measures in Saudi Arabia were broadly consistent with the provisions of the TRIPS Agreement which authorized the judicial or administrative bodies to issue a provisional seizure decision. The power to make such a decision was contained in Articles 34 and 132(3) of the Implementing Rules of the Saudi Customs system. Moreover, Customs authorities, in coordination with the Ministry of Commerce, seized consignments infringing intellectual property rights or involving commercial fraud, consistently with Article (58) of the Agreement. ~~The only identified inconsistency between the Customs Law and the TRIPS Agreement concerned the penalties provided for by the relevant Saudi law.~~

137. The representative of Saudi Arabia stated that it was the intention of Saudi Arabia to fully comply with the requirements of the Agreement on TRIPS as soon as possible. Much of the required legislation was already in place. In addition, Shariah provided significant protection of intellectual property rights. Saudi Arabia was working towards codification of all laws required by the Agreement on TRIPS. However, despite Saudi Arabia's desire to achieve full consistency with the Agreement on TRIPS as soon as possible, because of difficulties in providing the required **funds and** training to the personnel who would administer the legislation, Saudi Arabia may need to have recourse to a transitional period. In this connection, in document WT/ACC/SAU/28, the representative of Saudi Arabia stated that Saudi Arabia would propose a transitional period of five

years, under paragraph 2 of Article 65 of the Agreement on TRIPS, to apply the provisions of the Agreement.

138. In response to requests from members of the Working Party that Saudi Arabia try to minimise further the transitional period requested for full compliance with the TRIPS Agreement, the representative of Saudi Arabia presented an Action Plan for the Implementation of the TRIPS Agreement in document WT/ACC/SAU/43, in which he proposed that Saudi Arabia fully apply the Agreement on TRIPS by the end of 2002. Members of the Working Party welcomed this reduction in the transition period requested and urged Saudi Arabia to take even greater steps to try to implement the Agreement on TRIPS in full from the date of accession, without recourse to any transition period.

139. [The representative of Saudi Arabia stated that Saudi Arabia would apply fully all the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights [by **the end of 2002**] **according to the action plan provided by the Kingdom.** ~~{from the date of accession to the WTO, without recourse to any transition period}~~. The Working Party took note of this commitment.]

#### Policies Affecting Trade in Services

140. In addition to the Memorandum on the Foreign Trade Regime, the representative of Saudi Arabia provided the Working Party with information on the services regime in Saudi Arabia in a Supplementary Memorandum on the Foreign Trade Regime, (WT/ACC/SAU/5); as well as supplementary background notes and information in documents WT/ACC/SAU/23 and 24.

141. Some members of the Working Party congratulated Saudi Arabia on its very liberal services regime. They noted, in particular, the high number of foreign workers and service providers already resident within Saudi Arabia.

142. Some members of the Working Party requested clarification of the roles of various government agencies in the approval of new investments of foreign capital in the services sector. In response the representative of Saudi Arabia stated that all **foreign** investments, whether in a joint venture or wholly **foreign** owned **project, was were required to be approved, as a one window operation, by the newly set up General Investment Authority.** ~~by the Foreign Capital Investment Committee under the chairmanship of the Ministry of Industry and Electricity. In addition, other Ministries, such as the Ministry of Commerce, the Ministry of Health, the Ministry of Education, the Saudi Arabian Monetary Agency, the Ministry of Post, Telegraph and Telephone, Ministry of Communications and the Ministry of Defence and Aviation had a role in the approval process for investment in particular service sectors.~~

143. Some members of the Working Party requested information on the regulation of the financial services sector and in particular requested information of the conditions under which a foreign bank could obtain a licence to establish a branch within Saudi Arabia. In response, the representative of Saudi Arabia stated that financial firms' activities were regulated by the Banking Control Law. Under Article 2 of the Banking Control Law, any natural or legal person was required to have a licence to carry on banking business. Under Article 3 of the Banking Control Law, a Saudi national bank operating nation wide could be granted a licence if, *inter alia*, it was a Saudi joint stock company. This included joint venture banks. A foreign bank could be granted a licence to establish branches in Saudi Arabia if it satisfied the conditions determined by the Council of Ministers upon the recommendation of the Minister of Finance and National Economy. The representative of Saudi Arabia added that the Saudi Arabian Monetary ~~Agency Authority~~ (SAMA) always acted consistently with the requirements of Articles XVI and XVII of the GATS when considering an application for a new licence. Upon the recommendation of the Saudi Arabian Monetary ~~Agency Authority~~, the Minister of Finance and National Economy and the Council of Ministers would evaluate the recommendation taking into account the following objective considerations: the macroeconomic needs of the financial and banking system; the development of new products and services; the level of existing competition in the market; the benefits to the consumer; the introduction of new technologies; the impact on the financial stability and soundness of the banking system; the professional and business standing of the founders and members of the Board of Directors; and the capital adequacy of the proposed enterprise.

144. He further added that Saudi Arabia provided for a wide range of judicial, arbitral and administrative procedures with respect to trade in services. Saudi Arabia had administrative procedures for the review of administrative decisions affecting trade in services. Such decisions were appealable to the Board of Grievances under the Council of Ministers Resolution No. 190 of 16.11.1409 H Concerning Rules and Procedures to be Followed by the Board of Grievances and the Board of Grievances Law. Commercial disputes were generally covered by the Board of Grievances and some other standing and ad hoc committees. Some members of the Working Party asked the representative of Saudi Arabia to provide information on the review of decisions concerning the licensing of service providers in Saudi Arabia. In response the representative of Saudi Arabia stated that a number of Ministries and Agencies were involved in approval of the right to provide a service in Saudi Arabia; for example: the Ministry of Commerce for engineers, legal practitioners, accountants and insurers; the Ministry of Defence and Aviation for civil aviation, tourism and travel agents; the General Organization for Technical Education and Occupational Training for technical institutes and national occupational centres; the Ministry of Health for medical practitioners, pharmacists, hospitals; the Ministry of Communications for maritime transport; and the Saudi Arabian

Monetary ~~Agency Authority~~ for banks. In all cases the Ministries and Agencies involved had internal standing committees of senior officials to review initial administrative decisions pertaining to licensing. Decisions of standing committees could be appealed to the responsible Minister or Agency head. Administrative Decisions involving potential civil suits against the government could be brought before the Board of Grievances.

145. In response to requests for information on the nature and extent of incentives, tax exemptions and subsidies available to service providers in Saudi Arabia, on a national treatment basis, the representative of Saudi Arabia stated that **no tax holidays were now available within the new Foreign Investment Regulations of April 2000.** ~~foreign services projects licensed by the Ministry of Industry and Electricity were entitled to five year corporate income tax holidays pursuant to Article 7(b) of the Investment of Foreign Capital Regulations.~~

146. In response to requests for information concerning restrictions on the provision of professional services, the representative of Saudi Arabia stated that all professional services were treated in the same manner. A licence was required to provide professional services. To be eligible for a licence the company was required to be: reputable and well recognized in the field of its profession; to have been registered and successfully practising in the field for at least ten years; and to be prepared to participate in the training and the building of Saudi nationals' experience and introducing relevant technology. In addition, the foreign company should employ or have at least one representative in Saudi Arabia. That representative should stay in Saudi Arabia for a period not less than 9 months per year; have at least a university degree in the field of the company specialization; and have not less than 10 years experience successfully. In response to requests for further information concerning the conditions required to be fulfilled in order to be eligible for grant of a licence, the representative of Saudi Arabia stated that a foreign company would be considered as reputable, well recognized and practising in the field successfully if it was registered under the companies law of its home country, was certified as financially viable by its bankers, produced copies of audited balance sheets for the last two years, produced a list of previous contracts/assignments, outside Saudi Arabia, certified by the Chamber of Commerce and Industry in the company's home country, and also produced certificates of satisfactory completion of assignments from former clients. Concerning the participation in training and the introduction of technology, the applicant company should give an undertaking that it would train Saudi nationals and would introduce the new technologies and know-how that it employed in its home country. He also added that the foreign existing companies already licensed to operate in Saudi Arabia had a period of one year to fulfil those conditions. If they do not do that, the licence may be cancelled. New companies had to fulfil the conditions from the beginning of their business activities.



147. Some members of the Working Party asked whether Saudi Arabia planned to liberalise the limitations placed on the participation of foreigners in security underwriting, commodity brokerage services and currency exchange operations, as well as the limitations placed on the participation of foreigners in land transportation and professional services. In response, the representative of Saudi Arabia stated that although there were limitations on the participation of **both foreign and domestic** individuals in **providing** security underwriting, commodity brokerage services and currency exchange operations, there were no such limitations on **domestic and** foreign banks, excepting the requirements to be licensed. There were no plans to liberalise those conditions.

148. Some members of the Working Party asked whether there were any instances of less than national treatment for foreign service providers. The representative of Saudi Arabia stated that only Saudi Arabian nationals were allowed to participate in ~~security underwriting, commodity brokerage services, currency exchange operations,~~ commercial agencies, customs clearance agencies, real estate agency, transportation (land based **transport and coastal shipping services**) and civilian security. Postal services, basic telecommunications services, radio and television transmission services were reserved to the State. He further added that under Article 8 of the Unified Economic Agreement of the Gulf Cooperation Council, ~~member States were to agree on rules which would insure~~ national treatment **was provided** for Gulf Cooperation Council nationals in, among other things, freedom of movement, work and residence, right of ownership and freedom of exercising economic activity, including service activities **and free movement of capital**. Saudi Arabia, together with the other Gulf Cooperation Council members, was in the process of implementing this agreement. In addition, some bilateral agreements signed by Saudi Arabia conferred preferred or reciprocal supplier status on companies from signatory countries with regard to certain services. Agreements with Egypt and Jordan conferred reciprocal supplier status for cross-border truck and public transportation vehicles; agreements with Egypt and Tunisia granted preference to national shipping and transport modes in bilateral trade; agreements with Lebanon, Syria and Turkey provided for reciprocal treatment with regard to transportation and transport vehicles; and an agreement with Morocco included reciprocal airline privileges.

149. In response to requests for information concerning the rules governing temporary residence in Saudi Arabia by foreigners, the representative of Saudi Arabia stated that the Law of Residency was enforced by the Ministry of Interior. In addition, the Ministry of Labour approved applications for the presence of foreigners who work or were given licence to practice work in the private sector. Some members of the Working Party requested information on the system **followed for employment of foreign employees and investors.** ~~of mandatory "sponsorship" of foreign employees and investors by Saudi nationals.~~ The representative of Saudi Arabia stated that **once a foreign employee was**

**offered a contract, a visa would be granted. Business visitors would, however, require a letter or invitation or a copy of the relationship or agreement with a Saudi party.** ~~"sponsorship" by a Saudi Arabian national was required for all visa applications, in order to ensure that only genuine foreign workers and business persons were granted visas. Once a contract was offered, a visa would be granted.~~

150. In response to questions concerning the limitations placed upon the total number of natural persons employed in particular sectors, the representative of Saudi Arabia stated that as a matter of principle, work was considered a Saudi citizen's right. Consequently, a foreigner would not be employed when to do so would displace a Saudi worker. The Labour and Workers Regulations required that any enterprise, Saudi or foreign owned, would ensure that the percentage of the Saudi workers engaged by the employer should not be less than 75 percent of the total workforce. However, the Regulations also permitted the Minister of Labour to reduce the required percentage in circumstances where qualified Saudi workers were not available. Foreign workers were required to obtain work permits from the Ministry of Labour, and an application for a permit was required to be accompanied by a submission from the proposed employer confirming the non-availability of qualified Saudis for the work. ~~and a guarantee of repatriation at the conclusion of the applicant's contract.~~ All service providers activities, regardless of ownership were obliged to reserve certain positions for Saudis, including personnel **officers, recruitment offers, receptionists, managers,** treasurers, civilian security guards, and transaction follow-up clerks to government departments.

151. Some members of the Working Party requested clarification of the qualification requirements and procedures for approval of foreign service providers. In response, the representative of Saudi Arabia stated that different categories of services required different types of approval. For example, for medical services, the service provider should have a medical degree from a recognized institution. For educational services, the service provider should have adequate academic qualifications in the relevant disciplines from a university or a recognized institution. For the provider of accounting and auditing service, the provider should be a certified accountant from a recognized institute. In addition, all foreign companies should possess the necessary technical expertise, financial capabilities, and occupational proficiency.

152. In response to questions concerning restrictions placed on foreign service providers procurement of business inputs, the representative of Saudi Arabia stated that all non-Saudi contractors must assign not less than 30 percent of the works included in their contract to wholly owned Saudi companies. All contractors were obliged to purchase the tools and equipment which they procure for performance of their contracts from Saudi agents for these tools and equipment in

Saudi Arabia. Contractors were required to obtain the following services from local Saudi establishments: transportation services for goods and services within Saudi Arabia, (if the contractor did not perform this service by itself directly by equipment owned by the business and with personnel directly employed by the business) banking ~~and insurance~~ services; services for the leasing and purchase of land and buildings; and catering services and supply of foodstuffs.

153. Some members of the Working Party asked whether permission for a foreign owned service provider to own real property was automatic once the licence to engage in business activities as a foreign establishment in Saudi Arabia was obtained. In response, the representative of Saudi Arabia stated that **foreign establishments authorized to carry on their activities in the Kingdom under the Foreign Capital Investment Law may own real estate only for a specific use related to the licensed project, in accordance with the rules on foreign ownership of real estate. The concerned Minister's approval of a request to own real estate is a prerequisite before its review by a Ministerial Committee headed by the Minister of Interior.** ~~acquisition of a licence to engage in business activities automatically entitled the project owners to acquire real property needed for the conduct of the business activities.~~

154. [Following the completion of bilateral negotiations with WTO Members, the schedule of specific commitments on services of Saudi Arabia will be reproduced in Part II of the Annex to the Protocol of Accession of Saudi Arabia].

#### Government Procurement

155. Some members of the Working Party requested that Saudi Arabia undertake to accede to the Agreement on Government Procurement upon accession to the WTO. The representative of Saudi Arabia replied that the Agreement on Government Procurement was a Plurilateral Agreement, adherence to which was not a precondition for accession to the WTO.

156. **Members observed that government procurement accounts for a major part of Saudi Arabia's imports, and that Saudi participation in the Agreement on Government Procurement was an important issue. The benefits of joining the GPA included lower procurement costs and greater transparency. In particular, the transparency provisions of the Agreement can be useful to Saudi Arabia in ensuring the least cost/best quality outcome for procurement in covered agencies. Saudi Arabia should immediately become an observer and initiate accession negotiations as soon as possible after accession to the WTO. The representative of Saudi Arabia responded that his government would seek observer status in the Government Procurement**

**Committee and would participate in the work of the Working Group on Transparency in Government Procurement Procedures**

~~139. The representative of Saudi Arabia stated that Saudi Arabia would, upon accession to the WTO, commence negotiations for membership in the Agreement on Government Procurement by tabling an entity offer. He also confirmed that, if the results of the negotiations were satisfactory to the interests of Saudi Arabia and the other members of the Agreement, Saudi Arabia would complete negotiations for membership in the Agreement within a year of accession to the WTO. The Working Party took note of these commitments.~~

Transparency

157. Some members of the Working Party requested information on whether legislation was required to be published in any official journal prior to its entering into force. In response, the representative of Saudi Arabia stated that Article 71 of the Basic ~~Rule of~~ Law provided that any law was required to be published in the Official Journal before it could enter into effect. **He further added that Article 47 of the Board of Grievances Law required the publication of Judicial decisions.**

158. {The representative of Saudi Arabia said that from the date of accession all laws and regulations, decrees on judicial decisions and administrative rulings of general application related to trade would be published in a manner that fulfils the WTO requirements.}

Notifications

**159. The representative of Saudi Arabia said that upon entry into force of the Protocol of Accession, Saudi Arabia would submit all initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Saudi Arabia which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of these commitments.**

160. {The representative of Saudi Arabia said that at the latest within six months of the entry into force of the Protocol of Accession, Saudi Arabia would submit all additional notifications required by any agreement constituting part of the WTO Agreement. Any regulation subsequently enacted by Saudi Arabia which gained effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of these commitments.}

### Trade Agreements

161. In response to questions the representative of Saudi Arabia submitted the text of the Unified Economic Agreement signed on 11 November 1981 under the Gulf Cooperation Council. He said that the free-trade agreement met all the requirements of Article XXIV of GATT Agreement 1994, including in particular paragraphs 5 (b) and 8 (b) thereof. The free-trade area had eliminated duties and other restrictive regulations of commerce and also all the trade between the members of the Gulf Cooperation Council in the products originating in the member states and work was proceeding to further harmonise trade and commercial policies. He also submitted the programme for the implementation of the Agreement Facilitating and Developing Trade Exchange among Arab States to create a Free-trade Area and the Agreement Facilitating and Developing Trade Exchanges among Arab States. Saudi Arabia would notify these agreements upon becoming a WTO Member.

162. {The representative of Saudi Arabia stated that his Government would observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its trade agreements, and would ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which Saudi Arabia was a member were met from the date of accession. The Working Party took note of these commitments.}

### Conclusions

163. [The Working Party took note of the explanations and statements of Saudi Arabia concerning its foreign trade regime, as reflected in this report. The Working Party took note of the assurances given by Saudi Arabia in relation to certain specific matters which are reproduced in paragraphs ... of this report. The Working Party took note of the commitments given by Saudi Arabia in relation to certain specific matters which are reproduced in paragraphs **22, [24], 25, [27], 29, 34, 48, 60, 62, 64, 65, 67, 68, 74, 76, 91, 95, [108], 111, 113, 116, 118, [139], 159, 160 and 162** of this report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Draft Protocol of Accession of Saudi Arabia to the WTO .]

164. [Having carried out the examination of the foreign trade régime of Saudi Arabia and in the light of the explanations, commitments and concessions made by the representative of Saudi Arabia, the Working Party reached the conclusion that Saudi Arabia be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this report, and takes note of Saudi Arabia's Schedule of Concessions and Commitments on Goods [to be prepared] and its Schedule of Specific Commitments on Services [to be prepared] that are annexed to

the Protocol. It is proposed that these texts be adopted by the General Council when it adopts the report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Saudi Arabia which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Saudi Arabia to the Marrakesh Agreement Establishing the WTO.]

[TO BE COMPLETED.]

APPENDIX

ACCESSION OF THE KINGDOM OF SAUDI ARABIA

Draft Decision

The General Council,

Having regard to the results of the negotiations directed towards the establishment of the terms of accession of the Kingdom of Saudi Arabia to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol for the Accession of the Kingdom of Saudi Arabia,

Decides, in accordance with Article XII of the Marrakesh Agreement Establishing the World Trade Organization, that the Kingdom of Saudi Arabia may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

PROTOCOL OF ACCESSION OF THE KINGDOM OF SAUDI ARABIA  
TO THE MARRAKESH AGREEMENT ESTABLISHING  
THE WORLD TRADE ORGANIZATION  
DRAFT

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement"), and the Kingdom of Saudi Arabia (hereinafter referred to as "Saudi Arabia"),

Taking note of the Report of the Working Party on the Accession of Saudi Arabia to the WTO in document WT/ACC/SAU/... (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of Saudi Arabia to the WTO,

Agree as follows:

Part I - General

1. Upon entry into force of this Protocol, Saudi Arabia accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which Saudi Arabia accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph 145 of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in the paragraphs referred to in paragraph 145 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Saudi Arabia as if it had accepted that Agreement on the date of its entry into force.
4. Saudi Arabia may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure is recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.



Part II – Schedules

5. The Schedules annexed to this Protocol shall become the schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as "GATS") relating to Saudi Arabia. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

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

Part III - Final Provisions

7. This Protocol shall be open for acceptance, by signature or otherwise, by Saudi Arabia until ....

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

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

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

11. Done at Geneva this ..... day of ..... , two thousand, in a single copy in the English, French and Spanish languages each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one or more of these languages.

\_\_\_\_\_