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**Working Party on the
Accession of Tonga**

**DRAFT REPORT OF THE WORKING PARTY
ON THE ACCESSION OF TONGA
TO THE WORLD TRADE ORGANIZATION**

Revision

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I. INTRODUCTION

1. The Government of the Kingdom of Tonga applied for accession to the World Trade Organization in June 1995. At its meeting on 15 November 1995, the General Council established a Working Party to examine the application of the Government of Tonga to accede to the World Trade Organization under Article XII of the Marrakesh Agreement establishing the WTO. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/TON/2/[Rev.8].

2. The Working Party met on 26 April 2001; and under the Chairmanship of H.E. Mr. S. Harbinson (Hong Kong, China).

DOCUMENTATION PROVIDED

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of Tonga (document WT/ACC/TON/3), the questions submitted by Members on the foreign trade regime of Tonga, together with the replies thereto, and other information provided by the authorities of Tonga (WT/ACC/TON/4; WT/ACC/TON/5; WT/ACC/TON/9; WT/ACC/TON/11; and WT/ACC/TON/12), including the legislative texts and other documentation listed in Annex I.

INTRODUCTORY STATEMENTS

4. The representative of Tonga said that the Kingdom of Tonga was a small island nation with limited human and financial resources and a fragile ecosystem, highly vulnerable to natural disasters and adverse external changes. Rising sea levels represented a direct threat to his country. Tonga's economy relied heavily on imported goods and a few external financial sources. The trade balance deficit was largely financed by remittances from Tongans living abroad. The main industry, the fishing industry, had witnessed significant improvements over the past decade, but its performance was undermined by weather disturbances and high transportation costs. These factors made it difficult for the country to attract foreign investment.

5. In Tonga, accession to the WTO was seen as a powerful instrument to enhance trade security, create new trade and investment opportunities, and strengthen multilateral cooperation. It was considered important to foster competitiveness and development and help Tonga better integrate into the world trading system. His Government had put in place a national mechanism to coordinate accession to the WTO, and had taken a number of measures to bring Tonga's trade regime in line with WTO requirements. Tonga had established a National Codex Alimentarius Committee. Tonga had

also become Member of the World Intellectual Property Organization (WIPO) in July 2001, and new legislation had been drafted to ensure compliance with WTO TRIPS regulations.

6. Members of the WTO welcomed the application from the Kingdom of Tonga to join the Organisation. Members were impressed by the efforts undertaken by Tonga so far, but noted that further work would be required, particularly in the area of legislation, for Tonga to be in compliance with WTO requirements. WTO Membership was seen by some Members as a powerful tool for Tonga to achieve its development objectives and reduce the business costs for local enterprises. Members looked forward to a rapid and smooth accession process, resulting in terms that would strike an appropriate balance between the rules and requirements of the WTO and Tonga's level of development.

7. The Working Party reviewed the economic policies and foreign trade regime of Tonga and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party on the various aspects of Tonga's foreign trade regime, and on the terms and conditions of Tonga's accession to the WTO are summarized below in paragraphs 8 to [182].

II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

8. The representative of Tonga said that the central bank, the National Reserve Bank of Tonga, was responsible for the formulation and implementation of Tonga's monetary policy in coordination with the Ministry of Finance. The main objectives of Tonga's monetary policy were to ensure a sufficient level of foreign exchange reserves to meet import requirements, maintain a stable exchange rate for the national currency - the Pa'anga (TOP), and to slow the increase in bank lending to the private sector. Instruments used to this end in recent times included adjustments of interest rates and increases in mandatory reserve requirements for the commercial banks.

9. Fiscal policy aimed primarily at balancing the budget (an objective which had been achieved in recent years); increasing the efficiency of government services; promoting private sector development through the application of stricter economic, financial, and environmental criteria for borrowing, together with improved debt recording and reporting systems; improving public debt management; and strengthening the monitoring and management of public enterprises. Taxes levied in Tonga in 2004 included the individual income tax, the corporate income tax, a sales tax (5 per cent), a fuel sales tax, and a port and services tax (20 per cent). A fiscal deficit had been

registered in 2003-2004. The deficit had been financed by foreign concession loans, domestic bond reserves, and governmental cash reserves.

10. He added that a tax reform programme had been developed with a view to enhancing the effectiveness and transparency of the tax administration and fostering the development of a fair business environment. Under the new taxation system, emphasis had been moved from trade to internal taxes. The new system was based on a small number of broad based taxes. The new taxation regime was being introduced gradually. The reform involved the introduction of a broad based consumption tax, the Consumption Tax; the simplification of the individual income tax; the establishment of single corporate income tax to ensure greater fairness; and the introduction of a single customs duty rate and excise duties on imports and domestically produced alcohol and tobacco products (see paragraph [70] below). The Consumption Tax (15 per cent) had been introduced on 1 April 2005 in replacement of the sales tax, port and service tax, and fuel sales tax, which had been abolished. The draft Income Tax Bill modifying the individual and corporate income taxes was expected to be submitted to Parliament in 2005 and to enter into force by 1 December 2005. Under the new system, it was estimated that taxes on international trade and transactions would make up 57.9 per cent of government revenue, domestic taxes on goods and services 22.7 per cent, income and profit taxes 18.1 per cent, and property and other taxes 1 per cent.

- **Foreign Exchange and Payments**

11. The representative of Tonga said that the value of the currency of Tonga - the Pa'anga - was determined on the basis of a weighted basket of currencies comprising the U.S. dollar, the New Zealand dollar, the Australian dollar, and the Japanese yen. The exchange rate of the Pa'anga against the U.S. dollar, which was the intervention currency, was determined daily by the National Reserve Bank of Tonga (NRBT), while the rates for the other currencies, for transactions of the Reserve Bank, were determined based on the cross rates provided by the Bank of England. The NRBT was allowed to vary the value of the Pa'anga relative to the basket, at its own discretion, by 5 per cent per month. In May 2005, one Pa'anga bought approximately US\$ 0.52.

12. The NRBT had delegated to commercial banks approval authority for outward transfers amounting to less than TOP 50,000 and outward transfers from foreign currency accounts. Commercial banks were required to notify the NRBT of outward transfers from foreign currency accounts no later than one day after the transfer had been effected. Prior approval from the NRBT was required for (i) all outward transfers equal to or exceeding TOP 50,000 – this approval requirement was for information purposes only; all current payments were allowed to be made; (ii) all capital transactions, including transfers for the purchase of property, migrant transfers and debt

forgiveness; acquisition/disposal of non-financial assets such as patents; direct investment, including equity capital; portfolio investment, including equity and debt securities and financial derivatives; and other investments, including trade credits, loans and bank deposits, irrespective of the amount involved. Approval was generally granted provided that official international reserves remained at adequate levels; and (iii) all loans exceeding TOP 50,000 granted by non-residents to legal residents in Tonga. In reply to questions, the representative of Tonga said that Tonga had no plans to change these requirements, but was ready to conform to any relevant WTO provisions.

13. A repatriation requirement had been introduced in July 2000 following the decline in official foreign reserves under 3 months of import cover. The NRBT was entitled to impose repatriation requirements pursuant to the Foreign Exchange Control Act No. 9 of 1963, the Foreign Exchange Control Regulations of 1965, and the Foreign Exchange Control Regulations (Amendment) Act of 2000. Because of the high dependency of the Tongan economy on imports, a level of foreign reserves of 3 to 4 months of import cover was regarded as essential to protect the country from sudden external shocks. The repatriation requirement was being monitored by the NRBT. His Government would consider removing the repatriation requirement once it would be clear that Tonga's official foreign reserves could be maintained at a comfortable level of 3 to 4 months of import cover in the long-term.

14. He added that Tonga had accepted the obligations under Article VIII, Sections 2, 3, and 4 of the Articles of Agreement of the IMF on 22 March 1991, and maintained an exchange system free of restrictions on the making of payments and transfers for current international transactions. Tonga's official international reserves had amounted to US\$ 13 million as of end September 2002. In January 2003, the National Reserve Bank of Tonga had authorized the writing of forward contracts for bona fide importers and exporters by commercial banks for an amount up to US\$ 2 million.

- **Investment Regime**

15. The representative of Tonga said that his Government encouraged foreign investment. The 1978 Industrial Development Incentives Act, Cap. 114 (the IDI Act) aimed at fostering the establishment of manufacturing, processing, and assembling industries; tourism projects, including accommodation, vessels, sport facilities and tourist sites; service-oriented repair activities; and agricultural and fishery enterprises. Incentives were provided through a system of tax exemptions. Potential benefits included (i) income tax holidays including, for non-resident investors, on the withholding tax for up to five years; (ii) accelerated depreciation of assets; (iii) exemption from customs duties on imported capital goods for up to two years; (iv) duty drawback on imported raw materials and components; (v) a 50 per cent exemption from Port and Services Tax; and (vi) the right for non-resident companies and shareholders to repatriate profits and capital gains. Any person,

irrespective of nationality, wishing to benefit from these incentives had to apply for a Development Licence to the Minister of Labour, Commerce and Industry. Benefits granted depended on the nature of the project and were listed in the Development Licence.

16. Applicants for Development Licences were required to complete a form and provide information on the nature of the project, its cost and financing; employment requirements, including the employment of expatriate staff; potential markets for the products; details on the incentives sought; information on the experience and financial background of the applicant and all shareholders; and needs for electricity and water. In addition, applicants were requested to submit financial statements or bank references indicating their financial strength, and a business plan including information on proposed production, market prospects, financial matters, personal arrangements, office and land lease, and cash flow projections for the first three years of activity. In the case of tourism prime facility projects, a construction plan duly approved by the Ministry of Health and Ministry of Work was required. A TOP 200.00 (US\$ 100) fee was charged for each application for a Development Licence.

17. Applications were examined by a Standing Advisory Committee established within the Ministry of Labour, Commerce, and Industry. The Committee included the Minister and Secretary of Labour, Commerce and Industry; the Secretary of Finance; the Managing Director of the Tonga Development Bank; the General Manager of the Bank of Tonga; the Director of the Central Planning Department; and ad hoc members as required. The Committee made recommendations to the Minister. Applicants were informed in writing of the decision and, in case of approval, of the terms of the licence. The licence could be used to obtain a work permit – or Temporary Residence Visa – from the immigration authorities. Licence holders had to register their company with the Registrar of Companies as provided for in the Companies Act, Cap. 27. Registration was subject to the approval of the Privy Council. Although not specifically stated in the Act, in case of rejection, the refusal to deliver a licence could be appealed to the Ministry of Labour, Commerce, and Industry. In 2003, 44 projects involving a total investment of over US\$ 17 million had been approved, mainly in manufacturing and tourism. Between 1999 and 2003, a total of 250 licenses had been delivered (Table 1). He provided detailed information on the incentives granted under the IDI Act between 1999 and 2003 in Annex 1 of document WT/ACC/TON/11.

18. Domestic and foreign investors were entitled to the same benefits and subject to the same procedures. However, in the case of foreign investment the Committee would study the extent to which the project provided substantial and continuing benefits to the people and economy of Tonga and include these considerations in the recommendation to the Minister. The Committee examined

whether the project (i) involved the processing of local resources; (ii) substantially contributed to local added value; (iii) was labour intensive; (iv) had export potential; (v) contributed to import substitution; (vi) had a reasonable level of local participation; (vii) would have a multiplier effect leading to the creation of ancillary enterprises; (viii) was likely to complement other domestic manufactures; (ix) and satisfied any other criteria the Committee might consider relevant.

19. Several Members were seriously concerned about the discretionary powers exercised in investment approval decisions in Tonga and some of the criteria used in deciding whether to grant a licence for foreign investment. These Members observed that the benefits provided under the IDI Act would seem, in law or in fact, to be contingent upon export performance, import substitution, or local content requirements. The concerns raised by Members are discussed below in further detail in the sections "Industrial policy, including subsidies" and "Trade-Related Investment Measures (TRIMs)".

20. The representative of Tonga replied that the criteria causing concern to Members had never been applied in practice. He could therefore confirm that no benefits under the IDI Act had been or would be made contingent upon export performance, import substitution, or local content requirements. He noted that the provisions of the IDI Act exempting investment licence holders from the port and services tax had ceased to have effect when the Consumption Tax had been introduced on 1 April 2005. The IDI Act would be suspended on 1 July 2006. The Act would be repealed following the introduction of the single customs duty rate (of 15 per cent). He confirmed that benefits granted to investors under the Act would be eliminated upon revocation of the Act.

21. He noted that Parliament had passed a new law - the Foreign Investment Act 2002 - with a view to bringing Tonga's legislation on registration of foreign investment into line with WTO provisions. The new Law would become effective upon entry into force of the implementing regulations – the Foreign Investment Regulations 2002 – expected by December 2005. The Foreign Investment Act detailed the regulations for foreign investment into Tonga, the registration requirements for foreign investors and the duration of registration certificates; established reserved, restricted, and prohibited activities; detailed the terms for transfer of registration, cancellation of registration and the means for appeal if registration was refused; and set out transitional arrangements for foreign investors already operating in Tonga at the time of the legislation being implemented. No benefits or incentives were offered or provided under the Foreign Investment Act. Reserved activities, i.e. activities that could only be carried out by Tongans, were listed in Schedule 1 of the draft Foreign Investment Regulations 2002. Restricted activities were activities open to foreign investors under the conditions specified in Schedule 2 of the draft Foreign Investment Regulations 2002. Restricted activities included commercial fishing and agricultural supply stores

distributing seeds, fertilizers, chemicals. As for prohibited activities, there were listed in Schedule 3 of the draft Foreign Investment Regulations 2002. In response to a Member who noted that prohibited activities included "Export, import or production of any products prohibited under the Laws of Tonga", he referred to the "Import prohibition" and "export prohibition" sections of the Report. Unless an activity was designated as restricted, reserved, or prohibited, there was no foreign participation limitations, in law or in practice, for foreign investors wishing to invest into Tonga. In reply to questions from Members, he noted that there was no direct connection between the Foreign Investment Act and the IDI Act. The Foreign Investment Act provided for a registration mechanism for foreign investment while the IDI Act was a fiscal incentive package for investment.

22. The representative of Tonga confirmed that since enactment no benefits granted under the Industrial Development Incentives Act had been or would be made contingent, in law or in fact, on export performance, import substitution or local content requirements. Such criteria contained in the Industrial Development Incentives Act had never been applied in practice. He further confirmed that the IDI Act would be suspended on 1 July 2006 and subsequently repealed once customs duties would have been reduced to the single rate of 15 per cent. All the benefits provided for in the IDI Act would thereby be eliminated. He confirmed that the new Foreign Investment Act would provide no such benefits. The Working Party took note of these commitments.

23. The representative of Tonga stated that Tonga would also be prepared to enter Protocol commitments to abide by the relevant WTO provisions, including Article 3 of the Agreement on Subsidies and Countervailing Measures and the Agreement on Trade-Related Investment Measures, and to ensure that its laws implement these commitments. For the texts of these commitments, see the sections below dealing with these subjects.

- **State Ownership and Privatization**

24. The representative of Tonga said that a large number of services, infrastructure, and commercial activities had traditionally been government-funded. In 1998, his Government retained a stake, either through equity or loans, in 26 enterprises, including public utilities.

25. His Government aimed at rationalisation of public sector activities, including through privatization. A Cabinet Sub-Committee had been established to plan the restructuring of government commercial activities, and a Public Enterprise Unit to develop a programme of privatization. Since 1998, his Government had corporatized the Port Authority and the Tonga Telecommunication Commission, i.e. established these Government-owned entities as legally independent entities and made them subject to the requirements of the Companies Act, and privatized the Royal Beer Co. Ltd.

Postal services would be corporatized once the debts of Tonga Post have been paid off. The Government Store, which used to supply the public and private sector with hardware and other products had ceased operations in 1999, except for the disposal of goods undergoing processing. A list of enterprises with State ownership as per 30 June 2002, including information on their activities and market position, and the percentage of Government ownership, is provided in Table 2 and in paragraph 26 below. He expected the privatization programme to be completed over a period of five to ten years. The Tongan Government would only maintain or make new investment in companies that provided significant social and economic services that the private sector could not reasonably provide and where monopoly was likely to prevail. He confirmed that Tonga maintained no restrictions on foreign participation in the privatisation programme and that no special privileges were granted to public enterprises.

26. The representative of Tonga added that State-owned enterprises and enterprises with State participation at this time were services providers, and that his Government no longer owned shares in any manufacturing facility in Tonga. Tonga Corporation managed Tonga's landholdings in American Samoa and Hawaii. Tonga Investments Ltd. was a holding company established in 1971 to manage businesses carried out by its subsidiaries - Frisco Hardware Ltd., Homegas Ltd. and Primary Produce Export Ltd. Frisco sold hardware and construction materials - mostly imported goods - in competition with private enterprises. Primary Produce Limited was essentially a shell company established to collect debts, and would be wound up as soon as possible. Tonga Timber Limited supplied coconut/timber milling and hardware. Sea Star Fishing Co. Ltd. was one of a number of deep sea fishing operations in this market. The Government of Tonga had been negotiating to sell its shares in this company. Leiola Duty Free operated Tonga's duty free shops. The Government had not granted a monopoly, but there were at present no competitors in the market. Air Pacific Limited was Fiji's national airline, providing regional airline services in competition with other suppliers in the market. Hawaiian Air was another regional airline. Royal Tonga Airlines was Tonga's national airline and competed with Air New Zealand, Polynesian Airlines and Air Pacific (the other main airlines servicing similar routes). Pacific Forum Line Limited, a regional shipping company based in Fiji, provided regional freight and charter services, and Shipping Corporation of Polynesia Ltd. provided domestic and international passenger and cargo charter services. Westpac Bank of Tonga competed with three other banks currently present in Tonga, and the Tonga Development Bank provided development and business advisory banking services. International Dateline Hotel was one of many such tourist hotels in Tonga's market. While either fully or partially government-owned, with the exception of Leiola Duty Free, none of the enterprises listed above still in operation were granted any special rights or privileges nor a sanctioned monopoly in their line of business. Generally, they competed with other suppliers in the market.

27. Tonga's public utilities included the Tonga Water Board, established under the 1978 Water Board Act, Cap. 92, and responsible for the supply of water in the main populated areas; and the Tonga Broadcasting Commission, established under the Broadcasting Commission Act, Cap. 100, which operated public radio services. Private sector representatives participated in the Board of Directors of these enterprises. Home Gas, a subsidiary of Tonga Investment Limited, was the sole distributor of cooking gas in Tonga. Electricity was now provided by a private enterprise and the Government had corporatized its telecommunications provider, which now competed with another supplier in the market.

28. Asked about the percentage of Tonga's GDP generated by State-owned enterprises, the representative of Tonga said that Tonga's GDP figures did not differentiate between State-owned and non-State-owned firms. In March 2004, the value of assets of the Public Enterprise Division of the Ministry of Finance had amounted to TOP 186 million and net government investment, including loans, to TOP 107 million.

- **Pricing Policies**

29. The representative of Tonga said that Tonga applied price control on basic necessities to protect consumers, in particular low income families. Maximum prices were set for these goods to prevent wholesale and retail suppliers from taking advantage of local monopoly conditions resulting from the small size of the economy. Commodities currently subject to price control are listed in Table 3. None of these products, except for bread, were produced locally. [State-owned enterprises did not operate in the markets of price controlled goods.] He confirmed that the Home Gas Company distributed one of the liquid petroleum products mentioned in Table 3. Prices for services were determined freely by market forces.

30. The legal basis for Tonga's price controls was the 1988 Price and Wage Control Act, Cap. 113. Controls were enforced by the Competent Authority Committee, established within the Ministry of Labour, Commerce, and Industry, and chaired by the Minister. Other members of the Committee included the Minister of Finance, Secretary of Labour, Commerce and Industry, Deputy Secretary of Commerce, and three representatives of the private sector. The Committee met on a monthly basis and was responsible for setting maximum prices, monitoring the prices of controlled goods and services, monitoring minimum wages, and carrying out controls, including on-site inspections at traders' premises. The Committee could request traders to submit oral or written information on prices, wages and working hours and, in case of violation, to prohibit the sale of the incriminated goods until prices had been modified.

31. Responding to specific questions, the representative of Tonga said that controls were carried out at the point of sale, and not at the border, as the primary purpose of the price controls was to protect the interests of consumers. He confirmed that Tonga's price controls did not affect the valuation of goods for customs purposes. Tonga's price control mechanisms were enforced as maximum mark-up percentages, i.e. a percentage over landed cost for the wholesale trade and a percentage over wholesale cost for retail trade in the goods concerned, except for standard size bread (454 grams) and petroleum products. In the latter cases, the Committee determined the sales prices for these goods. He provided detailed information on the mark-up calculations in Annex A of document WT/ACC/TON/5. Price controls had recently been eliminated on motor vehicles, motorcycles and motor vehicle spare parts. He added that his Government had no plans to reduce the number of goods subject to price control, although some discussions had taken place on this matter. He confirmed that all products within the listed categories were subject to price control without exception. The price controls in principle applied equally to both domestically-produced and imported goods, although at the present time the only product under price control that was produced in Tonga was bread.

32. In response to concerns of Members who noted that, according to Annex A of WT/ACC/TON/5, local agricultural and fish products were not subject to price control while imported products were covered by controls, which would appear to be inconsistent with the provisions of Article III of GATT 1994, the representative of Tonga said that an Order, which amended the Price and Wage Control Act 1988 and removed the reference to local agricultural and fish products not subject to price control from the Mark-Up Schedule, had been approved by the Competent Authority on 2 May 2005. The Order had come into force on 17 May 2005.

33. The representative of Tonga confirmed that from the date of accession Tonga would apply its price control measures in a WTO-consistent fashion, and take into account the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. In this regard, an Order amending the Price and Wage Control Act 1988 had been issued, which removed the exemption of local agricultural and fish products from price control from the Mark-Up Schedule. He further confirmed that any price controls applied to imports from the date of accession would also be applied to similar domestically-produced goods. Tonga would also publish the list of any goods and services subject to price controls in its Official Gazette. The Working Party took note of these commitments.

- **Competition Policy**

34. The representative of Tonga said that Tonga had no specific legislation addressing competition issues, and had no plans to introduce such legislation. The Protection Against Unfair

Competition Act 2002 did not establish a competition policy; it provided protection against deceptive industrial and commercial practices, including damaging another's goodwill or reputation, creating confusion, misleading the public, and unfair competition in case of secret information.

35. In response to questions, the representative of Tonga noted that there was no WTO requirement for competition policy to be applied. Tonga understood the implications of restrictive business practices to which reference had been made, such as price fixing and anti-competitive mergers and business acquisitions. However, given the structure and size of Tonga's domestic market, these practices had not created problems that would warrant the utilization of Tonga's extremely limited resources.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

36. The representative of Tonga said that Tonga had become a sovereign and independent State within the British Commonwealth of Independent States in 1970. Tonga was a constitutional monarchy headed by His Majesty the King Taufa'ahau Tupou IV, who had acceded to the throne in 1965. The current Constitution had been promulgated the same year. The King chaired the Privy Council - comprising the Prime Minister, Ministers of the Crown and the two Governors of Ha'apai and Vava'u, all appointed by His Majesty – which advised and assisted His Majesty in his functions. The Cabinet, the second branch of the executive, was composed of the Ministers of the Crown and the Governors. Cabinet Ministers held office until their retirement.

37. Legislative powers were exercised by the Legislative Assembly, made up of Privy Councillors and Cabinet Ministers, sitting as nobles; nine representatives of the nobles, elected by the nobles; and nine representatives of the people elected every three years by universal suffrage. The Assembly was the only organ empowered to adopt laws (Clause 55 of the Constitution). Bills had to be passed three times by the majority of the Assembly members before being presented to His Majesty for Royal Assent, and became law upon publication. The Governors were responsible for the implementation of laws within their district.

38. Judicial power was exercised by the Magistrates' Court, the Court of Appeal, the Supreme Court and, for land-related matters, the Land Court. Judges were appointed by His Majesty in Council. The Magistrates' Court was the lowest court, dealing with criminal and civil cases for which the sanctions foreseen by the law would not exceed TOP 1,000 – or three years imprisonment in the case of criminal charges. The Land Court was the supreme court in charge of land related cases, including hereditary estate taxes and town allotment mortgages. Tonga's present judicial system did

not provide for specialized administrative or commercial courts. The highest court was the Court of Appeal.

39. Administrative decisions could be reviewed, in first instance, by the Supreme Court in accordance with the Supreme Court Act, Cap. 10. Supreme Court decisions could be appealed to the Court of Appeal pursuant to the Court of Appeal Act, provided appeal had been permitted by the first instance judge, the appeal had been lodged within 42 days from the date of judgement, and the grounds for appeal had been clearly laid down. The Court of Appeal was composed of three judges, including the Chief Justice. As the Court of Appeal was the highest court in Tonga, only decisions of the Court of Appeal pertaining to nobles titles and hereditary estates could be further appealed to the Privy Council.

40. According to Section 11 of the Commissioner for Public Relations Act 2001, foreign and domestic importers had the right to appeal any administrative action relating to matters subject to WTO provisions, e.g. customs classification and valuation, tariff application, licensing, TBT, SPS, and TRIPS, to an independent body – the Commissioner for Public Relations. The Commissioner was appointed by His Majesty in Council for five years, but was independent from the Executive. He was neither under the responsibility of nor accountable to the Executive. The Commissioner's office was not appointed by the Executive. The Commissioner could only formulate recommendations. Pursuant to Section 11, the Commissioner could, upon a complaint or on his own initiative, investigate any administrative decision or recommendation made, and any administrative act done or omitted by any department or organization to which the Act applied; any officer, including the Minister and Governor; and any employee or member of any such department or organization affecting any person in its personal capacity, and formulate recommendations to the relevant government bodies. Recommendations made by the Commissioner could be appealed to the Supreme Court. No case had been appealed to date. When recommendations by the Commissioner were not followed by action within a reasonable period of time, the Commissioner could send a copy of the recommendations to the Prime Minister who should table it in the Privy Council. He [considered] [confirmed that] this situation [to be] [was] in full conformity with relevant WTO obligations, including Article X:3(b) of the GATT 1994.

41. The representative of Tonga confirmed that from the date of its accession, Tonga would establish or designate tribunals or procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:I of the GATT 1994 and Article VI of the GATS. The tribunals or procedures would also include actions relating to the implementation of national

treatment, conformity assessment, the regulation, control, supply or promotion of a service, including the grant or denial of a license to provide a service and other matters. The tribunals or procedures responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter. The review procedure would include the opportunity for appeal, without penalty, by individuals and enterprises affected by any administrative action subject to review. If the initial right of appeal was to an administrative body, there should be the opportunity to choose to appeal the decision to a judicial body. Notice of the decision on appeal should be given to the appellant and the reasons for such a decision provided in writing. The Working Party took note of these commitments.

42. Policies related to foreign trade were formulated and implemented by the Ministry of Labour, Commerce and Industry, in cooperation with the Ministries of Finance; Police; Health; Agriculture and Forestry; and Fisheries. His Government had established a Trade Coordination Committee chaired by the Minister of Labour, Commerce and Industry to coordinate the work of the various government entities. Border control fell under the competence of the Minister of Finance, who was also responsible for customs duties, and taxes and excises, as well as the issuance of import licenses for some products. Import licenses for restricted products were issued by the Minister of Police and the Minister of Finance. The Minister of Foreign Affairs was in charge of immigration, and granted entry and resident permits. The Minister of Agriculture and Forestry, the Minister for Fisheries and the Minister for Health regulated matters of public health, quarantine and phytosanitary measures related to importation and exportation. The formulation and implementation of policies affecting trade in services involved the Tonga Visitors Bureau, Tonga Telecommunications Commission, Tonga Electric Power Board, the Ministries of Finance, Civil Aviation, Education, Justice, and Ports and Marines. While trading regulations were set out in laws and regulations, residual discretionary powers could also be exercised by the competent Minister when required.

43. The private sector could influence the legislative process through consultations held with the Ministries through associations such as the Tonga Chamber of Commerce, the Small Business Association, the Tonga Tourist Association, the Society of Accountants, the Tonga Business and Professional Women's Federation Inc, and the Law Society. In the reform of trade legislation, the Ministry of Labour, Commerce and Industry consulted with the private sector via its Government/Private Sector Consultative Committee.

44. The representative of Tonga acknowledged that implementing legislation would have to be adopted in a number of areas to ensure compliance with WTO regulations. He presented an overview of legislative action resulting from the WTO accession process in document WT/ACC/TON/7, noting

that adequate and timely technical assistance would be needed to help Tonga in implementing these measures. He confirmed the readiness of his Government to work with the Working Party to help identify any further legislative deficiencies.

45. Concerning the procedures to be followed for the ratification of Tonga's Protocol of Accession, he said that the Accession Package would be submitted to the Privy Council for ratification, i.e. approval, by the Minister for Labour, Commerce and Industries, who was responsible for overseeing the accession process to the WTO. Ratification did not require approval by the Parliament. After approval by the Privy Council, WTO provisions would not supersede domestic legislation; they would have to be integrated into domestic legislation through amendments. In the event of a conflict between WTO provisions and domestic laws and regulations, the latter would apply.

46. The representative of Tonga confirmed that sub-central entities had no autonomous authority over measures covered by WTO provisions. He confirmed that the provisions of the WTO Agreement, including Tonga's Protocol, would be applied uniformly throughout its customs territory and other territories under Tonga's control, any 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.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

47. The representative of Tonga said that the Licenses Act, Cap. 47, required any natural or legal person carrying out a business activity to take out a licence and pay an annual fee. The schedule covered a wide range of commercial activities, not necessarily linked to external trade. The decision to issue a licence was not discretionary or subject to specific criteria, but rather a simple "pay-and-serve" process.

48. He added that a new Business Licence Act would repeal the Licenses Act Cap. 47, and introduce a simple, transparent procedure for the issuance of business licenses. The new legislation aimed at bringing Tonga's rules in this area into line with best international practice and the rules of the WTO, i.e. Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994. The new Act required a licence to be issued automatically to any business or person planning to undertake business in Tonga

(whether wholesale, retail, export, or import), provided the proposed activity was not prohibited; the applicant was 18 years of age or older; in case of partnerships, that all partners were at least 18 years of age; and - for foreign investors - possession of a valid foreign investment registration certificate. Applications had to be submitted for each business activity listed in schedule 3 of the Act. Implementing Regulations had been submitted to the Cabinet for approval, and were expected to be implemented by December 2005. Pursuant to the draft regulations, business licenses would be delivered automatically within 7 days. In case of refusal, the applicant would have to be advised in writing of the grounds for refusing the application. Licence fees would be based only on the cost of services rendered (verification and processing of applications) and would be levied once a year (see Table 4). Any holder of a valid business licence could engage in the activity for which the licence had been granted for one year without restriction. He confirmed that under the new Foreign Investment Act, foreign firms seeking to be the importer of record would be required to have a foreign investment licence prior to obtaining the business licence for importation from the one-stop shop of the Customs Department.

49. In response to the concern of a Member regarding the current absence of regulations implementing the Business Licence Act, which might possibly include disguised restrictions on trade, the representative of Tonga maintained that the Business Licence Act provided for simple and transparent procedures, of a non-discriminatory nature and therefore applied equally to nationals and foreigners, for the issuance of business licenses. He stressed that the implementing regulations would not include hidden trade restrictions. A copy of the Regulations had been forwarded to the Working Party. The Business Licence Act would come into effect upon implementation of Regulations, i.e. by December 2005.

50. The representative of Tonga confirmed that from the date of accession, Tonga would ensure that its laws and regulations relating to the right to trade in goods and all fees, charges and 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 implement such laws and regulations in full conformity with these obligations. The Working Party took note of this commitment.

A. IMPORT REGULATION

- Customs Tariff

51. Noting that Tonga initially applied the Standard International Trade Classification (SITC), and that Tonga's Parliament had rejected proposed changes to Tonga's classification system, some

Members urged Tonga to implement a customs classification system in line with the international standard (the Harmonized System). Trade taxes being an important component of government revenue, Tonga was also encouraged to take steps to diversify its revenue base.

52. The representative of Tonga replied that Tonga was now implementing the 4-digit level of the Harmonized System. The Customs database was being upgraded to be made consistent with the 6-digit level of the Harmonized System. The Personal Computer (PC) Trade database developed by Statistics NZ, which was based on the 6-digit level of the Harmonized System, was being introduced. The database, which would be used to process customs data and collect trade statistics, was expected to be operational by December 2005.. Tonga levied customs duties in accordance with the Customs and Excise Act, Cap.67. It accorded tariff preferences to members of the Pacific Island Countries Trade Agreement (PICTA). Imports from other countries were subject to a single set of tariff rates. Import duties were mostly in the 0-30 per cent range, but higher rates were applied on motor vehicles, vans and trucks (45 per cent); petroleum (35 per cent); and beer, spirits, tobacco and cigarettes (rates ranging from 150 to 330 per cent *ad valorem* or specific duty amounts, if higher). Rates on tobacco had been increased recently for health reasons and now ranged between 187.5 per cent and 525 per cent (*ad valorem* or specific duty amount, whichever was higher). The weighted average level of customs duties had amounted to 18.5 per cent in 1995.

53. He added that a series of taxation reforms, including the introduction of a single customs rate, had been launched. The single customs rate would be introduced after the PC Trade has been put in place. A single rate of 15 per cent would be introduced no later than 1 January 2007. Tonga's customs tariff would be adjusted accordingly by amending the Customs and Excise Act, Cap. 67. No exceptions to the single rate customs duty were foreseen, as exceptions would defy the logic of introducing such a system. The introduction of a single rate customs tariff would not only allow for more streamlined customs procedures and a more administratively feasible customs system, but should also improve duty collection and allow for far more accurate recording of imports into Tonga.

- **Other duties and charges**

54. The representative of Tonga said that, in addition to customs duties, Tonga levied a 20 per cent *ad valorem* Port and Services Tax in accordance with the Port and Services Tax Act (Cap.71). The tax applied to all imported goods except those fully or partially exempt under the Industrial Development Incentives Act. Among the items exempt from the Port and Services tax were essential goods such as educational, scientific and cultural books, documents and materials; fertilizers; insecticides, pesticides and fungicides for agricultural use; agricultural machinery, implements and tools; timber milling machinery; and stock feed and seeds.

55. Some Members stated that the Port and Services Tax did not appear to meet the requirement of Article VIII of the GATT 1994, and requested that it be eliminated in the context of Tonga's accession to the WTO. Questions were also raised about the WTO-consistency of Tonga's wharfage dues.

56. The representative of Tonga acknowledged that the Port and Services Tax should be considered an "other duty or charge" within the meaning of Article II of the GATT 1994, and recalled that Tonga had offered to bind its Other Duties and Charges at zero during the negotiations on market access for goods. He noted that the Port and Services Tax had been eliminated on 1 April 2005 when the Consumption Tax had been introduced. As for the wharfage and berthage fees, and fees for the issuance of import licenses, these were fees for services rendered. These fees and charges are examined in the relevant section below.

57. The representative of Tonga confirmed that from the date of accession other duties and charges within the meaning of Article II.1(b) of the GATT 1994 would be applied in accordance with WTO provisions and that Tonga would not introduce any new other duties and charges. He further confirmed that other duties and charges within the meaning of Article II.1(b) of the GATT 1994 would be bound at zero in Tonga's Goods Schedule. The Working Party took note of these commitments.

- **Tariff rate quotas, tariff exemptions**

58. The representative of Tonga said that Tonga did not apply tariff rate quotas on any product, and had no intention to introduce such quotas.

59. Tariff exemptions were granted according to the Customs and Excise Act. The coverage of the exemptions required a legal basis and could not be extended administratively. Goods subject to duty exemption were goods for the use of the reigning Sovereign, the Government of Tonga, or accredited diplomatic representatives and technical assistance officials; personal effects and accompanied luggage of passengers (within specified limits); ground equipment, fuel and lubricants for air services; educational, scientific and cultural articles; charitable gifts; marine life-saving equipment; patterns, samples, advertising matter and documents; religious goods; and trophies, medals and photographs. A more detailed description of such goods (mostly not by HS number) was provided in document WT/ACC/TON/4, pp. 22-25. The coverage of the import duty exemptions and exemptions from Port and Services Tax were not identical. The potential benefits provided for in the Industrial Development Incentives (IDI) Act, described under the heading "Investment Regime" above, included exemption from customs duties on imported capital goods for up to two years as well

as suspension of duty on imported raw materials and components. He noted, however, that the IDI Act would be suspended on 1 July 2006 and subsequently repealed after reduction of the single customs duty rate to 15 per cent. The revocation of the Act would eliminate all the benefits granted under the Act.

60. The representative of Tonga confirmed that upon Tonga's accession to the WTO, any tariff quotas and tariff exemptions would only be implemented in conformity with the relevant WTO provisions including Article I of the GATT 1994 and the TRIMs Agreement. The Working Party took note of this commitment.

- **Fees and charges for services rendered**

61. The representative of Tonga said that the fees charged by the Port Authority pursuant to Standing Order 1999 were set in relation to the cost of the services rendered by the Authority. These fees included berthage, wharfage, mooring, slipway and boat lifter, and tug boat fees. The Port authority had been established by the Port Authority Act 1998 as part of a reform package to put the management of the port on an efficient commercial basis. The Port Authority administered the port at Tongatapu, and nearly 99 per cent of Tonga's trade in goods passed through this port. Fees charged by the Port Authority were set after consultation with the Port User Advisory Committee. The scale of fees was also submitted to the Executive of the South Pacific Board of Ports, composed of members from the Pacific Island Countries, Australia and New Zealand. Standing Order 1999 set out the fees charged by the Port Authority itself, as well as the fees that could be charged by stevedoring companies operating on the wharf.

62. Berthage fees applied to ships brought to the berth and wharf space. Berthage fees covered the operating costs and required return on investment for navigation aids, towage, pilotage, mooring lines and provision of the wharf. The fees depended on the capacity of each vessel and the time spent in the berth. The fees were calculated on the basis of the number of hours spent (cruise ships) or worked at the berth. Wharfage fees were collected when goods were discharged from or loaded into a vessel within the port. The fees corresponded to the costs of maintaining the wharf, insurance policy, and interests on loans for upgrading and construction of wharf facilities. Mooring fees were applied to local registered vessels and yachts and covered the costs of maintaining local wharves and other facilities. Slipway and boat lifter fees were charged for the use of the slipway and boat lifter, and tug boat fees for the renting of a tug boat and other port equipments. He provided detailed information on these fees in document WT/ACC/TON/11. pp. 10-13.

63. Some Members reminded Tonga that GATT Article VIII provided that all fees and charges be limited to the approximate cost of the services rendered, and not to constitute an additional fiscal tax on imports. As Tonga's wharfage fees, based on length and/or internal space, did not appear directly related to the cost of any particular customs service, Tonga was urged to bring its fee structure into conformity with the requirements of GATT Article VIII.

64. In response, the representative of Tonga said that fees based on length and/or internal space were directly related to the wharf space occupied and to the amount of cargo unloaded and therefore to the cost of the service provided. He also noted that fees for the issuance of business licenses, dealt with in the section on trading rights, were fees for services rendered. The protocol commitment in the following paragraph would therefore apply to them. He also provided detailed information on quarantine fees paid by exporters of agricultural products, which is reproduced in Table 5.

65. The representative of Tonga confirmed that all fees and charges, including those listed in paragraphs [48 and 61] of this Report, would be operated in conformity with the relevant provisions of the WTO Agreement, in particular Articles VIII and X of GATT 1994. From the date of accession, Tonga would not apply, introduce or reintroduce any fees and charges for services rendered that were applied to imports on an *ad valorem* basis. Information regarding the application and level of such fees and charges, revenues collected and their use, would be provided to WTO Members on request. The Working Party took note of these commitments.

- **Application of internal taxes to imports**

66. The representative of Tonga said that imported and domestically-produced beer (HS number 2203.0010) was subject to an excise tax of TOP 0.75 per litre or 20 per cent *ad valorem*, whichever was higher. Beer was, for the time being, the only product on which excise duty was levied.

67. Value added tax (VAT) had not been introduced in Tonga, but a sales tax of 5 per cent was levied on most goods and services. Exempt from sales tax were goods and services sold to the reigning Sovereign or to the Government; goods sold among vendors or businesses for the purpose of further retailing, manufacturing or processing before being sold to the public; local agriculture, livestock and fisheries products sold at local markets and farm gates by individual sellers; goods sold by street vendors such as handicrafts, woodcarvings, clothing and peanuts; tickets for international travel sold to patients upon approval and certification by the Minister of Health; building materials used in residential construction (exemption certificate to be issued by the Minister), all of which were imported; and goods destined for exportation.

68. Some Members noted that Tonga's sales tax exemption on local agriculture, livestock and fisheries products, and goods sold among vendors and businesses, involved elements that might discriminate against imports. Tonga was invited to provide further clarification on how these exemptions would not conflict with the provisions of Article III of the GATT 1994.

69. The representative of Tonga replied that the sales tax exemption on local agriculture, livestock and fisheries products applied only to very small individual producers who sold their products locally. Domestic products sold by large local firms were subject to sales tax. Small producers had been exempted due to difficulties in tax collection and the disproportionate costs involved in collecting relatively small amounts of sales tax. In this respect, Tonga's practice did not differ from that of many Members of the WTO. As to goods sold among vendors and businesses, registration with the Inland Revenue Department was required for vendors or businesses to qualify for a sales tax exemption. He did not consider this requirement an obstacle to trade as the only purpose of the registration procedure was to administer the collection of revenue. No further registration was required. He confirmed that apart from the above-mentioned exemptions, all other customers and firms were subject to the sales tax. The threshold for firms, farms, and individuals exempted from sales tax amounted to approximately US\$ 1,000,000. There were no data available on the percentage of firms exempted from the sales tax. He added that Tonga's present sales tax regime had been terminated on 1 April 2005 as part of the taxation reform programme.

70. The taxation reform programme had been designed with the assistance of the Pacific Financial Technical Assistance Centre (PFTAC). Under the new system, taxes levied in Tonga would include a simplified individual income tax; a single rate corporate income tax; a single rate customs duty; excise taxes on imports and domestically produced alcohol and tobacco products; and a broad based consumption tax, the Consumption Tax. The Consumption Tax had been introduced on 1 April 2005 in replacement of the sales tax, fuel sales tax, and ports and services tax. The rates of the Consumption Tax were 15 per cent and zero. The 15 per cent rate applied to most imports of goods and services supplied in Tonga. The main items to be zero rated were exports, international transport services, and basic provision of electricity and water for domestic consumption. The Consumption Tax applied equally to imported and domestically produced goods. Excise tax rates on imported and domestically produced alcohol and tobacco products would be identical and would take the form of specific duties, which would be collected at the import stage or at the border for imported products and at the point of sale (ex-factory) for domestic products.

71. In reply to questions raised by Members, the representative of Tonga stated that, subject to a limited number of exceptions, the Consumption Tax would apply to all imports and sales by

registered Consumption Tax payers. The social exemptions to the Consumption Tax included medical, dental and nursing services; domestic public transport services; and education services, and the administrative exemptions included financial services; some property transactions; and a personal baggage exemption for luggage accompanying passengers arriving by sea or air (limited to TOP 500 (US\$ 250)). The planned registration threshold for the Consumption Tax was TOP 100,000 (US\$ 50,000). However, businesses with an annual turnover below the threshold could register voluntarily if they so wished. Pursuant to Part III of Registration 6(6) of the Consumption Tax Act, any person who had failed to register would be treated as registered from the beginning of the first Consumption Tax period after which it had been obliged to apply for registration or as notified in writing by the Chief Commissioner. He added that all firms exempted from the Consumption Tax were required to register under the Business Licences Act to carry out business legally in Tonga.

72. The representative of Tonga confirmed that from the date of accession Tonga would apply its domestic taxes, including excise and consumption taxes, in full compliance with the relevant provisions of the WTO, including Articles I and III of the GATT 1994, in a non-discriminatory manner to imports from all WTO Members and to domestically-produced goods. The Working Party took note of this commitment.

- **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

73. The representative of Tonga said that Tonga prohibited imports of certain items, and importation of some goods was restricted and required a special licence. The items affected by these provisions are enumerated in Tables 6(a) and 6(b), respectively. He added that Tonga had not established specific import quotas for any product, and had no plans to introduce such quotas.

74. Some Members requested more information on the rationale behind the import prohibition on fireworks, Tonga's definition of indecent articles and seditious matter, the justification for the current restrictions on imported motor vehicles, brandy, whisky and rum, eggs, and cabin and ships biscuits, and any plans to modify or remove these import restrictions.

75. The representative of Tonga replied that the importation of fireworks and indecent articles, including pornography, was regulated for safety reasons and to protect public morals. The Minister of Police could authorize importation of fireworks. Tonga did not manufacture its own fireworks. Indecent articles and seditious matter were defined in accordance with the usual discretionary definition. Motor vehicles had been included on the "restricted list" solely to monitor imports for road safety reasons. Most of Tonga's imports were second-hand vehicles which could represent a danger on the roads. Tonga had no domestic production of motor vehicles, motorcycles or motor scooters, or

parts thereof, and licenses were issued freely by the Minister of Finance and, for left-hand vehicles, by the Minister of Finance and the Minister of Police unless a vehicle was found to be obviously unsafe. Vehicles imported for commercial purposes were considered unsafe if they were more than 10 years old. There was no restriction on the age of vehicles imported for private use. The safety of imported vehicles was evaluated by the customs officer at the wharf. Importers were required to comply with safety requirements for the goods to be released. Importation of eggs was monitored and restricted to protect local poultry farms. Tonga restricted imports of spirits for health reasons.

76. The representative of Tonga confirmed that Tonga would remove its licensing requirements for eggs, cabin and ships biscuits, brandy, whisky, and rum from the date of its accession to the WTO. The Working Party took note of this commitment.

77. The representative of Tonga added that any person or firm wishing to import goods into Tonga needed an import licence, covering each individual consignment. Mixed consignments required separate licenses. The licenses were issued by the Licensing Unit at the Ministry of Labour, Commerce and Industries according to the Licenses Act, Cap. 47. Except for the restrictions noted above, the licensing system was liberal, and procedures were simple and straightforward. Incomplete applications, or failure to abide by established procedures, might lead to rejection of an application. However, applications could be re-submitted and refusals could be appealed to the Minister for Labour, Commerce and Industries, or referred to the court system.

78. Licenses were not transferable among importers, but carried indefinite validity and no penalty applied to unused licenses. The system had been revised to eliminate discriminatory treatment of foreigners, and import licenses were now granted automatically to Tongans and non-Tongans alike. A Trading Licence Screening Committee, which had been considering each application lodged by non-Tongans, had been abolished. Although the licensing system facilitated the monitoring of imports and the collection of statistics, he acknowledged that its principal purpose was to generate revenue for his Government. In 1999, import licenses had raised more than TOP 200,000 (about US\$ 100,000).

79. Some Members reminded Tonga that Article 1:2 of the Agreement on Import Licensing Procedures stated that licensing procedures should be administered in conformity with GATT provisions. Article VIII of the GATT 1994 provided for all non-tariff import fees and charges to be limited in amount to the approximate cost of the services rendered, and not to constitute a tax on imports or exports. Moreover, the Agreement on Import Licensing Procedures required licensing systems to be operated in a transparent, predictable, fair and equitable manner, and it was noted that

the private sector had expressed dissatisfaction with Tonga's system of import (and export) licensing. Tonga was consequently urged to bring its licensing arrangements into conformity with the WTO.

80. The representative of Tonga replied that his Government had reviewed the issues raised. Tonga needed to retain import licensing procedures for monitoring and statistical purposes. Taking into account the views of WTO Members, his Government had amended Tonga's licensing system. The Licences Act, Cap. 47, and thereby the practice of licensing each consignment, would be repealed upon the entry into force of the Business Licence Act, i.e. upon adoption of its implementing regulations by December 2005. Under the new system, importers would have to obtain a business licence for importation. The new Act required business licenses to be issued automatically within 7 days and limited licence fees to the cost of the services rendered (i.e. verification and processing of applications) as required by Article VIII of the GATT 1994 (see Table 4). More detailed information on Tonga's licensing regime is provided in the "Trading rights" section of this Report, paragraphs [47 to 50].

81. The representative of Tonga confirmed that, from the date of accession, Tonga would not introduce, re-introduce or apply quantitative restrictions on imports, or other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreement. The legal authority of the Government of Tonga to restrict or prohibit importation of goods into Tonga would be applied from the date of accession in conformity with the relevant requirements of the WTO, in particular Articles XI, XII, XIII, XVIII, XIX, XX, and XXI of the GATT 1994, and the Agreements on Agriculture, the 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**

82. The representative of Tonga said that Tonga was using the Brussels Definition of Value (BDV) system for the purposes of customs valuation. The present system, set out in the Customs and Excise Act (in Part II, sections 15 and 16), was not based on transaction value as experience had shown that invoices presented to customs in Tonga in some cases did not reflect the price actually paid or payable.

83. In order to assist Tonga in evaluating the key areas where additional legislation and institutions might be necessary, a Member reminded Tonga that transaction value as defined in Article 1 of the Agreement on the Implementation of Article VII of the GATT 1994 was the preferred method of appraisal, followed by the transaction value of identical merchandise, the transaction

value of similar merchandise, the deductive value, computed value, and finally the fallback method. Tonga's current legislation did not appear to provide for any of these methods of valuation. Article 7 of the Agreement prohibited appraisals based on (i) the selling price in the country of importation; (ii) a system providing for the acceptance for customs purposes of the higher of two alternative values; (iii) the price of goods on the domestic market of the country of exportation; (iv) the cost of production other than computed values having been determined for identical or similar goods; (v) the price of goods for export to a country other than the country of importation; (vi) minimum customs values; or (vii) arbitrary or fictitious values. Tonga's legislation would also have to provide adequate protection for the treatment of confidential information in accordance with Article 10 of the Agreement; transparency provisions ensuring the publication of laws, regulations, judicial decisions and administrative rulings regarding the valuation of merchandise (Article 12); provisions granting importers the right to a written explanation of how judicial and administrative valuation decisions had been determined (Articles 11.3 and 16); and bonded entry of merchandise allowing importers to withdraw goods against sufficient surety or deposit to cover the ultimate payment of customs duties when the final determination of the customs value was being delayed (Article 13).

84. The representative of Tonga recognised that Tonga's present valuation rules did not conform to WTO requirements. Tonga planned to introduce a new WTO-compatible system as soon as was practicable. The Customs and Excise Amendment Act 2003, addressing the changes necessary to the valuation system, had been passed by Tonga's Parliament in October 2003. The Act had entered into force on 3 May 2004. However, the Customs and Excise Amendment Act 2003 did not fully comply with the requirements of the Customs Valuation Agreement. In particular, there was no authority for exclusion of genuine interest charges; important definitions, such as "goods of the same class or kind", had been omitted; incorrect tests were applied (180 days instead of 90 days); and the language used departed from that of the Agreement in a number of cases, leading to potential changes in meaning. Consequently, a new Customs and Excise Act 2004 incorporating all the requirements of the WTO Customs Valuation Agreement had been drafted. The draft Act was expected to be submitted to Parliament and adopted in 2005.

85. The representative of Tonga indicated that the implementation of the WTO Customs Valuation Agreement represented a major challenge for his Government. It had originally believed that the major problem for Tonga, in complying with WTO requirements, would be to implement Articles 1-6 of the WTO Customs Valuation Agreement correctly (i.e., use of transaction value and the hierarchy of alternative methods of valuation). As Tonga had begun to move towards compliance with these requirements, it had realized that the provisions of the Agreement were interrelated and that effective implementation of the requirements as a whole would take some time. The Customs

Department was not fully equipped with the appropriate facilities (databases, etc.) to implement the Agreement and customs officials needed to be trained. To this end, Tonga requested a transition period to implement the Agreement on the Implementation of Article VII of the GATT 1994. Tonga was prepared to take a commitment to ensure that any changes made in its laws, regulations and practice during the transition period would not result in a lesser degree of consistency with the provisions of the Agreement on Customs Valuation than existed on the date of accession. In this regard, the Government of Tonga requested that the Working Party grant it a transitional period of approximately two years from the date of its accession to allow it to obtain and utilize technical assistance to assist in the progressive implementation of the obligations of the Agreement, which would be implemented in full starting from 1 January 2007, as detailed in Table 7.

86. During this period, Tonga would ensure that its regulations under current legislation in place and additional legislation implemented during the transition concerning customs valuation would be applied on a non-discriminatory basis to all imports. Further, Tonga would ensure that any changes made in its laws, regulations and practice during the transition period would not result in a lesser degree of consistency with the provisions of the Agreement on Customs Valuation than existed on the date of accession. Tonga would participate in the work of the Committee on Customs Valuation. He added that Tonga would seek out all available technical assistance to ensure that its capacity to fully implement the Agreement upon expiration of the transition period is assured. The new legislation would be in full conformity with relevant WTO provisions. A copy of the text of the proposed amendments had been submitted for review by the Working Party, and it was expected that these amendments would be passed by Parliament in 2005. In response to requests from delegations for more specificity, he proposed that Tonga would proceed to conform its customs regime with the requirements of the Agreement on the Implementation of Article VII of the GATT 1994 in accordance with the action plan reproduced in Table 7, setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step.

Table 7: Action Plan for conformity with the
Agreement on the Implementation of Article VII of the GATT 1994

| Action | Deadline |
|--|---------------------------------|
| Working Party review of text and submission of legislation to the Parliament | [Prior to accession] |
| Parliamentary passage of legislation for WTO-consistent valuation rules | [No later than 1 December 2005] |
| Drafting of regulations for implementation and enforcement of the amended Customs Act | [No later than 1 January 2006] |
| Appointment of staff - assessors, collectors, auditors and inspectors | [No later than 1 July 2006] |
| Development of manuals and operating procedures | [No later than 1 July 2006] |
| Training for customs officials and officers | [No later than 1 August 2006] |
| Training for users | [No later than 1 August 2006] |
| Commencement of new Valuation System. Full implementation of the Agreement on the Implementation of Article VII of the GATT 1994. | [No later than 1 January 2007] |

87. The representative of Tonga confirmed that legislation on the valuation of imports for customs and taxation purposes conforming to the requirements of the WTO Agreement on the Implementation of Article VII of the GATT 1994 had been drafted and was expected to be submitted to the Parliament for enactment in 2005. Tonga would apply fully the Agreement no later than [1 January 2007] according to the action plan in Table 7. During this period, the scope of implementation of other aspects of the Agreement and other measures as described in paragraphs [85 and 86] would be applied by Tonga. The Working Party took note of this commitment.

- Rules of origin

88. The representative of Tonga said that importers were required to provide a combined certificate and invoice for imported goods, including details regarding the country of origin. These details were required for statistical purposes only.

89. A Member stated that Tonga should implement the Agreement on Rules of Origin - under which Tonga would have certain obligations including in regard to the transparency of laws, regulations and practices regarding rules of origin - from the date of accession. Tonga should abide by the transitional disciplines of Article 2 of the Agreement from the date of accession and Tonga's laws should be amended to incorporate the requirements of Article 2(h) and Annex II, paragraph 3(d), i.e. that for non-preferential and preferential rules of origin, respectively, the customs authority will provide upon the request of an exporter, importer or any person with a justifiable cause an assessment of the origin of the import and outline the terms under which it will be provided, and that any request for such an assessment would be accepted even before trade in the goods concerned began. Upon completion of the international work programme for the harmonisation of rules of origin, Article 3 of the Agreement would also apply to Tonga.

90. A Member noted that Tonga had ratified the Pacific Island Countries Trade Agreement (PICTA), which established regional rules of origin. A Rules of Origin Committee had been formed and would soon begin to implement the specific rules of origin contained in PICTA, which complied with the WTO Agreement on Rules of Origin. This Member consequently asked Tonga to confirm that its preferential and non-preferential rules of origin would comply with the WTO Agreement on Rules of Origin upon accession.

91. In reply, the representative of Tonga confirmed that the PICTA provisions were its only preferential rules of origin and that Tonga had no non-preferential rules of origin. He added that Tonga would incorporate the provisions of the WTO Agreement on Rules of Origin into the new Customs and Excise Bill 2004 currently being drafted. He expected Parliament to pass this legislation in 2005.

92. The representative of Tonga confirmed that, from the date of accession, Tonga's preferential and non-preferential rules of origin would comply fully with the WTO Agreement on Rules of Origin, including the provisions of Article 2(h) and Annex II, paragraph 3(d) of the Agreement, i.e., that for non-preferential and preferential rules of origin, respectively, the customs authority will accept requests from an exporter, importer or any person with a justifiable cause for an assessment of the origin of the import. Tonga would also abide by the relevant WTO provisions on transparency and the provision of information about its rules of origin and their application. The Working Party took note of this commitment.

- **Preshipment inspection**

93. The representative of Tonga said that that Tonga's legislation had no provision for pre-shipment inspection.

94. The representative of Tonga confirmed that if in the future Tonga engaged the services of a preshipment inspection enterprise or preshipment inspection requirements were introduced, it would be on a temporary basis and in conformity with the requirements of the Agreement on Preshipment Inspection. Tonga would take full responsibility to ensure that such enterprises operating on its behalf complied with the provisions of WTO Agreements, including the Agreements on Customs Valuation, Import Licensing Procedures, and Technical Barriers to Trade. Provision would be made that decisions by such firms could be appealed by importers in the same way as administrative decisions taken by the Government of Tonga. Tonga would also give due consideration to the recommendations of the Working Party on Preshipment Inspection of 2 December 1997 and

subsequent recommendations issued by that Working Party. The Working Party took note of these commitments.

- **Anti-dumping, countervailing duties, safeguard regimes**

95. The representative of Tonga said that Tonga had no specific legislation providing for the imposition of anti-dumping, countervailing duty, or safeguard measures, and had no plans to introduce such legislation. In response to a Member's comment, he confirmed that Tonga did not intend to use tariff flexibility to address unfair or excessive imports.

96. The representative of Tonga confirmed that Tonga would not apply any anti-dumping, countervailing or safeguard measures until it had implemented and notified appropriate laws in conformity with the provisions of the WTO Agreements on these matters. Tonga would ensure the full conformity of any such legislation with the relevant WTO provisions, including Article 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 and notified, Tonga would only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions. The Working Party took note of these commitments.

B. EXPORT REGULATION

- **Customs tariffs, fees and charges for services rendered, application of internal taxes to exports**

97. The representative of Tonga said that the requirements applicable to exportation were similar to those affecting imports. Under the new Business Licence Act 2002, exporters were required to hold a valid business licence for exporting. The procedures and conditions to obtain a business licence, including the fees to be paid, were the same as for importation (see paragraphs [48 and 80] of this Report). Tonga did not levy export duty on any item.

98. The representative of Tonga confirmed that from the date of accession, Tonga would apply all fees and charges for services rendered to exports in accordance with WTO Agreements, in particular Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994. The Working Party took note of this commitment.

- **Export restrictions**

99. The representative of Tonga said that Tonga prohibited exportation of raw coral and specified Tongan cultural articles. Certain other items were restricted and needed special authorization to be exported. Approval from the Director of Health was required for exportation of medical biological and organic products; chemicals; drugs including narcotic and barbiturates; poisons; and second-hand clothing. The Director of Agriculture authorized exports of veterinary biological and organic products; animals, birds, fish and reptiles; insects and gastropods; plants and fungi; seeds; and trees and timber. No quantitative restrictions applied to exports from Tonga, but - as noted above - a general export licensing procedure, applied on a consignment basis, was being enforced for revenue purposes.

100. Asked to explain the export restrictions on agricultural products, he added that exports of rare and indigenous species (plants and animals) were restricted for environmental reasons. Size and maturity, as well as requirements established in the country of importation, were determining factors in the exportation of some agricultural products. Tonga subjected medical, biological and organic products to quarantine to prevent the spread of diseases, and narcotics-related drugs and chemicals were restricted. He cited health reasons to justify Tonga's export restriction on second-hand clothing. He confirmed that the application and approval procedures were identical for Tongans and non-Tongans.

101. The representative of Tonga stated that from the date of accession, Tonga's applied laws and regulations regarding export restrictions would be in conformity with the relevant provisions of the WTO, including Articles XI, XVII, XX and XXI of the GATT 1994. The Working Party took note of this commitment.

- **Export subsidies**

102. The representative of Tonga said that TongaTrade had been established as a "search engine" for local producers exploring new potential markets overseas. TongaTrade identified the markets through research and gap analysis, assisted and facilitated the development of exporters' marketing skills, and facilitated the development and implementation of market management plans for groups of products.

103. Export financing was available from the normal commercial banking system or through the Tonga Development Bank (TDB). The TDB provided facilities including term loans - on purely commercial terms - for the production of commodities such as squash, vanilla and root crops; loans to

cover costs such as freight, inputs (e.g. fertilizer and chemicals) and marketing; as well as loans to companies purchasing export commodities, such as vanilla. Together with the Ministry of Agriculture and Forestry, the TDB administered an export diversification fund whereby the TDB provided loans to companies or registered societies for all matters pertaining to the export of produce. The fund had assisted in the development of squash exports in the early 1990s. All credits extended under this fund, in all TOP 1.05 million (US\$ 525,000), had been fully repaid. In addition, a Venture Capital Fund had been established to provide equity capital support for the development of viable private sector projects. Capital had only been provided to successful companies wishing to expand their activities. The facility had been available to any type of business and not calculated in relation to exports, but priority had been given to projects promoting exports or import substitution, foreign exchange earnings, the creation of employment, training opportunities and the introduction of new skills. The maximum amount invested in a single project had been TOP 50,000 (about US\$ 25,000). Only three projects had been financed over a period of three years, and the Venture Capital Fund had now been terminated.

104. The Tonga Reserve Bank had established an export guarantee scheme to guarantee loans from overseas sources. However, this scheme had never been used. The Government of Tonga had, on an ad hoc basis, provided support to growers of squash pumpkin against losses caused by drought and other natural disasters. Support provided to squash pumpkins growers would be detailed in Tonga's Domestic Support Tables. He stressed these measures had never involved any export price or similar guarantee.

105. The representative of Tonga added that Tonga benefited from a number of export market development programmes and schemes administered elsewhere. The Forum Secretariat's export market development programme financed marketing missions to Australia, New Zealand and Japan for companies in Tonga with export potential. The programme was offered through the offices of the South Pacific Trade Commission in Sydney (Australia), Auckland (New Zealand) and Tokyo (Japan). These offices also financed trade fairs and exhibitions to promote products from the Pacific Islands. The Forum Secretariat supported private sector development in Pacific Island Countries, and operated a marketing support fund directed towards export-oriented industries. In addition, the Commonwealth Secretariat had funded participation by Tongan companies in trade fairs and exhibitions and provided technical assistance to export-oriented industries in Tonga. The ACP-EU Centre for Development of Industry financed marketing studies and capital for joint ventures between European Communities' and Tongan enterprises, especially those with an export orientation, and the European Commission, through the European Development Fund, had funded market studies for export-oriented industries in Tonga and assisted in the production of promotion and marketing material.

106. Tonga's Industrial Development Incentives Act provided for import duty exemptions for holders of a Development Licence in respect of imported semi-finished products and/or raw materials, including packaging materials, used in the processing, manufacturing, or assembly of final products destined for re-exportation. Importers holding a Development Licence were required to pay customs duties in their entirety upon importation of the goods. The duties were refunded at the time of exportation of the finished products upon presentation, to the Controller of Customs, of sufficient evidence. The system therefore corresponded to a duty drawback scheme. However, in practice, goods imported for re-exportation were exempted from customs duties at the initial port of clearance. He added that Tonga did not have a system to monitor the re-exportation of goods. He recalled the discussion that had taken place in the Working Party on Tonga's investment regime and the commitment undertaken by Tonga to formally remove any of the criteria under the IDI Act that were inconsistent with relevant WTO provisions (paragraph 22). He confirmed that the IDI Act would be suspended on 1 July 2006 and subsequently repealed after reduction of the single customs duty rate to 15 per cent. Benefits granted under the Act would thereby be eliminated.

107. [The representative of Tonga confirmed that his Government did not maintain subsidies which met the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, and did not seek transitions to provide for the progressive elimination of such measures within a fixed period of time. He further stated that Tonga would not introduce such prohibited subsidies in the future, and would apply export promotion measures in conformity with WTO requirements. The Working Party took note of these commitments.]

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

108. The representative of Tonga said that his Government's industrial development policies included encouraging private sector development, through the Industrial Development Incentive (IDI) Act; improving efficiency through skills training; promoting export-oriented manufacturing; developing traditional and non-traditional agricultural products having potential for added value through processing, notably cassava, kava, vanilla and pumpkins; and establishing TongaTrade as a centralised agricultural and commodity export promotion wing of the Ministry of Labour, Commerce and Industries.

109. Some Members stated that some of the benefits granted to holders of Development Licenses issued in accordance with the Industrial Development Incentives Act such as exemption from income tax for up to five years; exemption from withholding tax for the same period; accelerated depreciation

of assets; customs duties exemptions on imported goods; and a 50 per cent exemption from the Port and Services Tax would - to the extent that these benefits were made contingent on export performance or import substitution in law or in fact - appear to violate the WTO Agreement on Subsidies and Countervailing Measures. Tonga was thus urged to amend the Industrial Development Incentives Act.

110. The representative of Tonga recalled the discussion that had taken place in the Working Party on Tonga's investment regime and in particular the commitment made by Tonga to repeal the Industrial Development Incentives Act (paragraph 22). He confirmed once again that the Foreign Investment Act did not provide benefits contingent on export performance, import substitution or local content requirements.

111. The representative of Tonga stated that his Government did not currently, and would not in the future, grant any subsidies, including export subsidies, which met a definition of a prohibited subsidy within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures. The representative of Tonga further confirmed that as from the date of accession Tonga's laws would implement these commitments and that any subsidy programs provided by his Government after accession would be administered in conformity with the Agreement on Subsidies and Countervailing Measures and that all necessary information on notifiable programs would be notified to the Committee on Subsidies and Countervailing Measures according to Article 25 of the Agreement upon entry into force of Tonga's Protocol of Accession. The Working Party took note of these commitments.

- **Technical barriers to trade, sanitary and phytosanitary measures**

112. Some Members stated that Tonga would need to implement fully the WTO Agreement on Technical Barriers to Trade as of the date of WTO accession, and requested detailed information on Tonga's standards and inspection regime, including participation in international standards organizations such as the Codex Alimentarius Commission or the Organization of International Epizootics, procedures for incorporation of international standards into Tonga's standards regime, any deficiencies in the present regime, and the steps Tonga would be taking to remedy these deficiencies prior to WTO accession. Tonga was reminded that the WTO TBT Agreement did not require Tonga to implement standards in any area, but any standards and conformity assessment systems introduced in the future would need to be consistent with WTO requirements.

113. The representative of Tonga said that Tonga had no specific Standardization Act or technical regulations in place. The Public Health Act 1992, which empowered the Minister for Health to make

regulations in relation to food standards, had so far not been used for this purpose. Thus, Tonga had not adopted any technical regulations, standards or conformity assessment procedures to date, and had no plans to do so. The Consumer Protection Act 2000 did refer to the implementation of approved standards, including labelling requirements, to protect consumers, but no standards had been established. Foreign goods entering Tonga were accordingly not subject to any particular standards-related procedures or requirements. As to the establishment of a TBT Enquiry Point, the WTO Desk at the Ministry of Labour, Commerce and Industries would serve this function.

114. In response to questions raised, the representative of Tonga restated that Tonga had not adopted any technical regulations, standards or conformity assessment procedures to date, and currently had no plans to do so. Tonga had already nominated an enquiry point, being the WTO Desk at the Ministry of Labour, Commerce and Industries.

115. The representative of Tonga confirmed that if, in the future, technical regulations or standards and conformity assessment procedures were to be introduced, Tonga would neither adopt nor implement these procedures until it had implemented and notified appropriate laws in conformity with the Agreement on Technical Barriers to Trade. This legislation would specify the authority responsible for making notifications to the WTO, the publication to be used for the publication of proposed measures, the procedure to be used for taking comments into account, the government body responsible for developing technical regulations, etc. The Working Party took note of these commitments.

116. The representative of Tonga said that the Quarantine Division of the Ministry of Agriculture and Forestry and the Ministry of Health was responsible for Tonga's sanitary and phytosanitary measures relating to foreign trade in animals, plants and related products. The principal pieces of SPS-related legislation were the Plant Quarantine Act (Cap 127) 1988 together with the Amendments to that Act and its associated Regulations 1995 and Fee Regulations 1997; the Animal Diseases Act (Cap 146) 1978; and the Public Health Act 1992 and the Amendments to that Act. The Quarantine Act Cap. 77, gave the Director of Health powers to impose quarantine restrictions for the protection of public health. Imports regulations required a code of conduct for imports and the release of imported goods, including initiation of pest risk analysis or pest risk assessment. He confirmed that Tonga had the capability of doing its own risk assessments. Tonga's legislation did not refer specifically to scientific evidence, but regulations were, in fact, based on this principle. Tonga had no measures establishing tolerances for the use of additives or contaminants.

117. Asked to what extent Tonga's standards aligned with relevant international standards, the representative of Tonga added that Tonga based its SPS measures on international standards to the

extent possible. Tonga was a member of the Codex Alimentarius Commission, the Asia Pacific Plant Protection Commission (APPPC) and the Pacific Plant Protection Organization (PPPO), but not yet a contracting party to the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). Tonga also received assistance from regional organisations, in particular the Secretariat of the PPPO and, on the animal side, the Secretariat of the Pacific Community. The Plant Quarantine Act and its Amendments were aligned with international standards such as those of the FAO (Food Agriculture Organisation) and the IPPC. The Pacific Plant Protection Organisation operated actively to set standards fitting to Pacific requirements. Such standards were submitted to the member countries (Forum Island Countries including New Zealand and Australia) for funding and implementation. In addition, the PPPO reviewed and drafted standards regulations of any member. The PPPO met every three years and was chaired by Tonga. Tonga used FAO and OIE standards as a basis for its own standards relating to animals and animal products. Regarding the principle of equivalence, Tonga recognized different measures achieving the same level of protection, and based its regulations in this respect on those of Australia and New Zealand. Importation was only prohibited when necessary to protect human, animal or plant life and health. A list of products prohibited in accordance with the Plant Quarantine Act and in the Animal Diseases Act is reproduced in Table 8.

118. Some Members requested more detailed information and specific legislative references to be able to evaluate Tonga's SPS regime and its consistency with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. For relevant legislation or administrative procedures not yet in place, Tonga was asked to indicate when these laws or procedures would be developed. A Member noted that Tonga's regime did not appear to be consistent with the SPS Agreement on the issue of transparency. Tonga would need to have notification procedures in place so that its trading partners could be made aware of changes in Tonga's quarantine measures, for example, quarantine arrangements against foot and mouth disease.

119. In reply, the representative of Tonga noted that three new Acts had been passed by the Legislative Assembly in 2002, namely the Animal Diseases Bill (Amendment) Act, the Agricultural Commodities Export Act, and the Pesticides Act (2002). FAO and South Pacific Commission consultants had assisted in the drafting of this legislation, which should be in conformity with international requirements. Tonga did not yet have legislation making observation of the SPS Agreement mandatory. [Such legislation, together with regulations containing the administrative procedures necessary to administer the SPS Agreement, would come into force as from the date of Tonga's accession to the WTO. The regulations would specify, for instance, the enquiry point, the authority responsible for making notifications to the WTO, the publication to be used for the publication of proposed measures, the procedure to be used for taking comments into account, the

Government body responsible for developing regulations, conducting risk assessments and control, as well as inspection and approval procedures.] [Tonga had already nominated an enquiry point, being the Director of the Ministry of Agriculture, Forestry and Food. Tonga was willing to accept a Protocol commitment that if, in the future, SPS regulations or standards and conformity assessment procedures were to be introduced, Tonga would neither adopt nor implement these procedures until it had implemented and notified appropriate laws in conformity with the Agreement on SPS.]

120. He confirmed that Tonga had the technical infrastructure in place required to implement the SPS Agreement, including an operational SPS Enquiry Point in the person of the Director of the Ministry of Agriculture, Forestry and Food. He provided a note on the implementation and administration of the SPS Agreement, circulated in document WT/ACC/TON/9. Tonga was ready to respond to all reasonable questions regarding its sanitary and phytosanitary measures, which should be addressed to the Director of Agriculture at the Ministry of Agriculture and Forestry. The Ministry would be responsible for making notifications to the WTO and ensuring that transparency obligations were met on an ongoing basis. The Ministry was seeking financial assistance for the development of an SPS information web site, and would welcome any funding provided by WTO Members as part of their capacity building assistance to developing countries.

121. Concerning quarantine measures against food and mouth disease, Tonga had taken precautionary measures by not allowing importation of animals or animal product from foot and mouth disease infected countries and regions. Tonga watched high risk vessels coming from infected countries, and screened air passengers arriving from infected destinations. He stressed that importation of the items listed in Table 8 was not prohibited *per se*, but that the pest risk analysis system used by Tonga required those applying for import permits to provide technical and biological data to the Ministry of Agriculture and Forestry indicating that the species were free of the regulated quarantine pest concern or, if an effective treatment was available, import permits would be issued with additional quarantine requirements. In response to a Member who felt that it would be necessary to amend the relevant legislation to clarify the fact that "prohibited" products were actually only subject to "restriction", i.e. import permits, the representative of Tonga replied that, in his view, there was no need to revise the legislation as several sections of the Plant Quarantine Act 1998 and Plant Quarantine Regulations 1995 provided an explanation of the term "prohibited".

122. The representative of Tonga confirmed that Tonga would neither adopt nor implement technical regulations or standards and conformity assessment procedures until Tonga had implemented and notified appropriate laws in conformity with the provisions of the Agreement on Technical Barriers to Trade. Tonga would ensure the full conformity of any such legislation with the

Agreement on Technical Barriers to Trade. The representative of Tonga also confirmed that Tonga would apply the Agreement on the Application of Sanitary and Phytosanitary Measures from the date of accession without recourse to any transition period. The Working Party took note of these commitments.

- **Trade-related investment measures**

123. The representative of Tonga said that, other than the measures set out in the Industrial Development Incentives Act (1978) in relation to the Development Licence programme, Tonga had no specific measures related to investment in trade-related businesses. These measures were, in his view, not inconsistent with the WTO Agreement on Trade-Related Investment Measures, and Tonga therefore did not intend to notify any measures under the Agreement.

124. Having reviewed the Industrial Development Incentives Act, some Members considered that the Act referred to import substitution, export performance or local content criteria which would constitute trade-related investment measures. It was noted that, even though these provisions did not appear to be applied in practice, the possibility to deny or revoke an industry's licence if export requirements were not met qualified as a TRIM. Members sought a commitment that the Industrial Development Incentives Act would be amended, and that the revised Act and associated practices and decision-making procedures would be consistent with the WTO, including the TRIMs Agreement.

125. The representative of Tonga recalled the discussion that had taken place in the Working Party on Tonga's investment regime and in particular the commitment made by Tonga to repeal the Industrial Development Incentives Act (paragraph 22). The Foreign Investment Act aimed at regulating foreign investment. The Act had been passed by Parliament and would enter into force upon finalization of the regulations. The representative of Tonga stated that, in his view, the Foreign Investment Act was consistent with trade-related investment measures under the GATT 1994.

126. The representative of Tonga said that Tonga would not maintain any measures inconsistent with the TRIMs Agreement, that Tonga's laws would implement this commitment, and that Tonga 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 entities**

127. Noting that the Government of Tonga had had a stake in 26 enterprises in 1998, some Members requested Tonga to provide information on any state trading enterprises operating under exclusive or special privileges in relation to imports or exports. Specific questions were raised

concerning the activities of Tonga Investments Ltd., Frisco, Primary Produce Limited, Royal Beer Co. Ltd., Leiloa Duty Free Shops (Tonga) Ltd., Sea Star Fishing Co. Ltd, Tonga Timber Ltd., and the Government Supplies Department.

128. The representative of Tonga replied that a description of the status and operations of enterprises wholly and partially owned by the Government of Tonga could be found in paragraphs [25 to 27] of this report. None of the enterprises listed enjoyed a government monopoly in their activities. A privatization paper had been endorsed by the Cabinet, identifying Leiloa Duty Free as a candidate for privatization in 2003/04. In his view, Tonga maintained no State-trading enterprises as defined by GATT Article XVII and the Understanding on the Interpretation of Article XVII of the GATT 1994.

129. The representative of Tonga confirmed that Tonga would apply its laws and regulations governing the trading activities of any State-owned enterprises and State-owned or other enterprises with special or exclusive privileges and would act in full conformity with the provisions of the WTO Agreement, in particular Article XVII of the GATT 1994 and the Understanding on that Article and Article VIII of the GATS. Tonga would notify any enterprise falling within the scope of Article XVII. The Working Party took note of these commitments.

- **Free zones, special economic areas**

130. The representative of Tonga said that Tonga had no designated free zones or free economic zones.

131. The representative of Tonga said that any free zones or special economic areas which it established would be fully subject to the coverage of its commitments in its Protocol of Accession to the WTO Agreement and that Tonga would ensure enforcement of its WTO obligations in those zones or areas. In addition, goods produced in any such zones or areas under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of Tonga, including the application of tariffs and taxes. The Working Party took note of these commitments.

- **Government procurement**

132. The representative of Tonga said that no specific procedures applied to goods and services purchased within Tonga. He confirmed that local suppliers did not benefit from any preferential margin in government procurement. His government had appointed agents in Australia and New Zealand to handle procurement of goods and services to be obtained outside Tonga.

133. Procurement of supplies was organized through public tender, open to all local and overseas suppliers. All bids were evaluated at the closing date of the Tender, and the lowest-price bidder would be awarded the contract or order. A specific form ("Overseas Requisition") would be prepared for winning bids from overseas. The form was endorsed by Treasury and approved by the Prime Minister before being sent to the Government Agent in the country concerned. The Overseas Agent would place the order with the supplier, arrange transportation, verify specification expedites etc., pay the supplier and bill the Government of Tonga.

134. Asked whether Tonga intended to initiate negotiations for accession to the Agreement on Government Procurement, the representative of Tonga noted that this plurilateral agreement had not been drawn up with the situation of very small developing countries, such as Tonga, in mind. Few, if any, Tongan government contracts would be covered due to the value thresholds applied under the Agreement. Moreover, large contracts were often implemented in the context of economic aid programmes, which would be covered by the procurement rules of the organisations concerned.

- **Agricultural policies**

135. The representative of Tonga said that the policies of his Government regarding trade in agricultural products did not differ significantly from those applicable to trade in general. The establishment of TongaTrade and the facilities offered by the Tonga Development Bank were aimed at encouraging the development and diversification of agricultural and commodity exports. He stressed that Tonga had not introduced any price support or export subsidy measures. He confirmed that expenditures for infrastructural facilities required for the facilitation of export were limited to the provision or construction of capital works only, and did not constitute subsidies to inputs or operating costs. The fees paid by exporters for these types of facilities were commensurate to the costs of the services rendered.

136. The policies of his Government were geared towards diversifying the agricultural sector through strengthening and developing infrastructural and support mechanisms such as the introduction of new crop varieties, market development, new quarantine and new methods of treatment for produce, and to provide continuous assistance to farmers.

137. The representative of Tonga provided information on domestic support and export subsidies in agriculture for the period 1996/97 to 1998/99 in document WT/ACC/SPEC/TON/3 and Revisions 1 and 2. He noted that all support recorded during this period qualified as "Green Box" measures exempt from the reduction commitment. His Government provided a number of general service measures, mainly through the Ministry of Agriculture and Forestry, in part financed by donor

countries and agencies. The figures provided in the supporting tables reflected the Government of Tonga's financial contribution to these measures.

138. Tonga's commitments on agricultural tariffs and on domestic support and export subsidies for agricultural products are contained in the Schedule of Concessions and Commitments on Goods (document WT/ACC/TON/[]/Add.1) annexed to Tonga's Protocol of Accession to the WTO.

- **Trade in civil aircraft**

139. A Member noted that Tonga exempted ground equipment and technical supplies required for use at airports in connection with air services from customs duty, and asked whether Tonga would consider binding its customs duties and other revenue charges on civil aircraft and parts at zero in its Schedule of Concessions and Commitments on Goods.

140. The representative of Tonga confirmed that, prior to 1 April 2005, ground equipment and technical supplies for use at airports in connection with air services were exempt from customs duties, but not from the 20 per cent Port and Services Tax. Under the new taxation regime, aircraft and aircraft parts for both domestic and international airlines were subject to the Consumption Tax. However, in the case of international airlines, the tax was refunded upon departure of the aircraft from Tonga. As for the tariff rate to be applied to aircraft and aircraft parts, it was still to be finalized. He added that the tariff on aircraft and parts would not have a protective effect as Tonga had no domestic production of these goods.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **GENERAL**

141. The representative of Tonga provided information on the implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in document WT/ACC/TON/6.

- **Intellectual Property Authorities**

142. Authorities responsible for policy formulation and implementation included the Intellectual Property and Company Registration (IPCR) Office, accountable for the implementation of intellectual property legislation; the Hon. Minister of Labour, Commerce and Industries, the Minister responsible for the Industrial Property Act 1994, the Copyright Act 2002, the Protection of Geographical Indications Act 2002, the Protection of Layout-Designs (Topographies) of Integrated Circuits Act

2001, and the Unfair Competition Act 2002; and the Supreme Court, responsible for settling intellectual property disputes. All intellectual property regulations had to be approved by the Cabinet.

- **Intellectual property legislation**

143. The representative of Tonga said Tonga would amend its intellectual property legislation to ensure consistency with WTO intellectual property rules and obligations. The main pieces of Tonga's current intellectual property regime were the Industrial Property Act 1994, the Protection of Geographical Indications Act 2001, the Protection of Layout-Designs (Topographies) of Integrated Circuit Act 2001, the Copyright Act 2002, and the Protection of Unfair Competition Act 2002. The Industrial Property Act had been implemented since 1 February 2000, the Copyright Act had been enacted and was expected to be implemented by 1 July 2006, and regulations implementing the Protection of Geographical Indications Act, the Protection of Layout-Designs (Topographies) of Integrated Circuits Act, and the Unfair Competition Act were in preparation.

144. Some Members were concerned that several TRIPS requirements, in particular the most-favoured nation and national treatment provisions of the TRIPS Agreement, had not been included in Tonga's legislation. The representative of Tonga acknowledged that Tonga's current intellectual property regime did not conform fully to WTO requirements. Further work would be needed to bring its legislation into conformity with WTO rules and obligations. He accordingly requested that Tonga be granted a transitional period permitting Tonga to complete this process after its accession to the WTO. Technical assistance would be required to help introduce the necessary legislative changes.

- **Participation in international intellectual property agreements**

145. The representative of Tonga said that Tonga had become member of the World Intellectual Property Organisation on 14 June 2001, and had been a party to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works as of the same date. These two conventions were self-executing under Tonga's legal regime. His Government was also considering membership in the Patent Cooperation Treaty, the Madrid Protocol and Agreements, and the Hague Agreement, and was seeking more information on the Geneva Phonogram Convention and the WIPO Copyright Treaty. A paper was being prepared for Tonga to join the WIPO Copyrights Treaty, the WIPO Performance and Phonogram Treaty, and the 1961 Rome Convention.

- **SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**

- **Copyright and related rights**

146. The representative of Tonga said that the Copyright Act of 1985, revised in 1987 and 1988, had provided some protection to literary and dramatic works. However, the Act was not entirely compliant with the TRIPS Agreement, and its entry into force had been delayed due to lack of implementing copyright regulations. The Act required revision to provide protection for computer programmes as literary works under the Berne Convention 1971; databases by copyright; rental rights for owners of rights in films, sound recordings, phonograms and computer programmes; protection to broadcasting organizations to control the use of the broadcast signals for a minimum of 20 years; and to protect performers from unauthorized recording and broadcasting of live performances.

147. He added that Parliament had passed a new law - the Copyright Act 2002 – to ensure conformity with the TRIPS Agreement. The Act, which would be implemented by 1 July 2006, repealed the existing copyright legislation.

- **Trademarks, including service marks**

148. The representative of Tonga said that trademarks were protected in accordance with the Industrial Property Act 1994, Part V and VI. Protection for well known trademarks or service marks was provided for in Part V, Section 26 (2) (e) of the Act. He noted that some provisions of the TRIPS Agreement, notably Articles 15.4 (nature of the goods and services), 17 (exceptions) and 20 (special requirements), had not been included in Tonga's existing legislation, but would be covered in the new legislation and regulations that would be introduced to ensure full conformity with the requirements of the WTO TRIPS Agreement. Amendments to the Industrial Property Act 1994 had been endorsed by the Cabinet and submitted to the Law Reform Committee.

- **Geographical indications, including appellations of origin**

149. The representative of Tonga said that geographical indications were protected under the Protection of Geographical Indications Act 2001. The Act, was in his view, in full compliance with the requirements of the TRIPS Agreement. Implementing regulations had been endorsed by the Cabinet and submitted to the Law Reform Committee.

- **Industrial designs**

150. The representative of Tonga said that industrial designs, including textile designs, were protected under the Industrial Property Act 1994 (Part IV) and the Intellectual Property Regulations 1998. Amendments to the Industrial Property Act 1994 had been endorsed by the Cabinet and submitted to the Law Reform Committee.

- **Patents**

151. The representative of Tonga said that the scope of patentability, the rights conferred by a patent and the criteria under which non-voluntary licenses were granted, were laid down in the Industrial Property Act 1994 and in the Industrial Property Regulations 1998. The Act had been in force since 1 February 2000. The relevant provisions of the Act and regulations were, in his view, in compliance with the requirements of the TRIPS Agreement. Tonga was not yet a party to the Patent Cooperation Treaty, but was considering membership.

152. The Intellectual Property and Company Registration (IPCR) Office acted as Tonga's Patent Office. Patent holders from third countries could apply for registration in accordance with the Industrial Property Act 1994. The Law afforded patent protection for any invention, whether a product or process, in any field of technology if it was new, involved an inventive step, and was industrially applicable. Applications for patents were to be made using Form 1, prescribed in the Industrial Property Act 1994, and submitted to the IPCR Office. Tonga had an agreement with IP Australia for it to conduct technical examinations of inventions and to provide search reports as to the patentability of inventions. Patent terms of up to 20 years from the filing date were available.

- **Plant variety protection**

153. The representative of Tonga said that plant varieties were currently not protected under any legislation in Tonga. However, a Plant Variety, Seed and Seedlings Bill was being drafted with the assistance of UPOV.

- **Layout designs of integrated circuits**

154. The representative of Tonga said that protection of layout designs of integrated circuits was provided for in the Protection of Layout-Designs (Topographies) of Integrated Circuit Act 2001. Regulations implementing the Layout Designs Act had been endorsed by the Cabinet and submitted to the Law Reform Committee. The relevant provisions of the Act and regulations were, in his view, in full compliance with the requirements of the TRIPS Agreement.

- **Requirements of undisclosed information, including trade secrets and test data**

155. The representative of Tonga said that Tonga unfair commercial use of undisclosed data was protected in accordance with Section 9 of the Protection Against Unfair Commercial Act 2002. Pursuant to this Act, any act or practice, in the course of industrial or commercial activities, that resulted in the disclosure, acquisition, or use of secret information without the consent of the person lawfully in control of that information (the rightful holder) and in a manner contrary to honest commercial practices constituted an act of unfair competition. Information was considered secret if (i) it was not generally known among or readily accessible to persons within the circles that normally dealt with that kind of information, (ii) had a commercial value because it was secret, and (iii) the rightful holder had taken reasonable steps to keep it secret. Secret tests or other data submitted to a competent authority for marketing approval of pharmaceutical or agricultural chemical products using new chemical substances were protected against disclosure, except where necessary to protect the public or where steps had been taken to ensure that the data were protected against unfair commercial use. The term of protection was determined by the court upon application, taking into account the nature of the tests or data and the efforts and expenditure involved, but should not be inferior to five years, except in exceptional circumstances. Prior to issuance of marketing approval of any pharmaceutical and agricultural chemicals products, the relevant Ministries in Tonga would determine the existence of a patent covering a product for which an application for marketing approval had been filed by a party other than the patentee, and must not approve such application for marketing approval until the date of the expiration of such patent.

- **MEASURES TO CONTROL ABUSE OF INTELLECTUAL PROPERTY RIGHTS**

156. The representative of Tonga said that measures to control the abuse of intellectual property rights were included in the Industrial Property Act 1994 and the Protection of Unfair Competition Act 2002. However, Tonga's legislation would need to be amended to ensure that such measures were in line with TRIPS requirements. Amendments to the Industrial Property Act 1994 and an Enforcement and Border Measures Bill had been endorsed by the Cabinet and submitted to the Law Reform Committee. He added that his Government had launched a limited scale public awareness programme on intellectual property regulations and the IPCR Office was organizing training for customs officials. Further training would include police forces.

157. Complaints concerning intellectual property matters could be lodged with the IPCR Office. Decisions of the IPCR could be appealed to a court.

- **ENFORCEMENT**

158. The representative of Tonga indicated that Tonga would need technical assistance to complete the necessary legislative changes to implement the TRIPS Agreement and to ensure that the Agreement's provisions were being observed, including the introduction of provisions addressing civil judicial procedures and remedies, provisional measures, administrative procedures and remedies, special border measures, and criminal procedures, as well as to carry out additional steps to implement and enforce the TRIPS Agreement, e.g. the training of personnel and the development of infrastructure. In answer to questions raised, he stated that pirated goods were sold in Tonga although the majority of the public did not recognize them as such. His Government was introducing programmes to raise the awareness of intellectual property rights.

159. The representative of Tonga said that Tonga had enacted new legislation in recent years that provided for WTO-consistent rules for the protection of intellectual property in several areas, including the Copyright Act 2002, the Protection of Geographical Indications Act 2001, and the Protection of Layout Designs (Topographies) of Integrated Circuit Act 2001. Section 6(1)(f) of the Copyright Act 2002 prohibited the importation of copies of copyright works without the permission of the right holder. However, importation of such goods was allowed for personal use under Section 15 of the Act. He acknowledged that further work would be needed in other areas to implement new legislation to bring Tonga's intellectual property regime into conformity with the WTO Agreement on TRIPS. Existing legislation and regulations, covering Patents, Industrial Property, Trademarks and services marks would need amendment. Amendments to the Industrial Property Act 1994, as well as draft regulations for the Geographical Indication Act 2002 and the Protection of Layout Designs (Topographies) of Integrated Circuits Act 2002, had been endorsed by the Cabinet and submitted to the Law Reform Committee for verification before submission to the Parliament. All these texts would be circulated to the Working Party for review prior to the conclusion of the negotiations. The Government of Tonga intended to enact these amendments and implement the relevant additional regulations by 1 July 2006.

160. In addition, an Enforcement of Intellectual Property Rights including Border Measure Bill, known as the Enforcement Bill, had been drafted. The draft provided measures to remedy or prevent the violation of intellectual property rights. It empowered the Minister to establish a cooperative body composed of officials from the Customs and Trade Department, the Police, and Intellectual Property to carry out enforcement of intellectual property rights. The Enforcement Bill did not impose any criminal penalties for the infringement of intellectual property rights. It did not stipulate any specific civil penalties, but it established procedures and measures to be followed by the Court and the

Customs Department in the event of infringement or imminent infringement actions. Measures and remedies to be ordered by the Court included injunctions to prevent further infringement or imminent infringement, provisional measures to prevent likely irreparable harm of imminent infringement, damages, compensation, the obligation for the infringer to relay information to the right holder regarding the counterfeit or pirated goods, destruction of the pirated copyright goods and/or counterfeit trademark goods, and any other remedy provided for in Tongan law. Pursuant to the Section on "Border Measures by the Customs Department" of the Bill, Customs had the authority to suspend clearance of counterfeit trademark goods and pirated copyright goods (i) upon order of the Court or (ii) upon the Customs Department's own initiative (as a temporary measure to enable the right holder to apply to the court to suspend customs clearance). The Bill had been endorsed by the Cabinet and submitted to the Law Reform Committee.

161. Asked about criminal and civil penalties for infringement of intellectual property rights, the representative of Tonga said that infringement of owners' rights was punishable by a fine of TOP 5,000 and/or five years imprisonment pursuant to Section 43(4) of the Industrial Property Act 1994. All complaints regarding intellectual property infringements should be lodged with the Supreme Court, except in the case of opposition to the registration of marks, which should be lodged with the IPCR Office. Responding to questions, he reminded the Working Party of the extreme smallness of Tonga's economy, which limited the gains of rightholders in upholding their rights, and thus their inclination to pursue violations of their rights in Tonga.

162. At present key Ministries lacked expertise about the obligations created under the TRIPS Agreement. Tonga recognized that cooperation with other Forum Group countries in the area of intellectual property protection would be useful, and membership of the Geneva, Brussels, UPOV and WIPO Conventions, the Patent Cooperation Treaty, and the Madrid Protocol would facilitate compliance with the TRIPS Agreement. Tonga intended to accede to these treaties by 1 January 2006. Tonga was a party to both the Paris and Berne Conventions. Care had been taken to ensure that all intellectual property legislation was in line with the provisions of these Conventions. The provisions, particularly those relating to national treatment, priority and protected properties were fully enforced.

163. The representative of Tonga thanked the Working Party for its recognition that technical assistance would be required and the governments concerned for the technical assistance that they had already provided. For the reasons given above, the Government of Tonga requested that the Working Party grant a transitional period to [1 January 2007], approximately three years from the date of its accession, to obtain technical assistance and equip the Government to fully implement the obligations

of the TRIPS Agreement. He confirmed that, if such a transitional period were granted, Articles 3, 4 and 5 of the Agreement, providing for, inter alia, national treatment and MFN treatment under current legislation in place would apply, and Tonga would ensure that any changes made in its laws, regulations and practice in this period would not result in a lesser degree of consistency with the provisions of the TRIPS Agreement that existed on the date of accession. In addition, Tonga would not grant patents, trademarks, or copyrights, or marketing approvals for pharmaceutical or agricultural chemicals inconsistent with the provisions of the TRIPS Agreement.

164. The representative of Tonga also stated that, should a transition be granted, existing rates of infringement would not in his view increase significantly over this transition period and that any infringement of intellectual property rights would be addressed immediately in cooperation and with assistance from affected right holders. He added that Tonga would seek out all available technical assistance to ensure that its capacity to enforce fully its TRIPS-consistent legal regime upon expiration of the transition period is assured. In response to requests from delegations for more specificity, the representative of Tonga presented an Action Plan setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step (Table 9).

Table 9: Action Plan for conformity with the TRIPS Agreement

| Action | Deadline |
|--|--|
| Drafting of new legislations, covering: <ul style="list-style-type: none"> - protection of undisclosed information and trade secrets; - plant variety protection; - general and enforcement obligations under the TRIPS Agreement. | Protection of undisclosed information and trade secrets is provided for by section 9 of the Protection Against Unfair Competition Act 2002 [Plant variety protection legislation will be drafted no later than 1 July 2006] |
| Drafting of amendments to existing legislations to address deficiencies vis-à-vis the WTO Agreement on TRIPS as identified in response to WT/ACC/9, specifically: <ul style="list-style-type: none"> - Industrial Property Act 1994; - Copyright Act 2002. | Copyright Act 2002 has been enacted. Amendments to Industrial Property Act 2004 have been endorsed by the Cabinet and submitted to the Law Reform Committee for verification. |
| Circulation of draft legislation addressing remaining deficiencies vis-à-vis the WTO TRIPS Agreement in Tonga's intellectual property rights regime. | [July 2004] |
| Parliamentary passage of new legislations and amendments to existing legislations. | [No later than 1 July 2006] |

| Action | Deadline |
|---|--|
| Drafting of implementing regulations for Intellectual Property legislations, specifically: - Geographical Indications Act 2001; - Protection of Layout Designs (Topographies) of Integrated Circuits Act 2001; - new legislations required, as detailed above. | Regulations for the Geographical Indications Act 2001 and the Protection of Layout Designs (topographies) of Integrated Circuits Act 2001 have been endorsed by Cabinet and submitted to the Law Reform Committee. |
| Development of manuals and operating procedures | [No later than 1 January 2006] |
| Appointment of staff | [No later than 1 January 2006] |
| Training of key IP personnel | [No later than 1 July 2006] |
| Training for users (development of information brochure and training program) | [No later than 1 January 2007] |
| Full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights. | [No later than 1 January 2007] |

165. The representative of Tonga confirmed that, if a transitional period were granted, Articles 3, 4 and 5 of the Agreement, providing for, inter alia, national treatment and MFN treatment under current legislation in place would apply, and Tonga would ensure that any changes made in its laws, regulations and practice in this period would not result in a lesser degree of consistency with the provisions of the TRIPS Agreement that existed on the date of accession. In addition, Tonga would not grant patents, trademarks, or copyrights, or marketing approvals for pharmaceutical or agricultural chemicals inconsistent with the provisions of the TRIPS Agreement. The Working Party took note of this commitment.

VI. POLICIES AFFECTING TRADE IN SERVICES

166. The representative of Tonga said that services accounted for more than 50 per cent of Tonga's GDP. While the Ministry of Labour, Commerce and Industry – which would serve as Tonga's services enquiry point – was responsible for formulating policies related to services sectors, there was no comprehensive policy and individual services sectors were regulated independently. Overall, the regulatory structure was very simple. The Licensing Act, Cap 47, which covered most services, required services providers to hold a licence obtained against payment of an annual fee (detailed information on the fee structure was provided in document WT/ACC/TON/3, pages 29-31). Tonga's legislation contained no specific provisions regulating monopolies, safeguard measures, international payments, or government procurement of services. A 25 per cent local participation requirement for access to foreign service suppliers in retail, construction, and tourism services needing no special equipment and skills, which had been implemented for economic development purposes, had been abolished.

167. He added that Tonga applied fully the most-favoured-nation principle to trade in services, including in the recognition of professional qualifications. He considered Tonga's laws and regulations on certification for foreign qualification in compliance with the provisions of the General Agreement on Trade in Services (GATS). Tonga had no national qualification standards of its own, but accepted qualifications from any recognized foreign institution. In the case of medical practitioners, the Director of Health applied the standards of Australia, Canada, New Zealand, the United Kingdom, and the United States, in accordance with the Medical Registration Act, Cap 75. Requests were dealt with case-by-case when recognition of foreign professional qualifications involved countries not explicitly mentioned in the relevant legislation.

168. Legal services were regulated by the 1989 Law Practitioners Act. The Act required any legal practitioner to be included in the Roll of Law Practitioners held by the Supreme Court, to possess a practising certificate, and be a member of the Tonga Law Society. Membership in the Tonga Law Society required documented professional knowledge and experience in common law jurisdiction, minimum three character references, and an expressed intent to practice law in Tonga. However, the legal practitioner did not need to reside in Tonga. Appearance before Tonga's Supreme Court required a diploma in law from the University of South Pacific or at least a Bachelor's degree in law from a recognised university. Foreign lawyers were subject to the same rules as domestic legal practitioners. The representative of Tonga confirmed that foreign legal firms and lawyers were allowed to provide consultations on legislation other than that of their home state.

169. Financial services were regulated by the 1991 Financial Institutions Act and regulations, the National Reserve Bank Act, the Tonga Development Bank Act, the Westpac Bank of Tonga Act, the Foreign Exchange Control Act and regulations, and the Money Laundering and Proceeds of Crime Act. Licenses were delivered by the Ministry of Finance based on inquiries by the National Reserve Bank of Tonga, which supervised the activities of banks, and approval of the Privy Council. The annual licence fee amounted to TOP 3,000. Financial services licenses were not subject to numerical or geographical limitations. In 1998, three commercial banks were operating in Tonga in addition to the Tonga Development Bank, providing banking services such as deposits, loans, and local and international money transfer. He confirmed that financial institutions were allowed to provide financial information and advisory services. Tonga allowed the establishment of new foreign commercial banks, merchant banks and other financial services companies both in the form of wholly-owned subsidiaries or direct branches. In addition, Tonga permitted the establishment, including through direct branches, of new foreign life and non-life insurance companies, insurance brokers and agencies, and insurance underwriting and management companies servicing the domestic market. Financial services could also be provided by authorized foreign exchange dealers.

170. Tonga's telecommunications market had been opened up following the adoption of the Communications Act 2000. The Tonga Communications Corporation (TCC), a government-owned entity, was an integrated provider of network infrastructure and communications services but competed with a second full service provider. Both companies provided domestic and international calling services, as well as internet services.

171. Under the 2000 Communication Act, any person or company wishing to deliver domestic or international communication services, including television, radio, internet, and mobile phone services, could apply for a licence. Licenses were delivered by the Privy Council under conditions set out by the Council, including (i) the approval by the Tonga Telecommunication Commission of the technical operating details of the service, (ii) sufficient funds to establish and maintain such a service, and (iii) payment of an annual licence fee (TOP 5,000 in 2000). In addition, with a view to monitoring developments in the telecommunication sector and ensuring fair competition, approval by the Cabinet was also required. A licence was granted for five years and could be renewed every two years thereafter. The transfer of a licence was subject to the approval of the Privy Council. Licenses could be revoked in case of non-payment of the licence fee, and lapsed after 12 months of non-use. The licence holder was expected to exercise "self-censorship" in respect of cultural sensitivities.

172. As to accountancy services, licenses were delivered by the Ministry of Labour, Commerce and Industry. Approval from the Tonga Society of Accountants was not needed, and no market access restrictions were imposed on foreign accountants and foreign accounting firms to practice in Tonga. Education services had been opened to foreign providers, and several religious institutions had established secondary schools. Other academic institutions, such as the University of the South Pacific Extension Centre, provided degree-level courses.

173. Specific regulations applied to shipping and electricity-related services. Shipping licenses had to be endorsed by the Ministry of Marine and Ports, and the Tonga Electric Power Boards verified qualifications and services to be provided before issuing licenses for electricity-related services. The representative of Tonga confirmed that no specific requirements applied to practice engineering, computing and architectural services in Tonga, except possession of a licence delivered by the Ministry of Labour, Commerce and Industry. Licenses were delivered upon presentation of a certificate from any recognized university, irrespective of the country, and a reference document from the former employer in the same business activity (optional).

174. [Tonga's commitments on services are contained in the Schedule of Specific Commitments in Services (document WT/ACC/TON/[]/Add.2) annexed to Tonga's Protocol of Accession to the WTO.]

- **Publication of information on trade**

175. The representative of Tonga said that all laws and regulations affecting trade were published in the Tongan Government Gazette. Copies of specific laws and regulations could be purchased from the Government Printing Department. Information on laws and regulations relating to trade was also available, free of charge, from the Trade Policy Unit at the Ministry of Labour, Commerce and Industries. An investment promotion website, which would be the official website of the Ministry of Labour, Commerce and Industries, was in the process of being established by the Industries Division of the Ministry of Labour, Commerce and Industry. Tonga was receiving technical assistance on this matter from the Multilateral Investment Guarantee Agency (MIGA), a member of the World Bank Group. The website would be dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services and TRIPS, where possible prior to enactment. This website would be updated on a regular basis and would be readily available to WTO Members, individuals and enterprises. Tonga intended, where possible, to provide a reasonable period, e.g. no less than 15 days, for comment to the appropriate authorities of Tonga before the regulations and other measures pertaining to or affecting trade in goods, services and TRIPS were implemented, except for those laws, regulations and other measures involving national emergency or security, or for which the publication would impede law enforcement. Tonga intended to implement this facility as soon as possible.

176. The representative of Tonga confirmed that, from the date of Tonga's accession, Tonga would fulfil the transparency requirements set out in Article X of the GATT 1994, Article III of the GATS and other WTO Agreements. [Tonga confirmed that all regulations and other measures pertaining to or affecting trade in goods, services and TRIPS, except for laws, regulations and other measures involving national emergency or security, or for which publication would impede law enforcement, would be published / posted on the website for comment prior to enactment.] He further confirmed that all laws, regulations, rulings, [including administrative rulings,] decrees or other measures related to trade in goods would be published in the Official Gazette, and that no law, regulation, etc. relating to trade in goods, services and TRIPS would become effective prior to such publication. The publication of such laws, regulations and other measures of general application would include the effective date of these measures and list, where appropriate and possible, the products and services affected by the particular measure, identified for customs purposes by appropriate tariff line and classification. The Working Party took note of these commitments.

- **Notifications**

177. The representative of Tonga said that at the latest upon entry into force of the Protocol of Accession, Tonga would submit all initial notifications required by any Agreement constituting part of the WTO Agreement. As new legislation implementing the provisions of WTO Agreements was enacted, revised notifications would be provided. Any regulations subsequently enacted by Tonga 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.

VII. TRADE AGREEMENTS

178. The representative of Tonga said that Tonga was a member of the South Pacific Forum, a political grouping of independent and self-governing States in the South Pacific. The South Pacific Forum had been established in 1971 to develop a collective response to regional issues. Tonga was also a party to the South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA), signed in July 1980. The SPARTECA Agreement was a preferential non-reciprocal trade agreement whereby Australia and New Zealand extended duty free and unrestricted or concessional access for virtually all products originating in the Forum Island members, i.e. Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa. The Agreement included provisions for general economic, commercial and technical co-operation and safeguard provisions against product dumping. He confirmed that Tonga did not provide any duty-free or concessional access to products originating in Australia and New Zealand under this Agreement.

179. He added that Tonga granted preferences to members of the Pacific Island Countries Trade Agreement (PICTA), ratified by Tonga in 2001. The PICTA provided for progressive phasing out of tariffs between Forum Island countries by 2010, as part of the establishment of a Pacific regional free trade area in goods. The first tariff cut took place upon entry into force of the Agreement in April 2003. Tonga also participated in the Pacific Agreement on Closer Economic Relations (PACER), which had entered into force on 3 October 2002. Members of the PACER included Pacific Forum Island Countries, Australia, and New Zealand. Although the PACER was not a free trade agreement, it set a timetable for regional free trade negotiations with Australia and New Zealand.

180. Tonga and Fiji had signed a bilateral trade agreement in 1995, aimed at facilitating the free flow of agricultural products. The Agreement was non-reciprocal, having been formulated shortly

after a bilateral quarantine protocol had been established for 20 agricultural items imported into Fiji from Tonga. A joint committee met bi-annually to discuss matters of mutual trade interest.

181. He added that Tonga had participated in the Regional Long-Term Sugar Agreement, running from 1995-1998. Under this Agreement, Fiji had supplied agreed quantities of sugar to Kiribati, Solomon Islands, Tonga, Tuvalu and Western Samoa at pre-determined prices. The Agreement had been administered by the Forum Secretariat, located in Suva (Fiji). Tonga's entitlement had been allocated among private firms based on their requests without any form of price subsidy.

182. Tonga had also signed and ratified the Cotonou Agreement between the European Communities (EC) and 70 countries in Africa, the Caribbean and the Pacific (ACP), whereby the EC extended non-reciprocal trade preferences to the ACP States. Preliminary negotiations with the EU on the establishment of an economic partnership agreement had commenced.

183. The representative of Tonga 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 preferential trading systems, free trade areas and customs unions of which Tonga was a member were met from the date of accession. The Working Party took note of these commitments.

CONCLUSIONS

184. The Working Party took note of the explanations and statements of Tonga concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by Tonga in relation to certain specific matters which are reproduced in paragraphs 22, 33, 41, 46, 50, 57, 60, 65, 72, 76, 81, 87, 92, 94, 96, 98, 101, [107], 111, 115, 122, 126, 129, 131, 165, 176, 177 and 183 of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of Tonga to the WTO.

185. Having carried out the examination of the foreign trade regime of Tonga and in the light of the explanations, commitments and concessions made by the representative of Tonga, the Working Party reached the conclusion that Tonga 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 Tonga's Schedule of Concessions and Commitments on Goods (document WT/ACC/TON/./Add.1) and its Schedule of Specific Commitments on Services (document

WT/ACC/TON/./Add.2) that are annexed to the draft Protocol. It is proposed that these texts be adopted by the [General Council] [Ministerial Conference] when it adopts the Report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Tonga 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 Tonga to the Marrakesh Agreement Establishing the WTO.

ANNEX 1

Table 1: Number of Investment Projects Having Been Granted a Development Licence for the Years 1999 to 2003 (US\$)

| SECTOR | 1999 | | 2000 | | 2001 | | 2002 | | 2003 | | TOTAL | |
|------------------------|----------------|-------------------|----------------|-------------------|----------------|-------------------|----------------|-------------------|----------------|-------------------|------------|--------------------|
| | No. of Project | Project Cost | No. of Project | Project Cost | No. of Project | Project Cost | No. of Project | Project Cost | No. of Project | Project Cost | 1999-2003 | |
| | | | | | | | | | | | NO. | COST |
| Manufacturing | 16 | 1,106,860 | 20 | 26,055,001 | 20 | 12,085,177 | 10 | 4,324,348 | 22 | 8,173,851 | 88 | 51,745,237 |
| Tourism Prime Facility | 23 | 4,647,097 | 20 | 3,468,780 | 23 | 19,742,596 | 7 | 3,504,845 | 10 | 3,130,440 | 83 | 34,493,758 |
| Engineering | 7 | 246,400 | 7 | 235,600 | | | 5 | 656,450 | 4 | 637,450 | 23 | 1,775,900 |
| Commercial Farming | 8 | 7,978,485 | 6 | 250,950 | 7 | 663,800 | 4 | 316,500 | | 436,999 | 30 | 9,646,734 |
| Commercial Fishing | 8 | 12,207,650 | 6 | 3,958,858 | 6 | 7,067,130 | 3 | 7,438,000 | 3 | 4,913,500 | 26 | 35,585,138 |
| TOTAL | 62 | 26,186,492 | 59 | 33,969,189 | 56 | 39,558,703 | 29 | 16,240,143 | 44 | 17,292,240 | 250 | 133,246,767 |

Table 2: Enterprises with Government Ownership in Mid-2002

| Organization | Activity/Market Position | Approximate share of the domestic market (%) | Percentage of Government Ownership |
|--|---|--|------------------------------------|
| Air Pacific Limited | Fiji's national airline; provides regional airline services; competes with the other market suppliers. | 11 | <5 |
| Westpac Bank of Tonga | Commercial bank; competes with 3 other banks in Tonga. | 32 | 4 |
| Export Produce Treatment Services Ltd. | Manages the hot air treatment plant at the airport. | 100 | 20 |
| Hawaiian Air | Hawaii's national airline. | Ceased operations in Tonga | <5 |
| International Dateline Hotel | Holds 49% of the shares of the company that owns Tonga's biggest hotel; competes with other accommodation facilities in Tonga. | N/A | 51 |
| Leiola Duty Free | Operates Tonga's duty free shops; has a monopoly position; likely to be privatised in 2003-2004. | 100 | 60 |
| Pacific Forum Line Limited | Regional shipping company based in Fiji; provides regional freight and charter services. | 20 | Approx. 5 |
| Royal Tongan Airlines | Tonga's national airline; competes with Air New Zealand, Polynesian Airlines and Air Pacific (other main airlines that service similar routes). | 38 | 99 |
| Sea Star Fishing Co. Ltd | Deep sea fishing company; competes with many other firms; Tonga's Government is considering divesting itself from this company. | 30 | 70 |
| Shipping Corporation of Polynesia Ltd | Provides domestic and international passenger and cargo charter services; many domestic competitors in this market. | 20 | 100 |
| Tonga Development Bank | Provides development and business advisory banking services. | 32 | 100 |
| Tonga Investment Ltd | Holding/investment company set up in 1991 to manage the activities of its subsidiaries (Frisco, Home Gas, and Primary Produce Limited); likely to be privatised in 2003-2004. | | 99 |
| | Frisco: Hardware and building materials supplier; mainly sells imported products; no exclusive or special rights or privileges; competes with other private firms. | 20 | |
| | Home Gas: Sole distributor of cooking and heating gas in Tonga; no exclusive or special rights or privileges. | 100 | |
| | Primary Produce Ltd.: No longer in operation; should be wound up. | N/A | |

| Organization | Activity/Market Position | Approximate share of the domestic market (%) | Percentage of Government Ownership |
|--|--|--|------------------------------------|
| Tonga Telecommunications International Ltd | Provides both local and international telecommunications services; competes with private enterprises; no special rights or privileges. | 70 | 100 |
| Tonga Timber Limited | Coconut/timber milling and hardware supplier; competes with other suppliers; no exclusive or special rights or privileges. | 20 | 99 |
| Tonga Corporation | Manages Tonga's landholdings in America, Samoa and Hawaii. | N/A | 100 |

Table 3: Products Subject to Price Control

| Tariff Line Item | Commodity |
|-----------------------|--|
| 11.02 | Flour |
| 1701.0000 | Sugar |
| 0405.0000 | Butter |
| 15.17 | Margarine |
| 0402.1000 | Baby Milk |
| 0902.0000 | Tea |
| 1006.0000 | Rice |
| 0901.0000 | Coffee |
| 1801.0000 | Cocoa |
| 15.01 – 1516.0000 | Edible Oils of all types |
| 15.01 | Cheese and Dripping |
| 2501.0000 | Salt |
| 19.01 | Infant Food Preparations |
| 2710.0020 | White Benzene |
| 2710.0070 | All Lubricant Oils |
| 3808.1000 | Insecticides |
| 3808.3000 | Herbicides |
| 3808.2000 | Fungicides |
| 3101.0000 – 3105.0000 | All chemicals and fertilisers for agricultural use |
| 27.10 | Liquid petroleum products |
| 2710.0010 | Motor Spirit |
| 2710.0040 | Kerosene |
| not available | Diesel |
| 1905.1010 | Bread of standard size |

Table 4: Business Licence Fees
(Schedule Two of the Business Licence Act 2002)

| Item | Activity | Fee (TOP) | Due date |
|------|---|-----------|---------------------------|
| 1. | Application for Business Licence | 75.00 | Upon application |
| 2. | Application for Renewal of Business Licence | 65.00 | Upon application |
| 3. | Amendment of Business Licence | 30.00 | Upon application |
| 4. | Inspection of Business Licence Register | 10.00 | Prior to inspection |
| 5. | Copying of Business Licence Register | 10.00 | Upon application for copy |

Table 5: Quarantine Fees Levied on Exports of Agricultural Goods

| Activity | Fee (TOP) |
|--|---|
| FUMIGATION | |
| Small Chamber (1.1 m3) | 10.00 |
| All other fumigation chambers including sheet fumigation. | 7.75 per m3 or part thereof (maximum of TOP 130.00 per container and/or chamber). |
| HEAT STERILISATION | |
| Sterilisation of goods by heat in an oven | 7.75 per 0.2m3 or part thereof (maximum of TOP 130.00 per container and /or chamber) |
| WASTE DISPOSAL | |
| Disposal/incineration of quarantineable material e.g. war ships | 0.40 per hour or part thereof. |
| STEAM CLEANING | |
| Per consignment | 15.00 per hour or part thereof. |
| COLD STORAGE | |
| Cool room/refrigerator | 0.02 per kg per 24 hours or part thereof |
| Freezer | 0.04 per kg for the first 24 hours and 0.02 per kg per 24 hours or part thereof, thereafter. |
| INSPECTION AND CLEARANCE: | |
| EXAMINATION FOR IMPORT OR EXPORT | |
| Documentation (Certificates and permits) | 4.00 |
| Examination of a container system unit | 2.00 |
| Examination of motor vehicle | 4.00 |
| Examination of goods at airports for issuing of a Phytosanitary Certificate (Max. 15 mins) | 2.00 |
| Examination of goods, other than at an airport for the issuing of a Phytosanitary Certificate (Max. 30 mins) | 4.00 |
| AIRCRAFT CLEARANCE | |
| Light Aircraft | 50.00 |
| Narrow-bodied aircraft (untreated) | 80.00 |
| Narrow-bodied aircraft (treated) | 50.00 |
| Wide-bodied aircraft (untreated) | 120.00 |
| Wide-bodied aircraft (treated) | 60.00 |
| SHIP CLEARANCE | |
| Vessel of more than 25 metres in length | 50.00 |
| Vessel of 25 metres or less in length | 20.00 |
| POST-ENTRY QUARANTINE | |
| Bench space per month (per 0.5 m3 or part thereof) | 7.75 |
| Potting Material, chemicals and other related expenses | At cost |
| OVERTIME | |
| For aircraft and passenger clearance at Airports; | |
| Weekdays | 4.00 per hour |
| Weekends & Public Holidays | 5.00 per hour |
| Other than aircraft and passenger clearance at Airports | 2.00 per hour |
| MISCELLANEOUS FEES | |
| Hire of forklift and driver | 25.00 per hour |
| Any other activity not specified in these Regulations | 4.00 per officer per half hour or part thereof including travelling time |

Source: Adapted from Tonga Government's Gazette Supplement Extraordinary, No.7, 24 Friday 1997, "The Plant Quarantine Fees Regulation 1997".

Table 6(a): Goods Prohibited from Importation into Tonga

| | |
|-----|---|
| 1. | Counterfeit coin, currency notes or stamps. |
| 2. | Indecent articles (obscene books, paintings, drawings, cards, lithographic or other engravings, photographs, prints, films or other indecent products or articles except for private purposes) [Schedule II, Part 1 (Section 35) PROHIBITED AND RESTRICTED IMPORTS] |
| 3. | Goods bearing the royal Arms of the Kingdom of Tonga, unless importers holds his Majesty's authority. |
| 4. | Goods bearing any trade name or trade mark being or claiming to be the name or trade mark registered under the Registration of United Kingdom Trade Mark Act. |
| 5. | Fireworks, unless given permission by Minister of Police. |
| 6. | All books and any written or printed matter, sounds and visual recordings of which import is prohibited by copyright law*. |
| 7. | All books and any written or printed matter and sound and visual recordings which advocate violence, lawlessness or disorder. |
| 8. | All toxic or hazardous wastes. |
| 9. | Goods the importation of which is prohibited by any other law in force in the Kingdom. |
| 10. | Goods the importation of which is restricted by any other law in force in the Kingdom except in accordance with such law. |

* Cover both counterfeit goods and copyright piracy.

Table 6(b): Goods Requiring a Special Import Licence

| HS Number | Description | Permission required & Ministry involved | Application Fee |
|----------------|---|---|-----------------|
| 93.03 | Firearms and ammunition | licence issued by the Minister of Police | 10.00 |
| 3602.000 | Explosives of all kinds including fuses and detonators | licence issued by the Minister of Police | NIL |
| 9304.0000 | Noxious, stupefying or tear gas in any form and all weapons and instruments or appliances for firing or using such gas containers or cartridges for such weapons or other instruments or appliances | written permission of the Minister of Police | NIL |
| 2208.3010 | Brandy and whisky | certified to the satisfaction of the Collector of Customs that it has been matured in wood for three years* | NIL |
| 2208.4010 | Rum | certified to the satisfaction of the Collector of Customs that it has been matured in wood for two years* | NIL |
| 87.04 87.11 | Motor vehicles, motor cycles and motor scooters | licence issued by the Minister of Finance and the Minister of Police (for public safety purposes and records keeping) | NIL |
| 87.04 | Left hand drive motor vehicles | licence issued by the Minister of Police (for public safety purposes and records keeping) | NIL |
| 4007.0010 | Eggs | licence issued by the Minister of Finance* | NIL |
| 1905.9010 | Cabin and ships biscuits | licence issued by the Minister of Finance * | NIL |
| | Goods the importation of which is restricted by any other law in force in the Kingdom except in accordance with such law. | | |

* Tonga is prepared to remove its licensing requirements for eggs, cabin and ships biscuits, brandy and whisky, and rum as at the date of its accession to the WTO.

Table 8: Import Prohibitions Relating to Animals, Plants and Related Products

| Plant | |
|---|---|
| Name | |
| | Plants, including living plants and products of plants, prohibited |
| Banana, Abaca, other Musaceae Heliconiaceae | Plants, corns and cut flowers |
| All Beans of the species Phaseolus | All except seed |
| Cassava (Manihol esculenta Grantz) | All except tissue cultures |
| Citrus | All except fruit and seeds. Fruit from areas where citrus canker (Xanthomonas Campestris p.v. citri, (Hasee) Dye) Occurs. All of Murraya spp. |
| All palms including coconut | All except seednuts and pollen from areas approved by the Minister |
| Cacao and host plants of Cacao swollen shoot | All except seed from Asia Pacific Region |
| Coffe (Coffea spp.) | All propagating material except seed |
| Maize (Zea mays L) | All except seed |
| Peanut (Arachis hypogaea L) | All except seed |
| Potato (Solanum tuberosum L) | All except tubers, true seed and tissue cultures |
| Sorghum (Sorghum spp) | All except seed |
| Rubber (Hevea spp) | All |
| Taro and edible aroids (Alocasia spp, Colocasia spp, Xanthosoma spp nd Cyrtosperma spp) | All except propagating material, seed and tissue cultures |
| Tomato (Lycopersicon esculenum Miller) | All except fruit and seed |
| Orchidaceae | All except tissue cultures and seedlings in Sterile flasks. |
| Animal | |
| Prohibition on importation or liberation of certain animals | <p>(1) No person shall import or introduce into the Kingdom without prior approval of His Majesty's Cabinet any animal or carcass of the species listed below:-</p> <ul style="list-style-type: none"> (a) any snake of any species whatever; (b) any venomous reptile, or any living stage of any venomous amphibian, venomous fish or venomous invertebrate; (c) any monkey of any species; (d) any member of the squirrel species; (e) any red fox or silver fox; (f) any musquash (or muskrat); (g) any hamster; (h) any mongoose; (i) any coypu (or nutria); (j) any mink; (k) any rabbit; (l) any hare; (m) any deer; (n) any opossum; (o) any other animal that is likely to become a nuisance or to cause injury or damage. <p>(2) No person shall without prior approval of Cabinet import or introduce into the Kingdom the egg, semen or carcass of any animal specified in subsection (1) of this section.</p> |

Source: The Plant Quarantine Act and the Animal Diseases Act, Second Schedule, Regulation 31.

ANNEX 2

Laws, Regulations and Other Information Provided to the Working Party by Tonga

- Income Tax Bill 2004
- Industrial Development Incentive Act 1978 (Cap. 48) and Amendments 1990, 1992;
- Act No. 11 of 4 October 1982 To Amend the Industrial Development Incentives Act 1978;
- Foreign Investment Act 2001;
- Foreign Investment Act 2002;
- Order to Amend the Prices of Goods and Wages Control Act 1998;
- Act No. 3 of 8 September 1947 (as amended, 1950, 1956 and 1984) To Make Provision For Controlling the Prices of Goods and Services and Wage Rates;
- Protection Against Unfair Competition Act, 2001;
- Chapter 27 of the Companies Act of 1988;
- The Registration of Business Names Bill 1995 - Arrangement of Sections and Registration of Business Names Act, 2001;
- Business Licence Act of 2002;
- Business Licence Regulations 2002 of 2005;
- Act No. 20 of 2 November 1993 To Amend the Licenses Act;
- Licence (Amendment) Act 1995 (Cap. 47);
- Drafting Guidelines for Amendments to the Licenses Act Cap. 47;
- Application for Licence to Import Goods;
- Act No. 29 of 16 October 1987 To Amend the Intoxicating Liquor Act;
- A Bill for An Act to Amend the Customs and Excise Act (The Customs and Excise (Amendment) Act 2003);
- The Customs and Excise (Amendment) Act No. 25 of 10 November 1999 – Tonga Harmonized Customs Tariff and Excise Schedule;
- Customs and Excise Bill 2004 of July 2004;
- Customs and Excise Amendment Act 2003 of 4 September 2003;
- Customs and Excise Act 1998 (Cap. 67) and Amendments;
- Customs and Excise Act (1983) Part I: Imports – Classification and Tariff;
- Act No. 3 of 24 June 1992 to Amend the Customs Duty and Excise Act (Cap. 67);
- Act No. 6 of 6 July 1927 (as amended, 1950, 1963, 1964, 1974, 1997 and 1988) To Impose Stamp Duties;
- Ports Authority (Overseas Vessels Tariff Fees) Standing Order 1999;
- Act to Repeal the Port and Services Tax Act of 24 November 2003;
- Port and Service Tax Act 1988 (Cap. 71);
- Act No. 22 of 23 October 1990 To Amend the Port and Service Tax Act;
- Act No. 11 of 1 September 1981 To Amend the Wharves Act;
- Wharves Act 1992 (Cap. 138) and Amendments 1997, 1998;
- List of Products subject to Wharfage Tax (conferred by Sections 5 and 16 of the Wharves Act 1992 (Cap. 138);
- Schedule of Duty Free and Ports & Services Tax Free Goods;
- Acts Nos. 6 of 3 November 1964 and 3 of 1985 To Impose a Tax Upon Fuel Imported into the Kingdom and Sold by the Importer;
- Act No. 3 of 1 July 1986 To Impose a Tax Upon Retail Sales of All Goods and Services in the Kingdom of Tonga;
- Consumption Tax Regulations 2005;
- Information on Implementation and Administration of the Customs Valuation Agreement;
- Agricultural Commodities Export Act of 2001, Section 4 – The Agricultural Commodities Export (General) Regulations 2001;
- Draft Bill for an Agricultural Commodities Export Act;

- Public Health Act 1992 and Amendments;
- Animal Diseases Act of 1978, Section 13 – The Animals (Importation) Regulations 2001;
- Animal Diseases Act 1988 (Cap 146);
- Draft Bill for an Act to Amend the Animal Diseases Act 1978;
- Pesticides Act of 2001, Section 22 – The Pesticides Regulations;
- Pesticides – information and application forms for licenses, registration and user permits;
- Draft Bill for a Pesticides Act;
- Act No. 18 of 15 April 1928 (as amended, 1986 and 1988) Relating to Quarantine;
- Plant Quarantine Act (Cap. 127) 1988;
- Information on State Trading;
- Act No. 10 of 30 September 1987 to Amend the Copyright Act of 1985;
- Copyright Act 1988 (Cap. 121) and Amendments;
- Draft Law on Copyright and Related Rights;
- Copyright Act 2001;
- Copyright Act 2002;
- Industrial Property Act 1994 (Cap. 19);
- Industrial Property Regulation 1998;
- Act No. 19 of 9 November 1994 To Provide For the Registration and Protection of Patents, Utility Model Certificates, Industrial Designs and Trade Marks;
- Draft Regulations for Geographical Indications Act 2002;
- Protection of Geographical Indications Act 2001;
- Draft Regulations for Layout-Designs (Topographies) of Integrated Circuits Act 2002;
- Protection of Layout Designs (Topographies) of Integrated Circuit Act 2001;
- Law on the Enforcement of Intellectual Property Rights Including Border Measures of 2004;
- Act No. 21 of 18 October 1989 To Provide For Law Practitioners; For Their Professional Conduct and Discipline; For The Establishment of the Tonga Law Society and For Connected Purposes;
- Act No. 16 of 15 August 1991 To Require The Registration Before Practice of Medical, Dental, Nursing, Midwifery and Other Health Professions in Tonga;
- Act No. 13 of 7 August 1984 To Amend the Tonga Telecommunications Act, 1983;
- Act No. 15 of 21 September 1989 To Regulate Broadcasting and Matters Related Thereto;
- Act No. 22 of 30 October 1991 To Regulate the Licensing and Supervision of Financial Institutions in Tonga and For Purposes Connected Therewith;
- Act No. 15 of 15 August 1991 To Provide For a Comprehensive Health Service For Tonga;
- Act No. 29 of 2 November 1992 To Deal with Public Health Services in Tonga;
- Act No. 9 of 24 October 1949 (as amended, 1950, 1951, 1956, 1957, 1960, 1962, 1974, 1975, 1981, 1983 and 1988) To Provide For the Establishment of the Tonga Electric Power Board For the Production, Control and Distribution of Electric Power Throughout the Kingdom and For Related Purposes;
- Water Board Act (Section 28) Water Supply (Amendment) Regulations 1992 (Tonga Government Gazette Supplement Extraordinary No. 5 of 5 June 1992);
- Act No. 19 of 5 July 1977 (as amended, 1979, 1980 and 1990) To Control and Regulate Tourism by the Establishment of an Advisory Board and by the Introduction of a System of Licensing of Tourist Facilities and Matters Relative Thereto; and
- Act No. 16 of 31 March 1970 To Make Better Provision For the Control of Immigration.

[Draft Decision

ACCESSION OF THE KINGDOM OF TONGA

Decision of [...]

[The General Council], [The Ministerial Conference]

Having regard to paragraph 2 of Article XII and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), and the Decision-Making Procedures under Articles IX and XII of the Marrakesh Agreement Establishing the World Trade Organization agreed by the General Council (WT/L/93);

[*Conducting* the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;]

Taking note of the application of the Kingdom of Tonga for accession to the Marrakesh Agreement Establishing the World Trade Organization dated 9 December 1994;

Noting the results of the negotiations directed toward the establishment of the terms of accession of the Kingdom of Tonga to the WTO Agreement and having prepared a Draft Protocol on the Accession of the Kingdom of Tonga;

Decides as follows:

The Kingdom of Tonga may accede to the WTO Agreement on the terms and conditions set out in the Draft Protocol annexed to this Decision.

DRAFT PROTOCOL

ON THE ACCESSION OF THE KINGDOM OF TONGA

Preamble

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"), and the Kingdom of Tonga,

Taking note of the Report of the Working Party on the Accession of the Kingdom of Tonga to the WTO Agreement reproduced in document WT/ACC/TON/[...], dated [...] (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of the Kingdom of Tonga to the WTO Agreement,

Agree as follows:

PART I - GENERAL

1. Upon entry into force of this Protocol pursuant to paragraph 8, the Kingdom of Tonga 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 the Kingdom of Tonga accedes shall be the WTO Agreement, including the Explanatory Notes to that 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 [184] of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in paragraph [184] 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 the Kingdom of Tonga as if it had accepted that Agreement on the date of its entry into force.
4. The Kingdom of Tonga may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure was 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 reproduced in Annex I 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 the Kingdom of Tonga. The staging of the 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 the Kingdom of Tonga until [...].

8. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by the Kingdom of Tonga.

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 by the Kingdom of Tonga thereto pursuant to paragraph 9 to each Member of the WTO and to the Kingdom of Tonga.

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

Done at [...] this [...] day of [...] 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 of these languages.

ANNEX I

SCHEDULE [...] – KINGDOM OF TONGA

Authentic only in the ... language.

(Circulated in document WT/ACC/TON/.../Add.1)

SCHEDULE OF SPECIFIC COMMITMENTS ON SERVICES

LIST OF ARTICLE II EXEMPTIONS

Authentic only in the ... language.

(Circulated in document WT/ACC/TON/.../Add.2)]
