

WORLD TRADE ORGANIZATION

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Working Party on the Accession of Tonga

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

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.6].
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;), 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. The 1996 Harmonised System Nomenclature had been introduced. 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 [142].

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.

10. A tax reform programme was under consideration with a view to moving emphasis from trade to internal taxes and enhancing the effectiveness of the tax administration. Under this programme, individual and corporate income taxes would be modified to ensure greater fairness. The details and timing of the programme, which would have to be carefully planned to avoid any loss of revenue, would depend on the terms of Tonga's accession to the WTO.

Foreign exchange and payments

11. The representative of Tonga said that the value of the currency of Tonga - the Pa'anga - was pegged to a basket including the currencies of the United States, Japan, Australia and New Zealand. The Foreign Exchange Control Act (Cap 103) provided for foreign exchange controls. Under the Foreign Exchange Control regulations (Section 2), currency transfers outside the territory of Tonga required authorization by the Minister of Finance, which was generally granted provided Tonga's international reserves were deemed adequate and the transaction was considered beneficial to Tongan exports. Acquisition of foreign financial assets was officially prohibited, but this restriction was not effective, and a repatriation requirement was not being monitored. Commercial banks were required to report any transaction exceeding TOP50,000 to the National Reserve Bank, and were allowed only to hold working balances in foreign currencies, up to a limit of TOP1 million. Forward exchange cover was currently not permitted for imports; cover for squash exporters required approval from the Ministry of Finance.

12. He added that Tonga had been a member of the International Monetary Fund (IMF) since 1985. Tonga's representative on the IMF Board of Governors was the Minister of Finance or, in his absence, the Governor of the National Reserve Bank of Tonga. Tonga had accepted the obligations of Article VIII, Sections 2, 3, and 4 of the Articles of Agreement of the IMF on 22 March 1991. Tonga's international reserves had amounted to TOP34.1 million in mid-1999.

13. Asked about restrictions on forward exchange cover for imports and further plans to extend the convertibility of the Pa'anga and liberalise capital flows, the representative of Tonga replied that no changes were foreseen in the regime affecting payments and capital movements for the time being. He stressed that Tonga's foreign exchange system was free of restrictions on payments and transfers for current international transactions.

Investment regime

14. The representative of Tonga said that the 1978 Industrial Development Incentives Act, Cap. 114 (the IDI Act) regulated both domestic and foreign investment. The 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 drawbacks 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 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.

15. 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 TOP200.00 fee was charged for each application for a Development Licence.

16. 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 1998, 68 projects involving a total investment of TOP14 million had been approved, mainly in manufacturing and agriculture. By 1998, 1,104 licences had been delivered, leading to the creation of 1,072 businesses, of which 860 were still active.

17. 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.

18. 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 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)".

19. The representative of Tonga stressed that his Government encouraged foreign investment, and the criteria listed in the Act had consequently not been applied in practice. He added that Parliament had recently passed a new law - the Foreign Investment Act - with a view to bringing Tonga's legislation into line with WTO provisions. The new Law would become effective as of the date of Tonga's accession to the WTO.

State ownership and privatization

20. 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. About 6 per cent of the population worked in the public sector. No special privileges were granted to these enterprises, which, in his opinion, did not have any significant influence on the level or direction of Tonga's imports or exports.

21. 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; the Tonga Electric Power Board, created under the Tonga Electric Power Boards Act, Cap. 93, to generate and supply electricity throughout Tonga; the Tonga Broadcasting Commission, established under the Broadcasting Commission Act, Cap. 100, which operated public radio services; and the Tonga Telecommunications Commission, created under the Telecommunications Act, Cap. 96, which provided domestic telecommunications services and regulated private radio and television services. Private sector representatives participated in the Board of Directors of these enterprises.

22. 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 Government Investment Unit (GIU) to develop a programme of privatization. Since 1998, his Government had privatised the Port Authority, the Tonga Telecommunication Commission, the Royal Beer Co. Ltd, and the Machinery Pool, and plans existed to liquidate the Primary Product Company. 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 is provided in Table 1. He expected the privatization programme to be completed over a period of 5 to 10 years. He confirmed that Tonga maintained no restrictions on foreign participation in the privatisation programme.

Pricing policies

23. 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. An exhaustive list of these commodities is provided in Table 2. None of these products, except for bread, were produced locally, and State-owned enterprises did not operate in the markets of price controlled goods. Prices for services, local agricultural products, fish caught locally, ex-bond goods, and Export Board sales were determined freely by market forces.

24. 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 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.

25. 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. Except for standard size bread (454 grams) and petroleum products, for which the Committee determined the maximum wholesale and retail prices, the Committee controlled the wholesale and retail margins, i.e the maximum percentage mark-up on landed cost for wholesale transactions, and the maximum allowed mark-up on wholesale costs for retailing. He provided detailed information on the mark-up calculations in Annex A of document WT/ACC/TON/5. 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, and confirmed that all products within the listed categories were subject to price control without exception.

26. [The representative of Tonga stated that 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. 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

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

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

28. 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.

29. 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.

30. 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 TOP1,000 – 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. Administrative decisions could be appealed under the Supreme Court Act.

31. [The representative of Tonga confirmed that from the date of its accession, Tonga's laws would give foreign and domestic importers and exporters the right to appeal administrative action relating to matters subject to WTO provisions to an independent body in full conformity with WTO obligations, including Article X:3(b) of the GATT 1994. The Working Party took note of this commitment.] [The representative of Tonga confirmed that from the date of accession to the WTO, Tonga would abide by the provisions of WTO relating to judicial and administrative decisions, including Article X:3 of the GATT 1994. The Working Party took note of this commitment.]

32. 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. The Minister of Police, Fire Services and Prisons was in charge of immigration. He granted entry and resident permits and issued import licenses for restricted products. 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.

33. 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.

34. 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 the his Government to work with the Working Party to help identify any further legislative deficiencies. In response to a specific question concerning the procedures to be followed for the ratification of Tonga's Protocol of Accession, he said that the Accession Package would have to be approved by the Privy Council.

35. [The representative of Tonga confirmed that Tonga would apply the provisions of the WTO Agreement, including Tonga's Protocol, 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. The Working Party took note of this commitment.]

POLICIES AFFECTING TRADE IN GOODS

Trading rights (the right to import and export)

36. The representative of Tonga said that the Licences Act, Cap. 47, required any natural or legal person carrying on any business or calling specified in a schedule to the Act 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.

37. He added that a new Business Licences Bill would repeal the Licences Act Cap. 47, and introduce a simple, transparent procedure for the issuance of business licences. 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 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. Any holder of a valid business licence could engage in importation or exportation without restriction. Concerning business licence fees, regulations would be issued stipulating that these fees would be no higher than the approximate cost of the services rendered.

38. [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.]

1. Import Regulation

Customs tariff

39. 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.

40. The representative of Tonga replied that Tonga levied customs duties in accordance with the Customs and Excise Act, Cap.67. Tonga did not accord any tariff preferences, thus a single set of tariff rates was applied to all imports regardless of country of origin. Tonga had implemented the Harmonized System (HS 96) on 1 May 2000. 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). The weighted average level of customs duties had amounted to 18.5 per cent in 1995.

41. He added that two studies had been commissioned on reform of the tax system. The proposals contained in these studies and their effect on the economy and government revenue would be reviewed carefully before any decision would be taken. Changes in the tax system would have to take into account the implications of accession to the WTO.

Other duties and charges

42. 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 tax-exempt items 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.

43. 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.

44. 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. The Port and Services Tax would accordingly be removed in accordance with a timetable to be specified in Tonga's Schedule of Concessions and Commitments on Goods.

45. Concerning the wharfage dues, these were levied according to Sections 5 and 16 of the Wharves Act 1992 (Cap.138) and Amendments 1997, 1998 on goods landed at or exported from the principal harbours and airports in Tonga. The Ports Authority charged wharfage on all cargo passing through the International Port of Queen Salote Wharf, such as TOP22 on petroleum products in bulk (per 1,000 litres or part thereof), and a terminal fee of TOP110 per container or TOP4.30 per ton. Having re-examined the dues levied under the Wharves Act, Tonga recognized that these were also "Other Duties and Charges" on imports. Tonga was accordingly prepared to take legislative action to remove the wharfage dues as from the date the zero binding on ODCs would come into effect.

46. [The representative of Tonga confirmed that Tonga did not apply duties and charges on imports other than ordinary customs duties, with the exception of wharfage dues and the Port and Services Tax to be applied through [date], as recorded in Tonga's Schedule of Concessions and Commitments on Goods. Any other such charges applied to imports after accession would be in accordance with WTO provisions. He further confirmed that Tonga would not list any other charges in its goods schedule under Article II:1(b) of the GATT 1994, binding such charges at [.. per cent] from the date of accession and at "zero" from [date]. The Working Party took note of this commitment.]

Tariff rate quotas, tariff exemptions

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

48. 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.

49. [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

50. 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 20 per cent Port and Services Tax and wharfage dues, 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.

51. The representative of Tonga acknowledged that the Port and Services Tax and the wharfage dues were fiscal charges, and as such would be dealt with as "Other Duties and Charges" within the meaning of GATT Article II (see section above). His Government would consider the establishment of a system whereby the users paid for the trade-related services rendered by public institutions. He added that the Ports Authority collected berthage fees on all overseas vessels including general cargo vessels, fishing boats, gas carriers, tankers, squash pumpkin vessels etc. These charges, which in his view were of purely commercial nature, covered the use of berth and all associated fixtures, facilities and services. He also provided detailed information on quarantine fees paid by exporters of agricultural products, which is reproduced in Table 3.

52. [The representative of Tonga confirmed that all fees and charges imposed by Tonga on or in connection with importation or exportation 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

53. The representative of Tonga said that imported and domestically-produced beer (HS number 2203.0010) was subject to an excise tax of TOP0.83 per litre or 55 per cent ad valorem, whichever was higher. Beer was, for the time being, the only product on which excise duty was levied.

54. [The representative of Tonga stated that upon accession to the WTO, Tonga would apply its internal taxes on tobacco, alcoholic beverages and beer in conformity with GATT obligations, in particular Article III, 1 and 2 and negotiate on the level of its import duties on these products.]

55. 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); and goods destined for exportation.

56. 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.

57. The representative of Tonga replied that the sales tax exemption on local agriculture, livestock and fisheries products applied only to very small individual producers. Domestic products sold by large local firms were subjected 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, imported goods required registration with the Inland Revenue Department to qualify for the sales tax exemption. However, 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.

58. [The representative of Tonga confirmed that from the date of accession Tonga would apply its domestic 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

59. 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 4(a) and 4(b), respectively. He added that Tonga had not established specific import quotas for any product, and had no plans to introduce such quotas.

60. 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.

61. The representative of Tonga replied that 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" to monitor imports for road safety reasons, and licences were issued freely by the Minister of Finance and the Minister of Police unless a vehicle was deemed unsafe. Importation of eggs was monitored and restricted for the protection of local poultry farms. Tonga restricted imports of spirits for health reasons: He added that Tonga was ready to remove its licensing requirements for eggs, cabin and ships biscuits, brandy, whisky, and rum from the date of its accession to the WTO.

62. 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 licences. The licences 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.

63. Licences were not transferable among importers, but carried indefinite validity and no penalty applied to unused licences. The system had been revised to eliminate discriminatory treatment of foreigners, and import licences 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 licences had raised more than TOP200,000 (about US\$140,000). The licensing fees, differentiated by type of product, are enumerated in Table 5.

64. 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.

65. The representative of Tonga replied that his Government was reviewing the issues raised. Taking into account of the views of WTO Members, his Government would be prepared to abolish the current procedures, thereby removing the import licensing fees as from the date of Tonga's accession to the WTO.

66. [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

67. 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, 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. Tonga recognised that its present valuation rules did not conform to WTO requirements, and planned to introduce a new WTO-compatible system as rapidly as possible. However, given the length of time needed to implement the new customs valuation rules, his Government would request a transitional period permitting it to complete this process after Tonga's accession to the WTO.

68. 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. 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).

69. The representative of Tonga replied that Tonga had decided to introduce a new system of customs valuation rather than trying to convert its present system. He did not expect major problems for Tonga to implement Article 1 of the WTO Customs Valuation Agreement (transaction value) correctly, provided that WTO Members would make available the necessary technical assistance. All other concerns raised by the Members would be addressed in new legislation, and Tonga would provide a copy of the proposed Bill once completed. He proposed that Tonga would complete the

work to conform 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 6.

Table 6: Legislative action plan regarding customs valuation

Action	Target date from receipt of adequate technical assistance
Parliamentary consideration and passage of legislation for WTO-consistent valuation rules.	One year
Establishment of implementing regulations.	Two years
Recruitment of personnel, obtaining facilities and equipment. Establishment of databases.	Two and a half years
Development of manuals and operating procedures.	Two and a half years
Training of at least 15 officials, customs officers and private sector people.	Three years
Implementation of legislation	Three years after receipt of adequate technical assistance or date of accession, whichever is later.

Note: The length of the transitional period will be agreed during the negotiations for accession, when the availability of adequate technical assistance is clarified.

70. [The representative of Tonga confirmed that Tonga would apply fully the WTO provisions concerning customs valuation as from [an agreed date], including the Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of this commitment.]

Rules of origin

71. 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. Other than this requirement, Tonga applied no specific rules of origin.

72. 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 upon completion of the international work programme for the harmonisation of rules of origin, Article 3 of the Agreement would also apply to Tonga.

73. [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. The Working Party took note of this commitment.]

Preshipment inspection

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

Anti-dumping, countervailing duties, safeguard regimes

75. The representative of Tonga said that Tonga had no specific legislation providing for the imposition of anti-dumping, countervailing duty, or safeguard measures, and that Tonga had no plans to introduce such legislation.

76. [The representative of Tonga confirmed that Tonga would not apply any anti-dumping, countervailing or safeguard measures until it had implemented 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, 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.]

2. Export regulation

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

77. The representative of Tonga said that the requirements applicable to exportation were broadly similar to those affecting imports. Thus, a prospective exporter in possession of a valid business licence should proceed to obtain an export licence for each consignment to be sold abroad. Export licences were issued by the Ministry of Labour, Commerce and Industries against payment of fee, differentiated according to the product exported. The fees applicable for export licences are listed in Table 7. Tonga did not levy export duty on any item.

78. Some Members noted that GATT Article VIII also covered export fees and charges, which accordingly should be limited to the approximate cost of the services rendered. Tonga was encouraged to bring its export licensing fee structure into conformity with the requirements of GATT Article VIII.

79. The representative of Tonga replied that his Government was reviewing the export licensing fee structure in the light of the views of WTO Members.

Export restrictions

80. 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.

81. 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.

Export subsidies

82. 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.

83. 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 TOP1.05 million, 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 was only provided to successful companies wishing to expand their activities. The facility was available to any type of business and not calculated in relation to exports, but priority was 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 was TOP50,000 (about US\$35,000). Only three projects had been financed over a period of three years.

84. 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. He stressed these measures had never involved any export price or similar guarantee.

85. The representative of Tonga added that Tonga benefitted 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.

86. Tonga operated an import duty drawback scheme whereby drawback could be claimed by a holder 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 products if a determination had been made that the finished goods were primarily for export. In addition, the

Industrial Development Incentives Act encouraged export oriented manufacturing by providing certain duty exemptions for products imported by these type of industries.

3. Internal policies affecting foreign trade in goods

Industrial policy, including subsidies

87. The representative of Tonga said that the Industrial Development Incentives Act, 1978 reflected the industrial development policies of his Government. Tonga's strategies and policies for the manufacturing sector included encouraging private sector development to enable the government to withdraw from direct involvement in manufacturing and marketing; improved efficiency through skills training; promotion of export-oriented manufacturing; development of traditional and non-traditional agricultural products having potential for added value through processing, notably cassava, kava, vanilla and pumpkins; and the establishment of TongaTrade as a centralised agricultural and commodity export promotion wing of the Ministry of Labour, Commerce and Industries.

88. Some Members stated that some of the benefits granted to holders of Development Licences 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.

89. The representative of Tonga replied that no import duty or tax exemption had been granted on the basis of export performance or import substitution. However, the Industrial Development Incentives Act would be replaced by new legislation to be applied from the date of Tonga's accession to the WTO.

Technical barriers to trade, sanitary and phytosanitary measures

(a) Standards and certification

90. 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.

91. 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. 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.

92. [The representative of Tonga stated that Tonga would ensure that no technical regulations, standards and conformity assessment procedures are adopted or implemented until Tonga has implemented appropriate laws ensuring 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 Working Party took note of these commitments.]

(b) Sanitary and phytosanitary measures

93. 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.

94. 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 OIE (International Office for Animal Diseases), the International Plant Protection Convention (IPPC) and the Codex Alimentarius Commission, and also

received assistance from regional organisations, in particular the Secretariat of the Pacific Plant Protection Organisation (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 Tonga represented the Polynesian Island Countries in the executive committee. 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.

95. 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.

96. 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 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.

97. Tonga did not yet have the technical infrastructure in place required to implement the SPS Agreement, including an operational SPS Enquiry Point. However, 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 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.

98. 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.

99. [The representative of Tonga 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 this commitment.]

Trade-Related Investment Measures (TRIMs)

100. 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.

101. 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.

102. The representative of Tonga replied that the Industrial Development Incentives Act would be repealed and replaced by the Foreign Investment Act.

103. [The representative of Tonga said that Tonga would not maintain any measures inconsistent with the TRIMs Agreement and would apply the TRIMs Agreement from the date of accession without recourse to any transition period. The Working Party took note of this commitment.]

State trading entities

104. Noting that the Government of Tonga had a stake in 26 enterprises, 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.

105. The representative of Tonga replied that, 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. 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. His Government no longer owned shares in Royal Beer Co. or any other manufacturing facility in Tonga. Leiloa Duty Free Shops, Sea Star Fishing Co., and Tonga Timber Ltd. competed with privately-owned firms. The Government Supplies Department, which had been purchasing goods for resale, had been ceased operations on 30 June 1999.

106. [The representative of Tonga confirmed that Tonga would apply its laws and regulations governing the trading activities of State-owned enterprises and 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

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

Government procurement

108. 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.

109. 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.

110. 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.

Trade in Civil Aircraft

111. 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.

112. The representative of Tonga confirmed that ground equipment and technical supplies for use at airports in connection with air services were exempt from customs duties. He added, however, that such goods were not exempt from Port and Services Tax. In the market access negotiations, Tonga had already offered to bind its "Other Duties and Charges" at zero, while the bound rate of duty on civil aircraft and parts remained to be determined.

Agricultural policies

113. 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.

114. 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.

115. 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 Revision 1. 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 included external assistance provided through the government system.

Trade-Related Intellectual Property Rights (TRIPS)

1. General

116. 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. The main pieces of legislation regulating intellectual property in Tonga 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. Responsibility for all matters related to intellectual property rested with the Ministry of Labour, Commerce and Industries. 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.

117. The representative of Tonga acknowledged that further work would be needed to implement new legislation. He accordingly requested that Tonga be granted a transitional period permitting Tonga to complete this process after its accession to the WTO. An action plan to achieve WTO conformity, proposed by Tonga, is reproduced in Table 9. He stressed that the timeframe indicated in Table 9 relied upon the provision of technical assistance by WTO Members.

Table 9: Action Plan covering Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Action	Target date from receipt of adequate technical assistance
Parliamentary passage of TRIPS-consistent legislation on copyright and related rights, patents, trademarks, industrial designs, geographical indications, layout designs of integrated circuits, and protection of undisclosed information (trade secrets)	Done
Establishment of Intellectual Property (IP) Office.	Done
Establishment of implementing regulations.	One year
Obtaining facilities and equipment.	One year
Development of manuals and operating procedures.	One and a half years
Training of at least 15 officials, customs officers and private sector people as well as educators in TRIPS issues.	Two years
Readiness to participate in regional and international IP administrative cooperation (Forum Island countries, PCT, Madrid Protocol, etc.).	Two years
Implementation	Two years after receipt of adequate technical assistance or date of accession, whichever is later.

2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights

(a) Copyright protection

118. The representative of Tonga said that the Copyright Act No. 20 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 organization 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.

119. He added that Parliament had passed a new law - the Copyright Act - in 2002, thereby providing legislation on copyright and related rights in full conformity with the requirements of the TRIPS Agreement.

(b) Trademarks, including service marks

120. 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.

(c) Geographical indications, including appellations of origin

121. 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.

(d) Industrial designs

122. 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.

(e) Patents

123. The representative of Tonga said that the scope of patentability, the rights conferred by a patent and the criteria under which non-voluntary licences 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.

(f) Plant variety protection

124. The representative of Tonga said that plant varieties were protected under the Industrial Property Act 1994 and the Industrial Property Regulations 1998.

(g) Layout designs of integrated circuits

125. The representative of Tonga said that layout designs of integrated circuits were protected in accordance with the Protection of Layout-Designs (Topographies) of Integrated Circuit Act 2001.

(h) Requirements on undisclosed information, including trade secrets and test data

126. The representative of Tonga said that Tonga had no specific legislation addressing this subject-matter. However, section 3 of the Tonga Civil Law Act stipulated that the Court should apply the common law of England and the rules of equity where there was no applicable law in place in Tonga.

3. Measures to control abuse of intellectual property rights

127. The representative of Tonga said that measures to control the abuse of intellectual property rights were included in the Protection of Unfair Competition Act 2002.

4. Enforcement

128. The representative of Tonga said that Tonga would need technical assistance to complete the necessary legislative changes, i.e. 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.

Policies affecting trade in services

129. 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 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. Access for foreign services suppliers was subject to a 25 per cent local participation requirement in retail, construction, and tourism services needing no special equipment and skills. This restriction was implemented for economic development purposes.

130. 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 applied those of other countries when necessary. 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.

131. 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. 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.

132. Financial services were regulated by the 1991 Financial Institutions 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 TOP3,000. 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. He confirmed that 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. Tonga also permitted the establishment of new foreign life and non-life insurance companies, insurance brokers and agencies, and insurance underwriting and management companies servicing the domestic market.

133. Tonga's telecommunications market had been opened up following the adoption of the Communications Act 2000. The Government however retained a monopoly on the provision of domestic telecommunication services through the Tonga Telecommunication Company, a majority public owned company, whose Board was chaired *ex officio* by the Prime Minister. International communication services, previously delivered by a foreign-owned supplier through a franchise

agreement with his Government, were now operated by Tonga Telecommunications International Ltd. As to Internet services, two mobile services providers offered international communication services in addition to the land-line facilities.

134. 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 (TOP5,000 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.

135. 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.

136. 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.

Transparency

Publication of information on trade

137. The representative of Tonga said that the Government Printing Department published all laws and regulations affecting trade, which were sold to the public at affordable prices. Information on laws and regulations was also available free of charge from the WTO Section at the Ministry of Labour, Commerce and Industries.

Notifications

[to be completed]

Trade agreements

138. The representative of Tonga said that Tonga did not grant preferences to any trading partner. He added 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.

139. Tonga and Fiji had signed a bilateral trade agreement in 1995, aimed at facilitating the free flow of agricultural produce. 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.

140. 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.

141. Tonga was also a signatory to the Lomé Convention 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.

142. [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. The Working Party took note of this commitment.]

Conclusions

143. 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 [.....and] 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.

144. 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 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.

ATTACHMENTS

Table 1: Enterprises with government ownership in mid-2002

Organization	Percentage of Government Ownership	Number of Shares 1999/2000
Air Pacific Limited	<5	70,400
Bank of Tonga	4	120,000
Export Produce Treatment Services Ltd.	20	40,000
Frisco	99	99
Hawaiian Air	<5	208
Home Gas	99	99
International Dateline Hotel	99	5,999,999
Leiola Duty Free	60	600,000
Pacific Forum Line Limited	Approx. 5	1,271,956
Primary Produce Ltd.	99	99
Royal Tongan Airlines	99	12,000,000
Sea Star Fishing Co. Ltd	70	42,000
Shipping Corporation of Polynesia Ltd	100	10,000
Tonga Development Bank	100	1,400,000
Tonga Investment Ltd	99	100
Tonga Telecommunications International Ltd	100	6,712,466
Tonga Timber Limited	99	1,889,999
Tonga Corporation	100	250,000

Table 2: Products subject to price control

Commodity	Tariff Line Item
Flour	11.02
Sugar	1701.0000
Butter	0405.0000
Margarine	15.17
Baby Milk	0402.1000
Tea	0902.0000
Rice	1006.0000
Coffee	0901.0000
Cocoa	1801.0000
Edible Oils of all types	15.01 – 1516.0000
Cheese and Dripping	15.01
Salt	2501.0000
Infant Food Preparations	19.01
Motor Vehicles	87.04
Motor Cycles	87.11
White Benzene	2710.0020
All Lubricant Oils	2710.0070
Insecticides	3808.1000
Herbicides	3808.3000
Fungicides	3808.2000
All chemicals and fertilisers for agricultural use	3101.0000 – 3105.0000
Motor Vehicle spare parts	87.08
Liquid petroleum products	27.10
Motor Spirit	2710.0010
Kerosene	2710.0040
Diesel	not available
Bread of standard size	1905.1010

Table 3: Quarantine fees levied on exports of agricultural goods

FUMIGATION	
Small Chamber (1.1 m3)	\$10.00
All other fumigation chambers including sheet fumigation.	\$7.75 per m3 or part thereof (maximum of \$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 \$130.00 per container and /or chamber)
WASTE DISPOSAL	
Disposal/incineration of quarantinable 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

Note: All fees are stated in Tongan Pa'anga.

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

Table 4(a): Goods prohibited to import 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 subject to 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.

Table 4(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 5: Import licence fees levied on a consignment basis

Nature of import	Fee
Importer of meat, fish or poultry	10.00
Importer of eggs	10.00
Importer of salted meat	10.00
Importer of canned meat	10.00
Importer of butter	10.00
Importer of sugar, flour, salt, milk powder or rice	10.00
Importer of tea, coffee, milo, etc.	10.00
Importer of other grocery goods	10.00
Importer of motor vehicles (right-drive) (per vehicle)	15.00
Importer of motor cycle (per cycle)	5.00
Importer of motor vehicles (left-drive) (per vehicle)	15.00
Importer of beer or ale	10.00
Importer of spirituous liquor	30.00
Importer of cigarettes and tobacco	30.00
Importer of soap, soap powder, detergents, etc.	30.00
Importer of timber as building material	10.00
Importer of other building materials	10.00
Importer of light machinery and equipment (per unit/set)	20.00
Importer of heavy machinery and equipment (per unit/set)	50.00
Importer of chemicals, compounds and mixtures	10.00
Importer of other dry products or items	10.00
Importer of other products in liquid form	10.00
Importer of fertilisers	10.00
Importer of fungicides, insecticides or pesticides	10.00
Importer of petroleum products including lubricants	20.00
Importer of liquid paraffin gas	20.00
Importer of hardware goods	10.00
Importer of computers, radios, televisions, electrical goods	10.00
Importer of other electrical or electronic components	10.00
Importer of vehicle and machinery parts	10.00
Importer of goods for private sale	20.00
Importer of other goods *	5.00

* No licence is required for consignments under 200 kilograms (by ship) or 60 kilograms (by air).

Table 7: Export licence fees

Category of exporter	Fee per consignment (T\$)
Exporter of frozen fish	20.00
Exporter of shellfish	10.00
Exporter of live fish and molluscs	30.00
Exporter of marine products for medical purposes	20.00
Exporter of corals, shells, etc.	20.00
Exporter of beche-de-mer	20.00
Exporter of other marine products	20.00
Exporter of meat and poultry	10.00
Exporter of live birds	50.00
Exporter of vanilla	10.00
Exporter of bananas	10.00
Exporter of coconuts products	10.00
Exporter of drinking coconut	10.00
Exporter of squash	20.00
Exporter of swamp taro	10.00
Exporter of watermelon	10.00
Exporter of vegetable produce	10.00
Exporter of giant taro	10.00
Exporter of ginger	10.00
Exporter of coffee or cocoa	10.00
Exporter of coffee or cocoa beans or cultivars	10.00
Exporter of other agricultural produce	10.00
Exporter of manufactured goods	10.00
Exporter of processed goods	10.00
Exporter of other produce and commodities	10.00
Exporter of handicrafts	10.00
Exporter of other goods	10.00

* Licences are required only for consignments exceeding 200 kilograms by ship and 60 kilograms by air.

Table 8: Import prohibitions relating to animals, plants and related products

Plant	
Name	Plants or plant material 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>7. (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 1

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

- 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;
- 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;
- Act No. 20 of 2 November 1993 To Amend the Licences Act;
- Licence (Amendment) Act 1995 (Cap. 47);
- Drafting Guidelines for Amendments to the Licences Act Cap. 47;
- Application for Licence to Import Goods;
- Act No. 29 of 16 October 1987 To Amend the Intoxicating Liquor Act;
- 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;
- 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;
- 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;
 - Protection of Geographical Indications Act 2001;
 - Protection of Layout Designs (Topographies) of Integrated Circuit Act 2001;
 - 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,

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 the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as 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 [143] of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in paragraph [143] 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)]
