

# 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**

Revision

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## 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. 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 [166].

## **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 determined on the basis of a weighted basket of currencies comprising the U.S. dollar, the New Zealand dollar, the Australian dollar, and the Japanese yen. The exchange rate of the Pa'anga against the U.S. dollar, which was the intervention currency, was determined daily by the National Reserve Bank of Tonga (NRBT), while the rates for the other currencies, for transactions of the Reserve Bank, were determined based on the cross rates provided by the Bank of England. The NRBT was allowed to vary the value of the Pa'anga relative to the basket, at its own discretion, by 5 per cent per month. In July 2003, one Pa'anga bought approximately US\$0.50.

12. The NRBT had delegated to authorized dealers approval authority for payments and transfers for current international transactions up to TOP\$50,000, and reserved the right to approve payments and transfers for current international transactions exceeding TOP\$50,000. Capital transactions were also subject to NRBT approval, which was generally granted provided that official international reserves remained at adequate levels. Transactions such as capital transfers; acquisition/disposal of financial assets; direct investment, including equity capital; and portfolio investment required approval irrespective of the amount involved.

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

### Investment regime

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

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

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. The representative of Tonga stated, however, that these criteria had not been applied in practice.

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, or local content requirements. The concerns raised by Members are discussed below in further detail in the sections "Industrial policy, including subsidies" and "Trade-Related Investment Measures (TRIMs)".

19. The representative of Tonga stated that Parliament had recently passed a new law - the Foreign Investment Act 2002 - with a view to bringing Tonga's legislation into line with WTO provisions. The new Law would become effective upon completion of the implementing regulations. The Act detailed the rules guiding foreign investment and listed the activities reserved for Tongan nationals or restricted to foreign investors. Regulations specifying the conditions for a foreign investor to invest in a restricted activity were being drafted. Unless an activity was designated as restricted, reserved, or prohibited, there would be no foreign participation limitations, in law or in practice, for foreign investors wishing to invest into Tonga. A copy of the regulations would be forwarded to Working Party members once finalized.

20. He noted the concerns voiced by Members in respect of benefits provided under the Industrial Development Incentives Act (IDI) and similar concerns raised regarding the Foreign Investment Act (FIA), and confirmed that no benefits under the IDI or under the FIA had been or would be made contingent, in law or in fact, on export performance, import substitution or local content requirements.

21. In response to the concern of a Member regarding the current absence of regulations implementing the Business Licence Act, which might possibly include disguised restrictions on trade, the representative of Tonga maintained that the Business Licence Act provided for simple and transparent procedures, of a non-discriminatory nature and therefore applied equally to nationals and foreigners, for the issuance of business licenses. He stressed that the implementing regulations would not include hidden trade restrictions. A copy of the regulations would be forwarded to the Working Party once finalized.

22. The representative of Tonga stated that Tonga would be prepared to enter a Protocol commitment to abide by the relevant WTO provisions, including Article 3 of the Agreement on Subsidies and Countervailing Measures, and to ensure that its laws would be modified to incorporate this commitment.

#### State ownership and privatization

23. 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.

24. His Government aimed at rationalisation of public sector activities, including through privatization. A Cabinet Sub-Committee had been established to plan the restructuring of government commercial activities, and a Public Enterprise Unit to develop a programme of privatization. Since 1998, his Government had corporatized the Port Authority and the Tonga Telecommunication Commission, and privatized the Royal Beer Co. Ltd.. Postal services would be corporatized once the debts of Tonga Post have been paid off. The Government Store, which used to supply the public and private sector with hardware and other products had ceased operations in 1999, except for the disposal of goods undergoing processing. A list of enterprises with State ownership as per 30 June 2002, including information on their activities and market position, 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.

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

#### Pricing policies

26. The representative of Tonga said that Tonga applied price control on basic necessities to protect consumers, in particular low income families. Maximum prices were set for these goods to prevent wholesale and retail suppliers from taking advantage of local monopoly conditions resulting from the

small size of the economy. Commodities currently subject to price control are listed in Table 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 were determined freely by market forces.

27. 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.

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

29. In response to concerns of Members who noted that, according to Annex A of WT/ACC/TON/5, local agricultural and fish products were not subject to price control while imported products were covered by controls, which would appear to be inconsistent with the provisions of Article III of GATT 1994, the representative of Tonga stated the readiness of his Government to amend the Price and Wage Control Act 1998 to remove the reference to local agricultural and fish products not subject to price control from the Mark-Up Schedule.

30. The representative of Tonga confirmed 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

31. The representative of Tonga said that Tonga had no specific legislation addressing competition issues, and had no plans to introduce such legislation. The Protection Against Unfair Competition Act 2002 did not establish a competition policy; it provided protection against deceptive industrial and commercial practices, including damaging another's goodwill or reputation, creating confusion, misleading the public, and unfair competition in case of secret information.

### **FRAMEWORK FOR MAKING AND ENFORCING POLICIES**

32. 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.

33. 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.

34. 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. He acknowledged that Tonga would need to introduce new legislation giving foreign and domestic importers 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. Details of the steps to be taken would be provided to Working Party members.

35. [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.]

36. 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 Foreign Affairs 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.

37. 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.

38. The representative of Tonga acknowledged that implementing legislation would have to be adopted in a number of areas to ensure compliance with WTO regulations. He presented an overview of legislative action resulting from the WTO accession process in document WT/ACC/TON/7, noting that adequate and timely technical assistance would be needed to help Tonga in implementing these measures. He confirmed the readiness of his Government to work with the Working Party to help identify any further legislative deficiencies. 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.

39. The representative of Tonga [stated that if laws or other acts of Tonga should be found to contradict international treaties or agreements, the provisions of the international treaty or agreement, such as the WTO, would apply. The representative of Tonga confirmed that sub-central entities had no autonomous authority over measures covered by WTO provisions. He] confirmed that the provisions of the WTO Agreement, including Tonga's Protocol, shall be applied uniformly throughout its customs territory and other territories under Tonga's control, any special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established. He added that when apprised of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts. The Working Party took note of these commitments.

## **POLICIES AFFECTING TRADE IN GOODS**

### Trading rights (the right to import and export)

40. 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.

41. 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 were being drafted that would stipulate that these fees would be no higher than the approximate cost of the services rendered.

42. [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

43. 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.

44. The representative of Tonga replied that his Government understood the value of joining the HS Treaty, but would not be in a position to do so in the near future for technical reasons. Tonga levied customs duties in accordance with the Customs and Excise Act, Cap.67. It accorded tariff preferences to members of the Pacific Island Countries Trade Agreement (PICTA). Imports from other countries were subject to a single set of tariff rates. Import duties were mostly in the 0-30 per cent range, but higher rates were applied on motor vehicles, vans and trucks (45 per cent); petroleum (35 per cent); and beer, spirits, tobacco and cigarettes (rates ranging from 150 to 330 per cent *ad valorem* or specific duty amounts, if higher). Rates on tobacco had been increased recently for health reasons and now ranged between 187.5 per cent and 525 per cent (*ad valorem* or specific duty amount, whichever was higher). The weighted average level of customs duties had amounted to 18.5 per cent in 1995.

45. He added that two studies had been commissioned on the subject of tax reform. 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

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

47. 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.

48. 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 and bound at zero no later than 1 January 2006.

49. 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. Upon examination of the dues levied under the Wharves Act, Tonga recognized that these were not in compliance with WTO regulations. Tonga was accordingly prepared to take necessary action to ensure that wharfage dues were, as from the date of accession, in full conformity with WTO regulations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994.

50. [The representative of Tonga confirmed that any other duties and charges applied to imports other than the normal customs duties and fees and charges for services rendered would be in accordance with WTO provisions no later than 1 January 2006. He further confirmed that existing "other duties and charges" as defined in Article II:1(b) of the GATT 1994 would be removed no later than 1



January 2006, and would be bound at "zero" as of that date in Tonga's Schedule of Concessions and Commitments on Goods. The Working Party took note of this commitment.]

Tariff rate quotas, tariff exemptions

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

52. 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.

53. [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

54. 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.

55. 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.

56. [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

57. The representative of Tonga said that imported and domestically-produced beer (HS number 2203.0010) was subject to an excise tax of TOP0.75 per litre or 20 per cent ad valorem, whichever was higher. Beer was, for the time being, the only product on which excise duty was levied.

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

59. 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.

60. The representative of Tonga replied that the sales tax exemption on local agriculture, livestock and fisheries products applied only to very small individual producers who sold their products locally. Domestic products sold by large local firms were subject to sales tax. Small producers had been exempted due to difficulties in tax collection and the disproportionate costs involved in collecting

relatively small amounts of sales tax. In this respect, Tonga's practice did not differ from that of many Members of the WTO. As to goods sold among vendors and businesses, registration with the Inland Revenue Department was required for vendors or businesses to qualify for a sales tax exemption. He did not consider this requirement an obstacle to trade as the only purpose of the registration procedure was to administer the collection of revenue. No further registration was required. Tonga's present sales tax regime would be terminated as part of the taxation reform programme.

61. He added that a new taxation regime was being designed with the assistance of the Pacific Financial Technical Assistance Centre (PFTAC). Under the new system, taxes levied in Tonga would include a simplified individual income tax; a single rate corporate income tax; a single rate customs duty; excise taxes on imports and local production of alcohol, tobacco, petroleum products and motor vehicles; and a broad based consumption tax, the Tongan Consumption Tax (TCT). The TCT would replace the sales tax, fuel sales tax, and ports and services tax. The expected date for introduction of the TCT and excise taxes on alcohol, tobacco, petroleum products, and motor vehicles was 1 April 2005.

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

#### Quantitative import restrictions, including prohibitions, quotas and licensing systems

63. 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.

64. 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.

65. The representative of Tonga replied that the importation of fireworks and indecent articles, including pornography, was regulated for safety reasons and to protect public morals. The Minister of Police could authorize importation of fireworks. Tonga did not manufacture its own fireworks.

Indecent articles and seditious matter were defined in accordance with the usual discretionary definition. Motor vehicles had been included on the "restricted list" 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 to protect 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 and was considering the suppression of the licensing procedure for motor vehicles.

66. 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.

67. 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.

68. 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.

69. 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 amend the current procedures to ensure compliance with Article VIII of the GATT 1994.

70. [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

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

72. In order to assist Tonga in evaluating the key areas where additional legislation and institutions might be necessary, a Member reminded Tonga that transaction value as defined in Article 1 of the Agreement on the Implementation of Article VII of the GATT 1994 was the preferred method of appraisal, followed by the transaction value of identical merchandise, the transaction value of similar merchandise, the deductive value, computed value, and finally the fallback method. Tonga's current legislation did not appear to provide for any of these methods of valuation. Article 7 of the Agreement prohibited appraisals based on (i) the selling price in the country of importation; (ii) a system providing for the acceptance for customs purposes of the higher of two alternative values; (iii) the price of goods on the domestic market of the country of exportation; (iv) the cost of production other than computed values having been determined for identical or similar goods; (v) the price of goods for export to a country other than the country of importation; (vi) minimum customs values; or (vii) arbitrary or fictitious values. Tonga's legislation would also have to provide adequate protection for the treatment of confidential information in accordance with Article 10 of the Agreement; transparency provisions ensuring the publication of laws, regulations, judicial decisions and administrative rulings regarding the valuation of merchandise (Article 12); provisions granting

importers the right to a written explanation of how judicial and administrative valuation decisions had been determined (Articles 11.3 and 16); and bonded entry of merchandise allowing importers to withdraw goods against sufficient surety or deposit to cover the ultimate payment of customs duties when the final determination of the customs value was being delayed (Article 13).

73. The representative of Tonga recognised that Tonga's present valuation rules did not conform to WTO requirements. Tonga planned to introduce a new WTO-compatible system as soon as is practicable. The Customs (Amendment) Bill 2003, addressing the changes necessary to the valuation system, had been passed by the Tongan Parliament in September 2003, and the necessary further amendments (addressing other requirements of the Agreement, including Article 9, 10, 11, 12, 13 and 17) had been drafted.

74. The representative of Tonga indicated that the major problem for Tonga, in complying with WTO requirements, would be to implement Articles 1-6 of the WTO Customs Valuation Agreement (i.e., use of transaction value and the hierarchy of alternative methods of valuation) correctly. In this regard, the Government of Tonga requested that the Working Party grant a transitional period from the date of its accession of approximately two years, until 1 August 2005, to implement the Agreement fully.

75. During this period, Tonga would ensure that its regulations under current legislation in place and additional legislation implemented during the transition concerning customs valuation would be applied on a non-discriminatory basis to all imports. Further, Tonga would ensure that any changes made in its laws, regulations and practice during the transition period would not result in a lesser degree of consistency with the provisions of the Agreement on Customs Valuation than existed on the date of accession. Tonga would [fully] participate in the work of the Committee on Customs Valuation [within the limits of its resources]. He added that Tonga would seek out all available technical assistance to ensure that its capacity to fully implement the Agreement upon expiration of the transition period is assured. The new legislation would be in full conformity with relevant WTO provisions. A copy of the text of the proposed amendments had been submitted for review by the Working Party, and it was expected that these amendments would be passed by Parliament by the end of 2003. In response to requests from delegations for more specificity, he proposed that Tonga would proceed to conform its customs regime with the requirements of the Agreement on the Implementation of Article VII of the GATT 1994 in accordance with the action plan reproduced in Table 6, setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step.

[Table 6: Action Plan for conformity with the  
Agreement on the Implementation of Article VII of the GATT 1994

Action	Deadline
Working Party review of text and submission of legislation to the Parliament	Prior to accession
Parliamentary passage of legislation for WTO-consistent valuation rules	No later than 1 January 2004
Drafting of regulations for implementation and enforcement of the amended Customs Act	No later than 1 January 2005
Appointment of staff - assessors, collectors, auditors and inspectors	No later than 1 July 2005
Development of manuals and operating procedures	No later than 1 July 2005
Training for customs officials and officers	No later than 1 August 2005
Training for users	No later than 1 August 2005
Commencement of new Valuation System. Full implementation of the Agreement on the Implementation of Article VII of the GATT 1994.	No later than 1 August 2005

]

76. The representative of Tonga confirmed that legislation on the valuation of imports for customs and taxation purposes conforming to the requirements of the WTO Agreement on the Implementation of Article VII of the GATT 1994 had been drafted and had been submitted to the Parliament for enactment. [Tonga would apply fully the Agreement no later than [1 August 2005] according to the action plan in Table 6. During this period the scope of implementation of other aspects of the Agreement and other measures as described in paragraphs [74 and 75] would be applied by Tonga. The Working Party took note of this commitment.]

#### Rules of origin

77. 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.

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

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

79. A Member noted that Tonga had ratified the Pacific Island Countries Trade Agreement (PICTA), which established regional rules of origin. A Rules of Origin Committee was to be formed by 13 June 2003 to implement the specific Rules of Origin Treaty obligations under PICTA. This Member consequently asked Tonga to confirm that its preferential and non-preferential rules of origin would comply with the WTO Agreement on Rules of Origin upon accession.

80. [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 [and will outline the terms under which it will be provided. Tonga would also abide by the relevant WTO provisions on transparency and the provision of information about its rules of origin and their application]. The Working Party took note of this commitment.]

#### Preshipment inspection

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

82. [The representative of Tonga stated that if preshipment inspection requirements were introduced, they would be temporary and in conformity with the requirements of the Agreement on Preshipment Inspection. Tonga would take full responsibility to ensure that such enterprises operating on its behalf complied with the provisions of WTO Agreements. Decisions by such firms could be appealed by importers in the same way as administrative decisions taken by the Government of Tonga. The Working Party took note of these commitments.]

#### Anti-dumping, countervailing duties and safeguard regimes

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



84. [The representative of Tonga confirmed that Tonga would not apply any anti-dumping, countervailing or safeguard measures until it had implemented [and notified] appropriate laws in conformity with the provisions of the WTO Agreements on these matters. Tonga would ensure the full conformity of any such legislation with the relevant WTO provisions, including Article VI and XIX of the GATT 1994 and the Agreement on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. After such legislation was implemented [and notified], Tonga would only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions. The Working Party took note of these commitments.]

## **2. Export regulation**

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

85. 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 a 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.

86. 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.

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

88. [The representative of Tonga confirmed that from the date of accession, Tonga would ensure that its export licensing fee regime 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. The Working Party took note if this commitment.]

### Export restrictions

89. 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.

90. 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.

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

#### Export subsidies

92. 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.

93. 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\$25,000). Only three projects had been financed over a period of three years.

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

95. 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.

96. Tonga's Industrial Development Incentives Act encouraged manufacturing (export or otherwise) by providing import duty exemptions for holders of a Development Licence in respect of imported semi-finished products and/or raw materials, including packaging materials used in the processing, manufacturing or assembly of products. He confirmed that no benefits under the Industrial Development Incentive Act were made contingent, in law or in fact, on export performance.

He further confirmed that the benefits granted under the Act were not subject to national treatment or market access limitations. Criteria for obtaining benefits under the Industrial Development Incentives Act are described in the section "Investment regime".

### **3. Internal policies affecting foreign trade in goods**

#### Industrial policy, including subsidies

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

98. 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.

99. The representative of Tonga replied that no benefits granted under the Industrial Development Incentives Act had been or would be granted on the basis of export performance or import substitution. However, the Industrial Development Incentives Act would be repealed by the Foreign Investment Act. The new Act would enter into force once the regulations had been finalized. No benefits were granted under the new Act.

100. [The representative of Tonga stated that his Government did not currently, and would not in the future, grant any subsidies, including export subsidies, which met a definition of a prohibited subsidy within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures. [He confirmed that the Industrial Development Incentives Act would be repealed prior to accession, and that Tonga would not introduce any such measures in the future]. The representative of Tonga further confirmed that any subsidy programs provided by his Government after accession would be

administered in conformity with the Agreement on Subsidies and Countervailing Measures and that all necessary information on notifiable programs would be notified to the Committee on Subsidies and Countervailing Measures according to Article 25 of the Agreement upon entry into force of Tonga's Protocol of Accession. The Working Party took note of these commitments.]

Technical barriers to trade, sanitary and phytosanitary measures

- (a) Standards and certification
- (b) Sanitary and phytosanitary measures

101. 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.

102. The representative of Tonga said that Tonga had no specific Standardization Act or technical regulations in place. The Public Health Act 1992, which empowered the Minister for Health to make regulations in relation to food standards, had so far not been used for this purpose. Thus, Tonga had not adopted any technical regulations, standards or conformity assessment procedures to date, and had no plans to do so. The Consumer Protection Act 2000 did refer to the implementation of approved standards, including labelling requirements, to protect consumers, but no standards had been established. Foreign goods entering Tonga were accordingly not subject to any particular standards-related procedures or requirements. As to the establishment of a TBT Enquiry Point, the WTO Desk at the Ministry of Labour, Commerce and Industries would serve this function.

103. 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.

104. 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 was chaired by Tonga. Tonga used FAO and OIE standards as a basis for its own standards relating to animals and animal products. Regarding the principle of equivalence, Tonga recognized different measures achieving the same level of protection, and based its regulations in this respect on those of Australia and New Zealand. Importation was only prohibited when necessary to protect human, animal or plant life and health. A list of products prohibited in accordance with the Plant Quarantine Act and in the Animal Diseases Act is reproduced in Table 8.

105. 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.

106. In reply, the representative of Tonga noted that three new Acts had been passed by the Legislative Assembly in 2002, namely the Animal Diseases Bill (Amendment) Act, the Agricultural

Commodities Export Act, and the Pesticides Act (2002). FAO and South Pacific Commission consultants had assisted in the drafting of this legislation, which should be in conformity with international requirements. Tonga did not yet have legislation making observation of the SPS Agreement mandatory. Such legislation, together with regulations containing the administrative procedures necessary to administer the SPS Agreement, would come into force as from the date of Tonga's accession to the WTO. The regulations would specify, for instance, the enquiry point, the authority responsible for making notifications to the WTO, the publication to be used for the publication of proposed measures, the procedure to be used for taking comments into account, the Government body responsible for developing regulations, conducting risk assessments and control, as well as inspection and approval procedures.

107. He confirmed that the technical infrastructure in place required to implement the SPS Agreement, including an operational SPS Enquiry Point. 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.

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

109. [The representative of Tonga confirmed that Tonga would neither adopt nor implement technical regulations or standards and conformity assessment procedures until Tonga had implemented and notified appropriate laws in conformity with the provisions of the Agreement on

Technical Barriers to Trade. Tonga would ensure the full conformity of any such legislation with the Agreements on Technical Barriers to Trade and the Application of Sanitary and Phytosanitary Measures. The Working Party took note of these commitments.]

#### Trade-Related Investment Measures (TRIMs)

110. 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.

111. 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.

112. The representative of Tonga replied that the Industrial Development Incentives (IDI) Act aimed at encouraging entrepreneurship to foster industrial growth and tourism in Tonga. In his opinion, none of the benefits granted under the IDI were contingent, in law or in fact, upon export performance, import substitution or local content requirements. However, the IDI Act would be repealed by the Foreign Investment Act (FIA). The FIA aimed at regulating foreign investment only and would enter into force upon finalization of the regulations. In his view, the FIA was consistent with trade-related investment measures under the GATT 1994.

113. [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

114. Noting that the Government of Tonga had had a stake in 26 enterprises in 1998., some Members requested Tonga to provide information on any state trading enterprises operating under exclusive or special privileges in relation to imports or exports. Specific questions were raised concerning the activities of Tonga Investments Ltd., Frisco, Primary Produce Limited, Royal Beer Co.



Ltd., Leiloa Duty Free Shops (Tonga) Ltd., Sea Star Fishing Co. Ltd, Tonga Timber Ltd., and the Government Supplies Department.

115. 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 ceased operations on 30 June 1999.

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

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

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

### Government procurement

119. 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.

120. 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.

121. 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

122. 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.

123. 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

124. 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.

125. 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.

126. 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. He confirmed that Tonga would not apply export subsidies under the Agreement of Agriculture, notwithstanding recourse as appropriate to measures allowed according to Article 9.4 of the Agreement of Agriculture.

### Trade-Related Intellectual Property Rights (TRIPS)

#### 1. General

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

Intellectual Property Authorities

128. Authorities responsible for policy formulation and implementation included the Intellectual Property and Company Registration (IPCR) Office, accountable for the implementation of intellectual property legislation; the Hon. Minister of Labour, Commerce and Industries, the Minister responsible for the Industrial Property Act 1994, the Copyright Act 2002, the Protection of Geographical Indications Act 2002, the Protection of Layout-Designs (Topographies) of Integrated Circuits Act 2001, and the Unfair Competition Act 2002; and the Supreme Court, responsible for settling intellectual property disputes. All intellectual property regulations had to be approved by the Cabinet.

Intellectual property legislation

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

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

Participation in international intellectual property agreements

131. The representative of Tonga said that Tonga had become member of the World Intellectual Property Organisation on 14 June 2001, and had been a party to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works as of the same date. These two conventions were self-executing under Tonga's legal regime. His Government was also considering membership in the Patent Cooperation Treaty, the Madrid

Protocol and Agreements, and the Hague Agreement, and was seeking more information on the Geneva Phonogram Convention and the WIPO Copyright Treaty.

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

(a) Copyright protection

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

133. He added that Parliament had passed a new law - the Copyright Act 2002 - which would repeal the existing copyright legislation. This Act addressed most of the deficiencies of the existing copyright legislation with respect to compliance with WTO requirements. However, it would need some amendment to ensure full conformity with the requirements of the TRIPS Agreement.

(b) Trademarks, including service marks

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

(c) Geographical indications, including appellations of origin

135. 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

136. 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. The relevant provisions of the Act and regulations were, in his view, in full compliance with the requirements of the TRIPS Agreement.

(e) Patents

137. 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. The relevant provisions of the Act and regulations were, in his view, in compliance with the requirements of the TRIPS Agreement.

138. The Intellectual Property and Company Registration (IPCR) Office acted as Tonga's Patent Office. Patent holders from third countries could apply for registration in accordance with the Industrial Property Act 1994. Tonga was not yet a party to the Patent Cooperation Treaty, but was considering membership.

(f) Plant variety protection

139. The representative of Tonga said that plant varieties were currently not protected under any legislation in Tonga.

(g) Layout designs of integrated circuits

140. 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. The relevant provisions of the Act and regulations were, in his view, in full compliance with the requirements of the TRIPS Agreement.

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

141. 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. He added that Tonga would need to pass new legislation to protect against unfair commercial use of undisclosed test or other data.

3. Measures to control abuse of intellectual property rights

142. The representative of Tonga said that measures to control the abuse of intellectual property rights were included in the Industrial Property Act 1994 and the Protection of Unfair Competition Act 2002. However, Tonga's legislation would need to be amended to ensure that such measures were in line with TRIPS requirements.

143. His Government had launched a limited scale public awareness programme on intellectual property regulations and the IPCR Office was organizing training for customs officials. Further training would include police forces.

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

4. Enforcement

145. The representative of Tonga said that Tonga [had enacted new legislation in recent years that provided for WTO-consistent rules for the protection of intellectual property in several areas, including the Protection of Geographical Indications Act 2001 and the Protection of Layout Designs (Topographies) of Integrated Circuit Act 2001. The new Copyright Act 2002 would need to be amended to ensure full conformity with requirements of the TRIPS Agreement. Regulations implementing this legislation was in development. He acknowledged that further work would be needed in other areas to implement new legislation to bring Tonga's intellectual property regime into conformity with the WTO Agreement on TRIPS. Existing legislation and regulations, covering Patents, Industrial Property, Trademarks and services marks would need amendment. New legislation providing for protection of undisclosed information and general enforcement of intellectual property protection would also be needed. These were in development, and would be circulated to the Working Party for review prior to the conclusion of the negotiations. The Government of Tonga intended to enact these laws and implement the relevant additional regulations prior to 1 January 2005.

146. He indicated that Tonga] would need technical assistance to complete the necessary legislative changes to implement the TRIPS Agreement and to ensure that the Agreement's provisions were being observed, including the introduction of provisions addressing civil judicial procedures and remedies, provisional measures, administrative procedures and remedies, special border measures, and criminal procedures, as well as to carry out additional steps to implement and enforce the TRIPS Agreement, e.g. the training of personnel and the development of infrastructure. [At present key

Ministries lacked expertise about the obligations created under the TRIPS Agreement. Tonga recognized that cooperation with other Forum Group countries in the area of intellectual property protection would be useful, and membership of the Geneva, Brussels, UPOV and WIPO Conventions, the Patent Cooperation Treaty, and the Madrid Protocol would facilitate compliance with the TRIPS Agreement. Tonga intended to accede to these treaties by 1 January 2006.

147. The representative of Tonga thanked the Working Party for its recognition that technical assistance would be required and the governments concerned for the technical assistance that they had already provided. For the reasons given above, the Government of Tonga requested that the Working Party grant a transitional period to 1 January 2007, approximately three years from the date of its accession, to obtain technical assistance and equip the Government to fully implement the obligations of the TRIPS Agreement. He confirmed that, if such a transitional period were granted, Articles 3, 4 and 5 of the Agreement, providing for, inter alia, national treatment and MFN treatment under current legislation in place would apply, and Tonga would ensure that any changes made in its laws, regulations and practice in this period would not result in a lesser degree of consistency with the provisions of the TRIPS Agreement that existed on the date of accession. In addition, Tonga would not grant patents, trademarks, or copyrights, or marketing approvals for pharmaceutical or agricultural chemicals inconsistent with the provisions of the TRIPS Agreement.

148. The representative of Tonga also stated that, should a transition be granted, existing rates of infringement would not in his view increase significantly over this transition period and that any infringement of intellectual property rights would be addressed immediately in cooperation and with assistance from affected right holders. Tonga would protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person that submitted such data may, without the permission of the latter person, rely on such data in support of an application for product approval for a period of at least five years from the date on which Tonga granted marketing approval to the person that produced the data. Prior to issuance of marketing approval of any pharmaceutical and agricultural chemicals products, the relevant Ministries in Tonga would determine the existence of a patent covering a product for which an application for marketing approval had been filed by a party other than the patentee, and must not approve such application for marketing approval until the date of the expiration of such patent. He added that Tonga would seek out all available technical assistance to ensure that its capacity to enforce fully its TRIPS-consistent legal regime upon expiration of the transition period is assured. In response to requests from delegations for more specificity, the representative of Tonga



presented an Action Plan setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step (Table 9).]

[Table 9: Actions to be taken for conformity with the TRIPS Agreement

Action	Deadline
Drafting of new legislations, covering: - protection of undisclosed information and trade secrets; - plant variety protection; - general and enforcement obligations under the TRIPS Agreement.	No later than 1 July 2004
Drafting of amendments to existing legislations to address deficiencies vis-à-vis the WTO Agreement on TRIPS as identified in response to WT/ACC/9, specifically: - Industrial Property Act 1994; - Copyright Act 2002.	No later than 1 July 2004
Circulation of draft legislation addressing remaining deficiencies vis-à-vis the WTO TRIPS Agreement in Tonga's intellectual property rights regime.	July 2004
Parliamentary passage of new legislations and amendments to existing legislations.	No later than 1 January 2005
Drafting of implementing regulations for Intellectual Property legislations, specifically: - Copyright Act 2002; - Geographical Indications Act 2001; - Protection of Layout Designs (Topographies) of Integrated Circuits Act 2001; - new legislations required, as detailed above.	No later than 1 July 2005
Development of manuals and operating procedures	No later than 1 January 2006
Appointment of staff	No later than 1 January 2006
Training of key IP personnel	No later than 1 July 2006
Training for users (development of information brochure and training program)	No later than 1 January 2007
Full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights.	No later than 1 January 2007

]

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

Policies affecting trade in services

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

151. 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.

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

153. Financial services were regulated by the 1991 Financial Institutions Act and regulations, the National Reserve Bank Act, the Tonga Development Bank Act, the Westpac Bank of Tonga Act, the Foreign Exchange Control Act and regulations, and the Money Laundering and Proceeds of Crime Act. Licenses were delivered by the Ministry of Finance based on inquiries by the National Reserve Bank of Tonga, which supervised the activities of banks, and approval of the Privy Council. The annual licence fee amounted to 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, providing banking services such as deposits, loans, and local and international money transfer. He confirmed that financial institutions were allowed to provide financial information and advisory services. Tonga allowed the establishment of new foreign commercial banks, merchant banks and other financial services companies both in the form of wholly-owned subsidiaries or direct branches. In addition, Tonga permitted the establishment of new foreign life and non-life insurance companies, insurance brokers and agencies, and insurance underwriting and management companies servicing the domestic market. Financial services could also be provided by authorized foreign exchange dealers.

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

155. 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.

156. 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.

157. 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.

[to be completed]

### Transparency

#### Publication of information on trade

158. 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.

159. The representative of Tonga confirmed that, from the date of accession, all laws, regulations, rulings, decrees or other measures related to trade in goods or services would be published in the Official Gazette, and that no law, rule, etc., related to trade in goods and services would become effective prior to such publication. He further stated that Tonga would fully implement Article X of the GATT 1994, and Article III of the GATS and the other transparency requirements of WTO Agreements requiring notification and publication. The Working Party took note of these commitments.

### Notifications

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

Agreement would also conform to the requirements of that Agreement. The Working Party took note of these commitments.

#### Trade agreements

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

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

163. Tonga and Fiji had signed a bilateral trade agreement in 1995, aimed at facilitating the free flow of agricultural products. The Agreement was non-reciprocal, having been formulated shortly after a bilateral quarantine protocol had been established for 20 agricultural items imported into Fiji from Tonga. A joint committee met bi-annually to discuss matters of mutual trade interest.

164. 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.

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

166. 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

167. 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 [30, 35, 39, 42, 50, 53, 56, 62, 70, 76, 80, 82, 84, 88, 91, 100, 109, 113, 116, 118, 149, 159, 160, and 166] 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.

168. 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	Activity / Market Position	Number of Shares 1999/2000	Percentage of Government Ownership
Air Pacific Limited	Fiji's national airline; provides regional airline services; competes with the other market suppliers.	70,400	<5
Westpac Bank of Tonga	Commercial bank; competes with 3 other banks in Tonga.	120,000	4
Export Produce Treatment Services Ltd.	Manages the hot air treatment plant at the airport.	40,000	20
Hawaiian Air	Hawaii's national airline.	208	<5
International Dateline Hotel	Holds 49% of the shares of the company that owns Tonga's biggest hotel; competes with other accommodation facilities in Tonga.	5,999,999	99
Leiola Duty Free	Operates Tonga's duty free shops; has a monopoly position; likely to be privatised in 2003-2004.	600,000	60
Pacific Forum Line Limited	Regional shipping company based in Fiji; provides regional freight and charter services.	1,271,956	Approx. 5
Royal Tongan Airlines	Tonga's national airline; competes with Air New Zealand, Polynesian Airlines and Air Pacific (other main airlines that service similar routes).	12,000,000	99
Sea Star Fishing Co. Ltd	Deep sea fishing company; competes with many other firms; Tonga's Government is considering divesting itself from this company.	42,000	70
Shipping Corporation of Polynesia Ltd	Provides domestic and international passenger and cargo charter services; many domestic competitors in this market.	10,000	100
Tonga Development Bank	Provides development and business advisory banking services.	1,400,000	100
Tonga Investment Ltd	<p>Holding/investment company set up in 1991 to manage the activities of its subsidiaries (Frisco, Home Gas, and Primary Produce Limited); likely to be privatised in 2003-2004.</p> <p>Frisco: Hardware and building materials supplier; mainly sells imported products; no exclusive or special rights or privileges; competes with other private firms.</p> <p>Home Gas: Sole distributor of cooking and heating gas in Tonga; no exclusive or special rights or privileges.</p> <p>Primary Produce Ltd.: No longer in operation; should be wound up.</p>	100	99

Organization	Activity / Market Position	Number of Shares 1999/2000	Percentage of Government Ownership
Tonga Telecommunications International Ltd	Provides both local and international telecommunications services; competes with private enterprises; no special rights or privileges.	6,712,466	100
Tonga Timber Limited	Coconut/timber milling and hardware supplier; competes with other suppliers; no exclusive or special rights or privileges.	1,889,999	99
Tonga Corporation	Manages Tonga's landholdings in America, Samoa and Hawaii.	250,000	100



Table 2: Products subject to price control

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

Table 3: Quarantine fees levied on exports of agricultural goods

<b>FUMIGATION</b>	
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).
<b>HEAT STERILISATION</b>	
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)
<b>WASTE DISPOSAL</b>	
Disposal/incineration of quarantineable material e.g. war ships	\$0.40 per hour or part thereof.
<b>STEAM CLEANING</b>	
Per consignment	\$15.00 per hour or part thereof.
<b>COLD STORAGE</b>	
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.
<b>INSPECTION AND CLEARANCE:</b>	
<b>EXAMINATION FOR IMPORT OR EXPORT</b>	
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
<b>AIRCRAFT CLEARANCE</b>	
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
<b>SHIP CLEARANCE</b>	
Vessel of more than 25 metres in length	\$50.00
Vessel of 25 metres or less in length	\$20.00
<b>POST-ENTRY QUARANTINE</b>	
Bench space per month (per 0.5 m3 or part thereof)	\$7.75
Potting Material, chemicals and other related expenses	At cost
<b>OVERTIME</b>	
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
<b>MISCELLANEOUS FEES</b>	
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 of which import is prohibited by copyright law.
7.	All books and any written or printed matter and sound and visual recordings which advocate violence, lawlessness or disorder.
8.	All toxic or hazardous wastes.
9.	Goods the importation of which is prohibited by any other law in force in the Kingdom.
10.	Goods the importation of which is restricted by any other law in force in the Kingdom except in accordance with such law.

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

<b>Plant</b>	
Name	
Banana, Abaca, other Musaceae Heliconiaceae	Plants, including living plants and products of plants, prohibited
All Beans of the species Phaseolus	Plants, corns and cut flowers
Cassava (Manihol esculenta Grantz)	All except seed
Citrus	All except tissue cultures
All palms including coconut	All except fruit and seeds. Fruit from areas where citrus canker (Xanthomonas Campestris p.v. citri, (Hasee) Dye) Occurs. All of Murraya spp.
Cacao and host plants of Cacao swollen shoot	All except seednuts and pollen from areas approved by the Minister
Coffe (Coffea spp.)	All except seed from Asia Pacific Region
Maize (Zea mays L)	All propagating material except seed
Peanut (Arachis hypogaea L)	All except seed
Potato (Solanum tuberosum L)	All except seed
Sorghum (Sorghum spp)	All except tubers, true seed and tissue cultures
Rubber (Hevea spp)	All except seed
Taro and edible aroids (Alocasia spp, Colocasia spp, Xanthosoma spp nd Cyrtosperma spp)	All
Tomato (Lycopersicon esculenum Miller)	All except propagating material, seed and tissue cultures
Orchidaceae	All except fruit and seed
	All except tissue cultures and seedlings in Sterile flasks.
<b>Animal</b>	
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"> <li>(a) any snake of any species whatever;</li> <li>(b) any venomous reptile, or any living stage of any venomous amphibian, venomous fish or venomous invertebrate;</li> <li>(c) any monkey of any species;</li> <li>(d) any member of the squirrel species;</li> <li>(e) any red fox or silver fox;</li> <li>(f) any musquash (or muskrat);</li> <li>(g) any hamster;</li> <li>(h) any mongoose;</li> <li>(i) any coypu (or nutria);</li> <li>(j) any mink;</li> <li>(k) any rabbit;</li> <li>(l) any hare;</li> <li>(m) any deer</li> <li>(n) any opossum;</li> <li>(o) any other animal that is likely to become a nuisance or to cause injury or damage.</li> </ul> <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.
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[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.

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## DRAFT PROTOCOL

### ON THE ACCESSION OF THE KINGDOM OF TONGA

#### Preamble

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

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

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

Agree as follows:

#### PART I - GENERAL

1. Upon entry into force of this Protocol pursuant to paragraph 8, the Kingdom of Tonga accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which the Kingdom of Tonga accedes shall be the WTO Agreement, including the Explanatory Notes to that Agreement, as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph [167] of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in paragraph [167] 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.

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ANNEX I

**SCHEDULE [...] – KINGDOM OF TONGA**

Authentic only in the ... language.

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

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***SCHEDULE OF SPECIFIC COMMITMENTS ON SERVICES***

***LIST OF ARTICLE II EXEMPTIONS***

Authentic only in the ... language.

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

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