MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

Trade Negotiations Committee

FINAL ACT EMBODYING THE RESULTS OF THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

RECTIFICATIONS PROPOSED BY THE SECRETARIAT

This document presents further rectifications proposed by the Secretariat to the 15 December 1993 English-language version of the Final Act, taking into account proposals received from delegations. The rectifications in this text have been presented as computer-generated "redline-strikeout" texts, in which any text added is shaded, and any text deleted is struck out.

Certain of the rectifications proposed herein result from decisions made on a horizontal basis across all texts, such as incorporation of MTN/FA/Corr. 1, adopted on 15 December 1993, which provided for a change of all Final Act references to "Multilateral Trade Organization" and "MTO" to "World Trade Organization" and "WTO". A list of points of a horizontal nature was included in MTN/FA/Corr. 2 of 18 February 1994, and applies to the present corrigendum as well. Rectifications which simply implement these horizontal points, or correct typographical errors, have not necessarily been specially explained. Explanations of other rectifications appear in notes following each text.

The notes explaining the rectifications made to the texts of the Agreement Establishing the WTO and the GATT 1994 were omitted from MTN/FA/Corr.2 of 18 February, and appear in this corrigendum.
# TABLE OF CONTENTS: MTN/FA/Corr.4

## I. AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION:

### A. ANNEX 1A

- **NOTES ON THE RECTIFIED TEXT**
  - General Agreement on Tariffs and Trade 1994
  - Notes on the Rectified Text

### B. ANNEX 1B: GENERAL AGREEMENT ON TRADE IN SERVICES

1. **Text of the Agreement**
2. **Annexes**
   - *(a)* Annex on Article II Exemptions
   - *(b)* Annex on Movement of Natural Persons Supplying Services under the Agreement
   - *(c)* Annex on Air Transport Services
   - *(d)* Annex on Financial Services
   - *(e)* Second Annex on Financial Services
   - *(f)* Annex on Negotiations on Maritime Transport Services
   - *(g)* Annex on Telecommunications
   - *(h)* Annex on Negotiations on Basic Telecommunications

### C. ANNEX 1C: AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

### D. ANNEX 2: UNDERSTANDING ON RULES AND PROCEDURES FOR THE RESOLUTION OF DISPUTES

### E. ANNEX 3: TRADE POLICY REVIEW MECHANISM

## II. DECISIONS FOR ADOPTION AT THE MARRAKESH MINISTERIAL MEETING

1. **Decision on Measures in Favour of Least-Developed Countries**
2. **Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policymaking**
3. **Decision on Notification Procedures**
4. **Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries**
5. **Decisions Relating to the Agreement on Technical Barriers to Trade**
   - *(a)* Decision on Proposed Understanding on WTO-ISO Standards Information System
   - *(b)* Decision on Review of the ISO/IEC Information Centre Publication
6. **Decisions Relating to the Agreement on Anti-Dumping Measures**
   - *(a)* Decision on Future Work on the Problem of Circumvention of Anti-Dumping Measures
   - *(b)* Decision on Review of Paragraph 6 of Article 17 of the Agreement on Anti-Dumping Measures
   - *(c)* Declaration on Dispute Settlement Pursuant to the Agreement
on Anti-Dumping Measures or Part V of the Agreement on Subsidies and Countervailing Measures

7. Decisions Relating to the Agreement on Customs Valuation
   (a) Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value
   (b) Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires

8. Decisions Relating to the General Agreement on Trade in Services
   (a) Decision on Institutional Arrangements for the General Agreement on Trade in Services
   (b) Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services
   (c) Decision on Trade in Services and the Environment
   (d) Decision on Negotiations on Movement of Natural Persons
   (e) Decision on Negotiations on Financial Services
   (f) Decision on Negotiations on Maritime Services
   (g) Decision on Negotiations on Basic Telecommunications
   (h) Decision on Professional Services

9. Understanding on Commitments in Financial Services

10. Decision on Accession to the Agreement on Government Procurement

11. Decisions Relating to the Understanding on Rules and Procedures Governing the Settlement of Disputes
    (a) Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes
    (b) Decision on Improvements to the GATT Dispute Settlement Rules and Procedures
I. AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

NOTES ON THE RECTIFIED TEXT

Rectifications made in accordance with the general guidelines appearing at pages 1 to 3 of MTN/FA/Corr.2 (such as changes from "MTO" to "WTO", or use of the term "least-developed country Member") are not specially explained.

1. Preamble: first recital rectified to correct grammatical parallelism; fourth recital rectified to conform reference to Uruguay Round to that in the Final Act text.

Article II

2. Article II, paragraph 2: rectified to add precision to the description of GATT 1947; the title of the Geneva Final Act of 30 October 1947 is rectified to correspond to that in the original document.

-- GATT 1947 is defined here as "the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act of the Second Session of the United Nations Conference on Trade and Employment, as rectified, amended or modified by the terms of the legal instruments which have entered into force before the date of entry into force of this Agreement".

-- The text of the General Agreement on Tariffs and Trade 1994 in Annex 1A states that "the provisions of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as 'GATT 1994') shall be the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act of the Second Session of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of the legal instruments which have entered into force before the date of entry into force of the WTO Agreement", provides that certain other instruments shall be deemed to have become effective under the GATT 1994, and provides that certain named Understandings and the Marrakesh Protocol shall be deemed to be an integral part of GATT 1994.

Article III

3. Article III, paragraph 1: grammatical rectification.

4. Article III, paragraphs 3 and 4: introduction of short titles of DSU and TPRM.

Article IV

5. Article IV, paragraph 1: specification that requirements for decision-making are those in "the relevant" Multilateral Trade Agreement, so as to add precision.

6. Article IV, paragraph 5: introduction of short titles for Council for TRIPS, GATS, Agreement on TRIPS. Paragraphs 3, 4 and 5: Deletion as redundant of locational references to agreements, which are supplied by the List of Annexes which follows the rectified text of the WTO Agreement; in each case there is only one agreement by that name annexed to the WTO Agreement.

7. Article IV, paragraphs 3 and 6: rectified to reflect short titles already introduced.
Article V

8. Article V, paragraphs 1 and 2: rectified to Ministerial Conference so as to clarify that the Ministerial Conference can carry out these functions; note as well the provisions in paragraph 1 of Article IV that "The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member ...", and in paragraph 2 of Article IV that "In the intervals between meetings of the Ministerial Conference, its functions shall be carried out by the General Council".

Article VI

9. Article VI, paragraph 1: rectification to "term of office" ("terms of office" would be already included in "conditions of service"). Paragraph 4, grammatical corrections.

Article VII

10. Paragraphs 1 and 3: rectification to use consistently the term "budget estimate".

Article IX

11. Article IX, paragraph 1: rectification to "the relevant" Multilateral Trade Agreement: see note no. 5 above to the parallel rectification to paragraph 1 of Article IV. Addition of "for" and "in": rectifications for grammatical clarification. Paragraph 1 and footnote 3: as a horizontal matter, the terms "Member" or "Members" with an upper-case "M" are used in all rectified texts in the Final Act only to refer to Members of the WTO.

12. Article IX, paragraph 2: reference to "General Council" in first sentence removed for consistency with paragraph 3 and in view of Article IV:2; consequential changes in second sentence.

13. Article IX, paragraph 3: rectification to decisions "taken" to conform with Article IX:3(b) and Article IV:1. Addition of "unless otherwise provided for in this Article" because the provisions of Article IX:3(a) and (b), and footnote 5, are exceptions to the general rule in the chapeau of Article IX:3 and are intended to govern in the specified circumstances.

14. Article IX, paragraphs 3(a) and (b): rectification to use short titles previously introduced; hyphen in "three fourths of the Members" is struck out.

Article X

15. Article X, paragraph 1, first sentence: clarification of reference to Article IV by addition of reference to paragraph 5, for greater precision. Third sentence: relocation of the phrase "unless the Ministerial Conference decides on a longer period" to the beginning of the sentence for the sake of clarity. Third sentence: addition of word "only", consistent with decision of negotiators to make such decisions by "consensus as a rule".

16. Article X, paragraph 2: deletion as redundant of word "enumerated"; deletion as redundant of locational references to agreements, which are supplied by the List of Annexes which follows the rectified text of the WTO Agreement.

17. Article X, paragraphs 3, 4 and 7: addition of "of" and "to" for grammatical parallelism.

18. Article X, paragraph 5: rectification to use short title previously introduced; hyphen in "two
thirds of the Members" is struck out.

19. Article X, paragraph 6: rectification to use short title previously introduced; rectification to add "and shall take effect for all members" was already implied by phrase "without further acceptance process" and reflects intentions of negotiators in Institutions Group.

20. Article X, paragraph 8: addition of word "only" consistent with decision of negotiators to make such decisions by "consensus as a rule"; see note no. 15 above concerning parallel change to Article X, paragraph 1.

21. Article X, paragraph 9: upper-case "Agreement" used for agreements part of the WTO system; otherwise, agreements in general are in lower case.

22. Article X, paragraphs 9 and 10: references to "in Annex 4" deleted as redundant since Plurilateral Trade Agreements are by definition located in Annex 4 (see Article II, paragraph 3).

**Article XI**

23. Article XI, paragraph 1: rectification to use short title previously introduced.

**Article XII**

24. Article XII, paragraph 1: rectification to "State" in line with standard GATT usage.

**Article XIII**

25. Article XIII, paragraph 2: rectification to use short title previously introduced.

26. Article XIII, paragraph 3: rectification to "has acceded" because the legal effect described (application of paragraph 1, which specifies that the WTO Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply) is relevant only after the Member in question has acceded.

**Article XIV**

27. Article XIV, paragraph 1: deletion of reference to deposit of an instrument of acceptance because this paragraph states that the WTO Agreement can be accepted "by signature or otherwise", not solely by deposit of an instrument of acceptance.

28. Article XIV, paragraph 3: rectification of "signatory" to "Member"; Note also that under paragraph 6 of the Final Act text, all participants in the Uruguay Round will receive certified copies of the Final Act and annexes thereof.

29. Article XIV, paragraph 4: addition of depositary reference to Director-General to GATT 1947 CONTRACTING PARTIES, because certain of the Plurilateral Trade Agreements now provide for deposit with the GATT Director-General; also, depositary functions will begin as of 15 April 1994 in the case of, for instance, the Agreement on Government Procurement to be done at Marrakesh.

**Article XVI**

30. Article XVI, paragraph 3: alignment of drafting with the conflict clause in the general interpretative note to Annex 1A, which has the same legal function.
31. Article XVI, paragraph 4: the "attached agreements" also include the Plurilateral Trade Agreements, which do not bind all Members; rectification clarifies that this "implementation clause" applies only to the obligations in the Multilateral Trade Agreements and that non-parties to the Plurilateral Trade Agreements are not required to implement the provisions thereof. Each of the Plurilateral Trade Agreements independently includes an implementation clause similar that in Article XVI:4.

32. Article XVI, paragraph 5: rectification of "provisions" to "provision" for grammatical reasons (the singular would include the plural). Rectification to second sentence to avoid any possible implication, under Articles 19-20 of the Vienna Convention on the Law of Treaties (1969), that reservations to the Multilateral Trade Agreements are permitted unless expressly limited or prohibited; under the second sentence as rectified, reservations would be excluded unless expressly provided for.

List of Annexes

33. The List of Annexes would replace the list of agreements which followed the text of GATT 1994 in the 15 December version of the Final Act, and would identify with precision those agreements that are attached to each Annex of the WTO Agreement.

34. The List of Annexes should be corrected as follows:

(a) the list should include an item for "Annex 1", since Annex 1 is referred to in the WTO Agreement (Articles II:2, IX:2, X:1, XIII:1);

(b) the title of Annex 1A should read "Multilateral Agreements on Trade in Goods", for consistency with the Dispute Settlement Understanding;

(c) the titles of the Understandings listed after GATT 1994 should correspond to the titles listed in paragraph 3(a) through (g) in the text of GATT 1994, on page 22 of MTN/FA/Corr.2, and the titles listed on pages 24, 26, 28, 32, 35, 36 and 38;

(d) the title "International Dairy Agreement" should read "International Dairy Arrangement" and the title "Arrangement on Bovine Meat" should read "Arrangement Regarding Bovine Meat".
A. ANNEX 1A

The title of this Annex (page 20 in MTN/FA/Corr.2) should instead read "Multilateral Agreements on Trade in Goods".

NOTE ON THE RECTIFIED TEXT: The text of Article XVI, paragraph 3 of the WTO Agreement has been aligned with the general interpretative note to Annex 1A. The general interpretative note has been rectified to add an introduction of the short title of the WTO Agreement.

GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

NOTES ON THE RECTIFIED TEXT:

A. Rectified text: The clean text of this provision, as rectified, reads as follows. The version below corrects a few typographical errors in MTN/FA/Corr.2. The Understanding on Article XXXV is indicated as deleted: see the note on page 38 of MTN/FA/Corr.2.

1. The provisions of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "GATT 1994") shall be the provisions of the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of the legal instruments which have entered into force before the date of entry into force of the WTO Agreement.

2. The legal instruments set forth below that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement shall be deemed to have become effective under the GATT 1994.

(a) protocols and certifications relating to tariff concessions;

(b) protocols of accession (excluding the provisions (a) concerning provisional application and withdrawal of provisional application and (b) providing that Part II of GATT 1947 shall be applied provisionally to the fullest extent not inconsistent with legislation existing on the date of the Protocol);

(c) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement; and

(d) other decisions of the CONTRACTING PARTIES to GATT 1947.

3. The Understandings set out in subparagraphs (a) through (f) below shall be deemed to be an integral part of GATT 1994.

(a) Understanding on the Interpretation of Article II:1(b) of GATT 1994
(b) Understanding on the Interpretation of Article XVII of GATT 1994
(c) Understanding on Balance-of-Payments Provisions of GATT 1994
(d) Understanding on the Interpretation of Article XXIV of GATT 1994
(e) Understanding in Respect of Waivers of Obligations under GATT 1994
(f) Understanding on the Interpretation of Article XXVIII of GATT 1994


5. Explanatory Notes

(a) The references to "contracting party" in the provisions of GATT 1994 shall be deemed to read "Member". The references to "less-developed contracting party" and "developed contracting party" shall be deemed to read "developing country Member" and "developed country Member". The references to "Executive Secretary" shall be deemed to read "Director-General of the WTO".

(b) The references to the CONTRACTING PARTIES acting jointly in Articles XV:1, XV:2, XV:8, XXXVIII and the Notes Ad Article XII and XVIII; and in the provisions on special exchange agreements in Articles XV:2, XV:3, XV:6, XV:7 and XV:9 of GATT 1994 shall be deemed to be references to the WTO. The other functions that the provisions of GATT 1994 assign to the CONTRACTING PARTIES acting jointly shall be allocated by the Ministerial Conference.

6. (a) The provisions of Part II of GATT 1994 shall not apply to measures taken by a Member under specific mandatory legislation, enacted by that Member before it became a contracting party to GATT 1947, that prohibits the use, sale or lease of foreign-built or foreign-
reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone. This exemption applies to: (a) the continuation or prompt renewal of a non-conforming provision of such legislation; and (b) the amendment to a non-conforming provision of such legislation to the extent that the amendment does not decrease the conformity of the provision with Part II of GATT 1947. This exemption is limited to measures taken under legislation described above that is notified and specified prior to the date of entry into force of the WTO Agreement. If such legislation is subsequently modified to decrease its conformity with Part II of GATT 1994, it will no longer qualify for coverage under this paragraph.

(b) The Ministerial Conference shall review this exemption not later than five years after the date of entry into force of the WTO Agreement and thereafter every two years for as long as the exemption is in force for the purpose of examining whether the conditions which created the need for the exemption still prevail.

(c) A Member whose measures are covered by this exemption shall annually submit a detailed statistical notification consisting of a five-year moving average of actual and expected deliveries of relevant vessels as well as additional information on the use, sale, lease or repair of relevant vessels covered by this exemption.

(d) A Member that considers that this exemption operates in such a manner as to justify a reciprocal and proportionate limitation on the use, sale, lease or repair of vessels constructed in the territory of the Member invoking the exemption shall be free to introduce such a limitation subject to prior notification to the Ministerial Conference.

(e) This exemption is without prejudice to solutions concerning specific aspects of the legislation covered by this exemption negotiated in sectoral agreements or in other fora.

B. Notes:

1. Paragraph 1: clarifies that the "provisions of" GATT 1994 are to be the provisions of the GATT text as rectified, amended or modified up to the date of entry into force of the WTO Agreement. Thus, any changes to the text of the GATT up to the date of entry into force of the WTO Agreement would be automatically incorporated.

2. Paragraph 2: clarifies that decisions and other "joint action" under GATT Article XXV are not in pari materia with the provisions of the GATT, and therefore not subject to the formal amendment procedures of Article X of the WTO Agreement. The rephrasing in subparagraph (c) brings it into greater consistency with GATT Article XXV. The rectification to the last sentence of the footnote to paragraph 2(c) would provide a mandate for the Ministerial Conference at its first meeting to rectify this footnote to eliminate those waiver decisions listed which have expired as of the date of entry into force, and to add new waiver decisions made up to that date. The preparation of this rectification could be among the items undertaken by the Implementation Committee for the WTO.

3. Paragraphs 3 and 4: These paragraphs incorporate by reference the texts listed, which are identified in the List of Annexes to the WTO Agreement. Concerning the proposed deletion of the Understanding on the Interpretation of Article XXXV, see the note on page 38 of MTN/FA/Corr.2.

4. Paragraphs 5 and 6: The texts are unchanged from the 15 December version of the Final Act, except for horizontal rectifications of "MTO" to "WTO" and of the reference to date of entry into force of the WTO Agreement.
B. **ANNEX 1B: GENERAL AGREEMENT ON TRADE IN SERVICES**

1. **Text of the Agreement**

**GENERAL AGREEMENT ON TRADE IN SERVICES**

PREAMBLE

PART I  **SCOPE AND DEFINITION**

Article I  Scope and Definition

PART II  **GENERAL OBLIGATIONS AND DISCIPLINES**

Article II  Most-Favoured-Nation Treatment
Article III  Transparency
Article III bis  Disclosure of Confidential Information
Article IV  Increasing Participation of Developing Countries
Article V  Economic Integration
Article V bis  Labour Markets Integration Agreements
Article VI  Domestic Regulation
Article VII  Recognition
Article VIII  Monopolies and Exclusive Service Suppliers
Article IX  Business Practices
Article X  Emergency Safeguard Measures
Article XI  Payments and Transfers
Article XII  Restrictions to Safeguard the Balance of Payments
Article XIII  Government Procurement
Article XIV  General Exceptions
Article XIV bis  Security Exceptions
Article XV  Subsidies

PART III  **SPECIFIC COMMITMENTS**

Article XVI  Market Access
Article XVII  National Treatment
Article XVIII  Additional Commitments

PART IV  **PROGRESSIVE LIBERALIZATION**

Article XIX  Negotiation of Specific Commitments
Article XX  Schedules of Specific Commitments
Article XXI  Modification of Schedules

PART V  **INSTITUTIONAL PROVISIONS**

Article XXII  Consultation
Article XXIII  Dispute Settlement and Enforcement
Article XXIV  Council for Trade in Services
Article XXV  Technical Cooperation
Article XXVI  Relationship with Other International Organizations

PART VI  FINAL PROVISIONS

Article XXVII  Denial of Benefits
Article XXVIII  Definitions
Article XXIX  Annexes

Annex on Article II Exemptions
Annex on Movement of Natural Persons supplying Services under the Agreement
Annex on Air Transport Services
Annex on Financial Services
Second Annex on Financial Services
Annex on Negotiations on Maritime Transport Services
Annex on Telecommunications
Annex on Negotiations on Basic Telecommunications
GENERAL AGREEMENT ON TRADE IN SERVICES

Members,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby agree as follows:

PART I

SCOPE AND DEFINITION

Article I

Scope and Definition

1. This Agreement applies to measures by Members affecting trade in services.

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

   (a) from the territory of one Member into the territory of any other Member;

   (b) in the territory of one Member to the service consumer of any other Member;

   (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
(d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

3. For the purposes of this Agreement:

(a) "measures by Members" means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

(b) "services" includes any service in any sector except services supplied in the exercise of governmental authority.

(c) A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

PART II
GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III

Transparency

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services
to which a Member is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Member shall respond promptly to all requests by any other Member for specific information, by any other Member, on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (hereinafter referred to as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing countries. Enquiry points need not be depositories of laws and regulations.

5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

Article III bis

Disclosure of Confidential Information

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article IV

Increasing Participation of Developing Countries

1. The increasing participation of developing countries in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

   (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, \textit{inter alia} through access to technology on a commercial basis;

   (b) the improvement of their access to distribution channels and information networks; and

   (c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement Establishing the WTO to facilitate the access of developing countries' service suppliers to information,
related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;
(b) registration, recognition and obtaining of professional qualifications; and
(c) the availability of services technology.

3. Special priority shall be given to the least developed countries in the implementation of paragraphs 1 and 2 above. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

Article V

Economic Integration

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

(a) has substantial sectoral coverage, and

(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under sub-paragraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, in particular sub-paragraph (b), particularly those in subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and sub-sectors.

(b) Notwithstanding paragraph 6 below, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

1This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the a priori exclusion of any mode of supply.
4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or sub-sectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2-4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification thereof to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification thereof and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems it such a working party necessary.

(c) Based on the reports of the working parties referred to in paragraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

Article V bis

Labour Markets Integration Agreements

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration of the labour markets between or among the parties to such an agreement, provided that such an agreement:

(a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;

(b) is notified to the Council for Trade in Services.

2Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.
Article VI
Domestic Regulation

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that they do in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.

(b) In determining whether a Member is in conformity with the obligation under
paragraph 5(a) above, account shall be taken of international standards of relevant international organizations applied by that Member.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

**Article VII**

**Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3 below, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in its territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Member shall:

   (a) within 12 months from the date on which the WTO Agreement Establishing the WTO takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;

   (b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;

   (c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international

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3The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.
standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article VIII

Monopolies and Exclusive Service Suppliers

1. Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.

2. Where a Member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member's specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Council for Trade in Services may, at the request of a Member which has a reason to believe that a monopoly supplier of a service of any other Member is acting in a manner inconsistent with paragraph 1 or 2 above, request the Member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of the WTO Agreement Establishing the MTO, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall make such notification to notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

Article IX

Business Practices

1. Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

2. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.
Article X

Emergency Safeguards Safeguard Measures

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement Establishing the MTO.

2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement Establishing the MTO.

Article XI

Payments and Transfers

1. Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

Article XII

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1 above:
   (a) shall not discriminate among Members;
   (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
(c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the General Council.

5. (a) Members applying the provisions of this Article shall consult promptly with the Committee on Balance-of-Payments Restrictions on restrictions adopted under this Article.

(b) The Ministerial Conference shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the Member concerned as it may deem appropriate.

(c) Such consultations shall assess the balance-of-payment situation of the Member concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:

(i) the nature and extent of the balance-of-payments and the external financial difficulties;

(ii) the external economic and trading environment of the consulting Member;

(iii) alternative corrective measures which may be available.

(d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phase out of restrictions in accordance with paragraph 2(e).

(e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member.

6. If a Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Ministerial Conference shall establish a review procedure and any other procedures necessary.

*It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.*
Article XIII

Government Procurement

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement Establishing the MTO.

Article XIV

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

(a) necessary to protect public morals or to maintain public order;\(^5\)

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
   
   (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

   (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

   (iii) safety;

(d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective\(^6\) imposition or collection of direct taxes\(^7\) in respect of non-residents or residents in order to prevent the avoidance or evasion of taxes, including

\(^5\)The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

\(^6\)Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member’s territory; or

- apply to non-residents in order to ensure the imposition or collection of taxes in the Member’s territory; or

- apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including
of services or service suppliers of other Members;

(e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

**Article XIV bis**

**Security Exceptions**

1. Nothing in this Agreement shall be construed:

   (a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

   (b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

      (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

      (ii) relating to fissionable and fusionable materials or the materials from which they are derived;

      (iii) taken in time of war or other emergency in international relations; or

   (c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

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Compliance measures; or

- apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member’s territory; or

- distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

- determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member’s tax base.

Tax terms or concepts in paragraph (d) of Article XIV(4) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

*NOTE TO THE RECTIFIED TEXT:* as the matter in this footnote is a definition “for the purpose of this Agreement” it has been moved to a new subparagraph (o) in Article XXVIII.
Article XV

Subsidies

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.\textsuperscript{8} The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

PART III

SPECIFIC COMMITMENTS

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.\textsuperscript{9}

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;\textsuperscript{10}

\textsuperscript{8}A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

\textsuperscript{9}If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in paragraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in paragraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

\textsuperscript{10}Sub-paragraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.
(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

**Article XVII**

**National Treatment**

1. In the sectors inscribed in its schedule Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.\(^\text{11}\)

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

**Article XVIII**

**Additional Commitments**

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's schedule Schedule.

\(^{11}\)Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.
PART IV

PROGRESSIVE LIBERALIZATION

Article XIX

Negotiation of Specific Commitments

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement Establishing the WTO and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures by Members affecting trade in services as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing countries Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to it conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment of the least-developed countries Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

Article XX

Schedules of Specific Commitments

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each schedule shall specify:

(a) terms, limitations and conditions on market access;
(b) conditions and qualifications on national treatment;
(c) undertakings relating to additional commitments;
(d) where appropriate the time-frame for implementation of such commitments; and
(e) the date of entry into force of such commitments.
2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

Article XXI

Modification of Schedules

1. (a) A Member (hereinafter referred to in this Article as the "modifying Member") may modify or withdraw any commitment in its schedule at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

   (b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.

2. (a) At the request of any Member whose benefits under this Agreement may be affected (hereinafter referred to as an "affected Member") by a proposed modification or withdrawal notified under paragraph 1(b), the modifying Member shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in schedules of specific commitments prior to such negotiations.

   (b) Compensatory adjustments shall be made on a most-favoured-nation basis.

3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.

   (b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

   (b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.

5. The Council for Trade in Services shall establish procedures for rectification or modification of schedules of commitments. Any Member which has modified or withdrawn scheduled commitments under this Article shall modify its schedule according to such procedures.
PART V
INSTITUTIONAL PROVISIONS

Article XXII
Consultation

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) shall apply to such consultations.

2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member to bring this matter before the Council for Trade in Services. The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

Article XXIII
Dispute Settlement and Enforcement

1. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter—have recourse to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

2. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of such obligations and specific commitments in accordance with Section 22 (Compensation and the Suspension of Concessions) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

3. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Section 22 (Compensation and the
Suspension of Concessions) of the Understanding on Rules and Procedures Governing the Settlement of Disputes Article 22 of the DSU shall apply.

Article XXIV

Council for Trade in Services

1. The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Members.

3. The Chairman of the Council shall be elected by the Members. The Council shall establish its own rules of procedure.

Article XXV

Technical Cooperation

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the WTO Secretariat and shall be decided upon by the Council for Trade in Services.

Article XXVI

Relationship with Other International Organizations

The General Council Ministerial Conference Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

PART VI

FINAL PROVISIONS

Article XXVII

Denial of Benefits

A Member may deny the benefits of this Agreement:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or in the territory of a Member to which the denying Member does not apply the WTO Agreement;
in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws of a non-Member or of a Member to which the denying Member does not apply this the WTO Agreement, and

(ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Member or of a Member to which the denying Member does not apply this the WTO Agreement;

to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply this the WTO Agreement.

Article XXVIII

Definitions

For the purpose of this Agreement:

(a) "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(c) "measures by Members affecting trade in services" include measures in respect of

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;

(d) "commercial presence" means any type of business or professional establishment, including through

(i) the constitution, acquisition or maintenance of a juridical person, or

(ii) the creation or maintenance of a branch or a representative office, within the territory of a Member for the purpose of supplying a service;

(e) "sector" of a service means,

(i) with reference to a specific commitment, one or more, or all, sub-sectors of that service, as specified in a Member's schedule,

(ii) otherwise, the whole of that service sector, including all of its sub-sectors.
(f) "service of another Member" means a service which is supplied,

(i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;

(g) "service supplier" means any person that supplies a service;

(h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;

(i) "service consumer" means any person that receives or uses a service;

(j) "person" means either a natural person or a juridical person;

(k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member,

(i) is a national of that other Member; or

(ii) has the right of permanent residence in that other Member, in the case of a Member which

1. does not have nationals; or

2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;

(l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(m) "juridical person of another Member" means a juridical person which is either;

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13Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.
(i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

1. natural persons of that Member,

2. juridical persons of that other Member identified under sub-paragraph (i);

(n) A juridical person is

(i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;

(ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person.

(o) For the purpose of this Agreement "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

[NOTE TO THE RECTIFIED TEXT: text of subparagraph (o) moved from former footnote 7 to Article XIV.]

Article XXIX

Annexes

The Annexes to this Agreement are an integral part of this Agreement.
NOTES ON THE RECTIFIED TEXT:

General:

A number of editorial changes have been introduced throughout the text for purposes of consistency with other texts of the Final Act, grammar, punctuation or improving the clarity of the language. Most of those changes are self-explanatory and therefore are not referred to individually in these notes.

Article XIV:

Footnote No. 7: the footnote contains a definition of "direct taxes", for the purposes of the Agreement. The text of the footnote is moved to Article XXVIII (Definitions). Since the definition is for the purposes of the entire Agreement and not specifically for Article XIV, it would be more appropriate to have it as part of Article XXVIII, which contains similar definitions, rather than a footnote to Article XIV.

Article XXVI:

Reference to "The General Council" is changed to "The Ministerial Conference" for consistency with Article V of the WTO Agreement.

Article XXVIII:

Subparagraph (k)(ii): Reference in the third line to "acceptance or accession to this Agreement" is changed to "acceptance of or accession to the WTO Agreement" for consistency with the WTO Agreement.

Paragraph (o): New paragraph containing former footnote 7 to Article XIV, as mentioned above.
2. Annexes

(a) Annex on Article II Exemptions

ANNEX ON ARTICLE II EXEMPTIONS

Scope

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.

2. Any new exemptions applied for after the date of entry into force of the WTO Agreement Establishing the MTO shall be dealt with under paragraph 3 of Article IX of that Agreement.

Review

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement Establishing the MTO.

4. The Council for Trade in Services in a review shall:
   
   (a) examine whether the conditions which created the need for the exemption still prevail; and
   
   (b) determine the date of any further review.

Termination

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.

6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.

7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

Lists of Article II Exemptions

[List of all measures exempted under paragraph 2 of Article II to be included in the treaty copy of the WTO Agreement prepared for signature].

NOTE ON THE RECTIFIED TEXT:

Since paragraph 2 of Article II requires that exemptions be listed in the Annex, a heading has been added for that purpose.
ANNEX ON MOVEMENT OF NATURAL PERSONS
SUPPLYING SERVICES UNDER THE AGREEMENT

1. The Annex applies to measures affecting natural persons who are service suppliers of a Member, and to natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service for which specific commitments relating to entry and temporary stay of such natural persons have been undertaken.

2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.¹

NOTE TO THE RECTIFIED TEXT: In paragraph 1, the phrase "for which specific commitments relating to entry and temporary stay of such natural persons have been undertaken" has been deleted. Paragraph 1 determines the scope of application of the Annex. The language in the last line confines the application of the Annex only to services on which specific commitments are undertaken. This is not consistent with the rest of the Annex nor with the intentions of negotiators.

¹Interpretative Note: The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.
c) Annex on Air Transport Services

ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment made or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect at the date of entry into force of the WTO Agreement Establishing the WTO.

2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:
   (a) traffic rights, however granted; or
   (b) services directly related to the exercise of traffic rights,
except as provided in paragraph 3 of this Annex.

3. The Agreement shall apply to measures affecting:
   (a) aircraft repair and maintenance services;
   (b) the selling and marketing of air transport services;
   (c) computer reservation system (CRS) services.

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

6. Definitions:
   (a) "aircraft repair and maintenance services" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.
   (b) "selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.
   (c) "computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.
   (d) "traffic rights" mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their
conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

(d) **Annex on Financial Services**

**ANNEX ON FINANCIAL SERVICES**

1. **Scope and Definition**

1.1(a) This annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in the Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

1.2(b) For the purposes of paragraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:

1.2.1(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

1.2.2(ii) activities forming part of a statutory system of social security or public retirement plans; and

1.2.3(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

1.3(c) For the purposes of paragraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in paragraph 1.2.2 or 1.2.3 subparagraphs (b)(i) or (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

1.4(d) Paragraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. **Domestic Regulation**

2.1(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

2.2(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. **Recognition**

3.1(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
3.2(b) A Member that is a party to such an agreement or arrangement referred to in paragraph 3.1 subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

3.3(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII of the Agreement shall not apply.

4. Dispute Settlement

4.1 Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. Definitions

For the purposes of this Annex:

5.1(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

*Insurance and insurance-related services*

- (a)(i) Direct insurance (including co-insurance):
  - (i)(A) life
  - (ii)(B) non-life
- (b)(ii) Reinsurance and retrocession;
- (c)(iii) Insurance intermediation, such as brokerage and agency;
- (d)(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

*Banking and other financial services (excluding insurance)*

- (e)(v) Acceptance of deposits and other repayable funds from the public;
- (f)(vi) Lending of all types, including consumer credit, mortgage, credit, factoring and financing of commercial transaction;
- (g)(vii) Financial leasing;
- (h)(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (i)(ix) Guarantees and commitments;
- (j)(x) Trading for own account or for account of customers, whether on an exchange, in an
over-the-counter market or otherwise, the following:

(i)(A) money market instruments (including cheques, bills, certificates of deposits);
(ii)(B) foreign exchange;
(iii)(C) derivative products including, but not limited to, futures and options;
(iv)(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
(v)(E) transferable securities;
(vi)(F) other negotiable instruments and financial assets, including bullion.

(k)(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l)(xii) Money broking;

(m)(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(n)(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(o)(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(p)(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in sub-paragraphs (e)(v) to (o)(xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

5.3 "Public entity" means:

5.3.1(i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

5.3.2(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

5.4 "Agreement" means the Articles of the General Agreement on Trade in Services, this Sectoral Annex on Financial Services and the schedule of each Party with respect to financial services.

NOTES ON THE RECTIFIED TEXT:

The paragraph numbering in the Annex has been made consistent with the numbering in the GATS text.

Former Paragraph 5.4 has been deleted because it defines the "Agreement" in a manner which is inconsistent with the provisions of the GATS. It excludes a number of Annexes which are an integral
parts of the Agreement, including the Second Annex on Financial Services, the Annex on Telecommunications and the Annex on Movement of Natural Persons. A definition of the term "Agreement" does not seem necessary in this context.

(e) Second Annex on Financial Services

SECOND ANNEX ON FINANCIAL SERVICES

1. Notwithstanding Article II of the General Agreement on Trade in Services and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement Establishing the MTO, list in that Annex measures relating to Financial Services which are inconsistent with paragraph 1 of Article II of the Agreement.

2. Notwithstanding Article XXI of the General Agreement on Trade in Services, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement Establishing the MTO, improve, modify or withdraw all or part of the commitments on Financial Services inscribed in its schedule.

3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.
ANNEX ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

1. Notwithstanding paragraph 1 of Article II of the GATS and paragraph 2 of the Annex on Article II Exemptions, Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for maritime transport services including access to and use of port facilities only on:

   (a) the date of implementation determined under paragraph 4 of the results of the negotiations mandated by the Ministerial Decision on Negotiations on Maritime Transport Services; or,

   (b) should the negotiations not succeed, on the date of the final report of the Negotiating Group on Maritime Transport Services provided for in that Decision.

2. Paragraph 1 above shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's schedule.

3. From the conclusion of the negotiations referred to in paragraph 1 above, and before the date of implementation of the results of these negotiations, Members shall be free to implement commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI.

4. References to the dates cited under paragraphs 1(a) and (b) above are contained in paragraph 4 of the Ministerial Decision on Negotiations on Maritime Transport Services.

NOTES TO THE RECTIFIED TEXT:

In paragraph 1, the first clause up to the comma has been deleted as redundant; the provisions to which this Annex takes precedence are already identified in the rest of the sentence. Also, the words "international shipping, auxiliary services and" have been replaced by "maritime transport services including" because the former wording would have excluded cabotage from the scope of this Annex, a result not intended by the negotiators.

Paragraph 4 has been incorporated into sub paragraphs (a) and (b) of paragraph 1; see parallel changes made to the Annex on Negotiations on Basic Telecommunications.
ANNEX ON TELECOMMUNICATIONS

1. **Objectives**

   Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. **Scope**

   2.1(a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.\(^1\)

   2.2(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

   2.3(c) Nothing in this Annex shall be construed:

   2.3.1(i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its schedule; or

   2.3.2(ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. **Definitions**

   For the purposes of this Annex:

   3.1(a) **Telecommunications** means the transmission and reception of signals by any electromagnetic means.

   3.2(b) **Public telecommunications transport service** means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer’s information.

   3.3(c) **Public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

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\(^1\)This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.
3.4(d) *Intra-corporate communications* means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Member’s domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party Member. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

3.5(c) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. **Transparency**

4.1 In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. **Access to and use of Public Telecommunications Transport Networks and Services**

5.1(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its schedule. This obligation shall be applied, *inter alia*, through paragraphs 5.2(b) through 5.6(f) below.²

5.2(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs 5.3(c) and 5.6(f), that such suppliers are permitted:

5.2.1(i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;

5.2.2(ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and

5.2.3(iii) to use operating protocols of the service supplier’s choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

5.3(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

²The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".
5.4(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary
to ensure the security and confidentiality of messages, subject to the requirement that such measures
are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination
or a disguised restriction on trade in services.

5.5(e) Each Member shall ensure that no condition is imposed on access to and use of public
telecommunications transport networks and services other than as necessary:

5.5.1(i) to safeguard the public service responsibilities of suppliers of public
telecommunications transport networks and services, in particular their ability
to make their networks or services available to the public generally;

5.5.2(ii) to protect the technical integrity of public telecommunications transport
networks or services; or

5.5.3(iii) to ensure that service suppliers of any other Member do not supply services
unless permitted pursuant to commitments in a Member’s schedule.

5.6(f) Provided that they satisfy the criteria set out in paragraph 5.5(e), conditions for access to and
use of public telecommunications transport networks and services may include:

5.6.1(i) restrictions on resale or shared use of such services;

5.6.2(ii) a requirement to use specified technical interfaces, including interface
protocols, for inter-connection with such networks and services;

5.6.3(iii) requirements, where necessary, for the inter-operability of such services and
to encourage the achievement of the goals set out in paragraph 7.1;

5.6.4(iv) type approval of terminal or other equipment which interfaces with the
network and technical requirements relating to the attachment of such
equipment to such networks;

5.6.5(v) restrictions on inter-connection of private leased or owned circuits with such
networks or services or with circuits leased or owned by another service
supplier; or

5.6.6(vi) notification, registration and licensing.

5.7(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may,
consistent with its level of development, place reasonable conditions on access to and use of public
telecommunications transport networks and services necessary to strengthen its domestic
telecommunications infrastructure and service capacity and to increase its participation in international
trade in telecommunications services. Such conditions shall be specified in the Member’s schedule.

6. Technical Co-operation

6.1(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries,
particularly developing countries, is essential to the expansion of their trade in services. To this end,
Members endorse and encourage the participation, to the fullest extent practicable, of developed and
developing countries and their suppliers of public telecommunications transport networks and services
and other entities in the development programmes of international and regional organizations, including
the International Telecommunication Union, the United Nations Development Programme, and the
International Bank for Reconstruction and Development.
6.2(b) Members shall encourage and support telecommunications co-operation among developing countries at the international, regional and sub-regional levels.

6.3(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

6.4(d) Members shall give special consideration to opportunities for the least developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

7. Relation to International Organizations and Agreements

7.1(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

7.2(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

NOTE TO THE RECTIFIED TEXT: The paragraph numbering in the Annex has been made consistent with the numbering in the GATS text.
(h)  *Annex on Negotiations on Basic Telecommunications*

ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Notwithstanding paragraph 1 of Article II of the GATS and paragraph 2 of the Annex on Article II Exemptions, Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

   (a) the date of implementation determined under paragraph 5 of the results of the negotiations mandated by the Ministerial Decision on Negotiations on Basic Telecommunications; or,

   (b) should the negotiations not succeed, on the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 above shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's schedule.

3. References to the dates cited under paragraphs 1(a) and (b) above are contained in paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications.

NOTES TO THE RECTIFIED TEXT:

In paragraph 1, the first clause up to the comma has been deleted as redundant; the provisions to which this Annex takes precedence are already identified in the rest of the sentence. Also, paragraph 4 has been incorporated into subparagraphs (a) and (b) of paragraph 1. See also the parallel changes made to the Annex on Negotiations on Maritime Transport Services.
Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

TABLE OF CONTENTS

Part I: General Provisions and Basic Principles

Part II: Standards Concerning the Availability, Scope and Use of Intellectual Property Rights

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

Part III: Enforcement of Intellectual Property Rights

1. General Obligations
2. Civil and Administrative Procedures and Remedies
3. Provisional Measures
4. Special Requirements Related to Border Measures
5. Criminal Procedures

Part IV: Acquisition and Maintenance of Intellectual Property Rights and Related Inter-Partes Procedures

Part V: Dispute Prevention and Settlement

Part VI: Transitional Arrangements

Part VII: Institutional Arrangements; Final Provisions
AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of the GATT 1994 and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (WIPO) (hereinafter referred to as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:
PART I: GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1

Nature and Scope of Obligations

1. Members Each Member shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their domestic law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members Each Member shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 to 7 of Part II.

3. Members Each Member shall accord the treatment provided for in this Agreement to the nationals of other Members. In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions. Any A Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS").

Article 2

Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members each Member shall comply with Articles 1 to 12, and Article 19, of the Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

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1When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

Article 3

National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and of the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights. TRIPS.

2. Members may avail themselves of the exceptions permitted under paragraph 1 above in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4

Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance and law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the Agreement Establishing the WTO (hereinafter referred to as the "WTO Agreement"), provided that such agreements are notified to the Council for Trade-Related Aspects of Intellectual Property Rights TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

3For the purposes of Articles 3 and 4 of this Agreement, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.
Article 5

Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 above do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (WIPO) relating to the acquisition or maintenance of intellectual property rights.

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 above, nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 7

Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8

Principles

1. **Members** A Member may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.
PART II: STANDARDS CONCERNING THE AVAILABILITY, SCOPE
AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9

Relation to the Berne Convention

1. Each Member shall comply with Articles 1-21 and the Appendix to 21 of the Berne Convention (1971) and the Appendix thereto. However, a Member shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10

Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12

Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than fifty years from the end of the calendar year of authorized publication, or, failing such authorized publication within fifty years from the making of the work, fifty years from the end of the calendar year of making.
Article 13

Limitations and Exceptions

Members Each Member shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 14

Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do a Member does not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply mutatis mutandis to producers of phonograms and any other right holders in phonograms as determined in domestic law. If, on the date of the Ministerial Meeting concluding the Uruguay Round of Multilateral Trade Negotiations, a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of fifty years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 above shall last for at least twenty years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1-, 2 and 3 above, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, mutatis mutandis, to the rights of performers and producers of phonograms in phonograms.
SECTION 2: TRADEMARKS

Article 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 above shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, a Member may afford an opportunity for the registration of a trademark to be opposed.

Article 16

Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having his consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of making rights available on the basis of use.

2. Article 6bis of the Paris Convention (1967) shall apply, mutatis mutandis, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in that Member obtained as a result of the promotion of the trademark.

3. Article 6bis of the Paris Convention (1967) shall apply, mutatis mutandis, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.
Article 17

Exceptions

Members A Member may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 18

Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19

Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20

Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

Article 21

Licensing and Assignment

Members A Member may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign his trademark with or without the transfer of the business to which the trademark belongs.
SECTION 3: GEOGRAPHICAL INDICATIONS

Article 22

Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. In respect of geographical indications, each Member shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).

3. A Member shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The provisions of the preceding paragraphs of this Article shall apply to a geographical protection under paragraphs 1, 2 and 3 shall be applicable against an indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 23

Additional Protection for Geographical Indications for Wines and Spirits

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if domestic legislation of a Member's law so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

4. Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide for enforcement by administrative action.
3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22 above. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for Trade Related Aspects of Intellectual Property Rights (TRIPS) concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

**Article 24**

**International Negotiations; Exceptions**

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 to 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, each Member shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for Trade Related Aspects of Intellectual Property Rights (TRIPS) shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement Establishing the MTO. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement Establishing the MTO.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least ten years preceding the date of the Ministerial Meeting concluding the Uruguay Round of Multilateral Trade Negotiations or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

   (a) before the date of application of these provisions in that Member as defined in Part VI below; or

   (b) before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical
with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the Agreement Establishing the MTO.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, his name or the name of his predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

SECTION 4: INDUSTRIAL DESIGNS

Article 25

Requirements for Protection

1. Members Each Member shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. A Member may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. A Member shall be free to meet this obligation through industrial design law or through copyright law.

Article 26

Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. A Member may provide limited exceptions to the protection of industrial designs,
provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least ten 10 years.

SECTION 5: PATENTS

Article 27

Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3 below, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members A Member may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by domestic its law.

3. Members A Member may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members each Member shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement Establishing the WTO.

For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.
Article 28

Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having his consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having his consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29

Conditions on Patent Applicants

1. Members Each Member shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. Members A Member may require an applicant for a patent to provide information concerning his corresponding foreign applications and grants.

Article 30

Exceptions to Rights Conferred

Members A Member may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

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6This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.
Article 31

Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive.

(d) such use shall be non-exclusive;

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

7"Other use" refers to use other than that allowed under Article 30.
(k) Members are A Member is not obliged to apply the conditions set forth in sub-paragraphs (b) and (f) above where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32

Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33

Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.8

Article 34

Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28 above, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members each Member shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.
(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in sub-paragraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 35

Relation to the IPIC Treaty

Members agree to Each Member shall provide protection to the layout-designs (topographies) of integrated circuits (hereinafter referred to as "layout-designs") in accordance with Articles 2 to 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

Article 36

Scope of the Protection

Subject to the provisions of paragraph 1 of Article 37 below, Members, each Member shall consider unlawful the following acts if performed without the authorization of the right holder: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout-design.

Article 37

Acts Not Requiring the Authorization of the Right Holder

1. Notwithstanding Article 36 above, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members Each Member shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, he may perform any

9The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.
of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in sub paragraphs (a) - (k) of Article 31 above shall apply mutatis mutandis in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

**Article 38**

**Term of Protection**

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of ten years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than ten years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2 above, a Member may provide that protection shall lapse fifteen years after the creation of the layout-design.

**SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION**

**Article 39**

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 below and data submitted to governments or governmental agencies in accordance with paragraph 3 below.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices, so long as such information:

   -(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

   -(b) has commercial value because it is secret; and

   -(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of

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10 For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.
pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members each Member shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members a Member from specifying in their national legislation its laws and regulations licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member’s laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation laws and regulations, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member’s laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3 above.
PART III: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 41

1. Members Each Member shall ensure that enforcement procedures as specified in this Part are available under their national laws so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in national laws, a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of a Member to enforce their laws in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of laws in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 42

Fair and Equitable Procedures

Members Each Member shall make available to right holders\textsuperscript{11} civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

\textsuperscript{11}For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.
Article 43

Evidence of Proof

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 44

Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are A Member is not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members a Member may limit the remedies available against such use to payment of remuneration in accordance with sub-paragraph (h) of Article 31 above. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with national a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45

Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of his intellectual property right by an infringer who knew or had reasonable grounds to know that he was engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members a Member may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not know or had no reasonable grounds to know that he was engaged in infringing activity.
Article 46

Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 47

Right of Information

Members A Member may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48

Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney’s fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members A Member shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws that law.

Article 49

Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.
SECTION 3: PROVISIONAL MEASURES

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that his right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted inaudita altera parte, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4 above, provisional measures taken on the basis of paragraphs 1 and 2 above shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where national law permits or, in the absence of such a determination, not to exceed twenty working days or thirty-one calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.
SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

Article 51
Suspension of Release by Customs Authorities

Members Each Member shall, in conformity with the provisions set out below, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52
Application

Any right holder initiating the procedures under Article 51 above shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of his intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article 53
Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

12Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

13It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

14For the purposes of this Agreement:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by him in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.
2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue his right of action within a reasonable period of time.

Article 54

Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51 above.

Article 55

Duration of Suspension

If, within a period not exceeding ten working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another ten working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 paragraph 6 above shall apply.

Article 56

Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55 above.

Article 57

Right of Inspection and Information

Without prejudice to the protection of confidential information, each Member shall provide the competent authorities the authority to give the right holder sufficient opportunity to have
any product goods detained by the customs authorities inspected in order to substantiate his claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such product goods inspected. Where a positive determination has been made on the merits of a case, Members a Member may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58

Ex Officio Action

Where Members require a Member requires competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 55 above;

(c) Members the Member shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59

Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46 above. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60

De Minimis Imports

Members A Member may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.
SECTION 5: CRIMINAL PROCEDURES

Article 61

Members Each Member shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members A Member may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV: ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

Article 62

1. Members A Member may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 to 6 of Part II of this Agreement, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members each Member shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply mutatis mutandis to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where the national a Member's law provides for such procedures, administrative revocation and inter partes procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 above shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V: DISPUTE PREVENTION AND SETTLEMENT

Article 63

Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by any a Member pertaining to the subject matter of this Agreement (the
availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of any Member and the government or a governmental agency of another Member shall also be published.

2. Members Each Member shall notify the laws and regulations referred to in paragraph 1 above to the Council for Trade Related Aspects of Intellectual Property Rights TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with the World Intellectual Property Organization WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1 above. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1 to 3 above shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64

Dispute Settlement

1. The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade GATT 1994 as elaborated and applied by the Dispute Settlement Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

2. Subparagraphs XXIII:1(b) and XXIII:1(c) of the General Agreement on Tariffs and Trade Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement establishing the Multilateral Trade Organization.

3. During the time period referred to in paragraph 2, the TRIPS Council for TRIPS shall examine the scope and modalities for Article XXIII:1(b) and Article XXIII:1(c)-type complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.
PART VI: TRANSITIONAL ARRANGEMENTS

Article 65

Transitional Arrangements

1. Subject to the provisions of paragraphs 2, 3 and 4 below, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement Establishing the WTO.

2. Any developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1 above, of the provisions of this Agreement other than Articles 3, 4 and 5 of Part I.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2 above.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2 above, it may delay the application of the provisions on product patents of Section 5 of Part II of this Agreement to such areas of technology for an additional period of five years.

5. Any Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 above shall ensure that any changes in its domestic laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

Article 66

Least-Developed Country Members

1. In view of their special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, least-developed country Members such a Member shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65 above. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Each developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

Article 67

Technical Cooperation

In order to facilitate the implementation of this Agreement, each developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall
include assistance in the preparation of domestic legislation laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII: INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 68

Council for Trade-Related Aspects of Intellectual Property Rights

The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with the World Intellectual Property Organization (WIPO), the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

Article 69

International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, each Member shall establish and notify contact points in its administration and be ready to exchange information on trade in infringing goods. Each Member shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

Article 70

Protection of Existing Subject Matter

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.

2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4 below, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of
application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation laws and regulations in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement Establishing the MTO by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of the this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.

6. Members A Member shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement Establishing the MTO patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(i)(a) notwithstanding the provisions of Part VI above, provide as from the date of entry into force of the WTO Agreement Establishing the MTO a means by which applications for patents for such inventions can be filed;

(ii)(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c)(iii) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in sub-paragraph (ii) sub-paragraph (b) above.

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(i) above 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI above, for a period of five years after obtaining market marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement Establishing the MTO, all patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.
Article 71

Review and Amendment

1. The Council for Trade Related Aspects of Intellectual Property Rights TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65 above. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO WTO Agreement Establishing the MTO on the basis of a consensus proposal from the Council for Trade Related Aspects of Intellectual Property Rights TRIPS may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X, paragraph 6, of the WTO Agreement Establishing the MTO.

Article 72

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73

Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require any a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
NOTES ON THE RECTIFIED TEXT:

For the sake of simplicity, the phrase "including trade in counterfeit goods" has been deleted from the title of this Agreement. The reasons for identifying this part of the TRIPS Agreement specifically in the title would now appear to be part of history.

Paragraph 4 of Article 22: In its original form, this paragraph, read literally, might be understood to require that the protection provided for under paragraphs 1-3 of the Article would also have to be applied in favour of indications which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory. In order to make clear that the protection given to geographical indications will also be applicable against such indications, the revised draft is offered.

Article 57: The word "product" has been substituted by "good" in order to harmonize usage with the remainder of the Section on border measures.

Articles 1.1, 8.1, 14.4, 23.2, 27.2, 40.2, 41.1, 41.4, 44.2, 50.6, 62.4, 65.5, 67 and 69: In previous discussions, some concern was expressed about the apparently arbitrary and interchangeable use of the words "national" and "domestic" as qualifications of nouns such as "legislation". This was a separate concern from that raised by the delegation of Hong Kong, which has been resolved through the explanatory notes to the WTO Agreement and footnote 1 of the TRIPS Agreement. In most cases where these adjectives have been used, it would seem that the intention has been to refer simply to a Member's legislation, etc. It is therefore suggested in the attached that, wherever possible, these qualifying words be deleted and, where not already the case, words such as "a Member's" or "its" be added. In few cases, the adjectival use of "national" or "domestic" has been retained, where its deletion would make the meaning less precise.

Changes are proposed with a view to rationalizing the use of the terms "law", "laws and regulations", "legislation" and "laws". The term "law" has been used where a broad meaning is intended or where reference is made to a particular law (Articles 1.1, 14.4, 22.3, 23.2, 27.2, 31, 40.3, 41.1, 41.4, 41.5, 44.2, 48.2, 50.6, footnote 14 to Article 51, 52 and 62.4). The phrase "laws and regulations" has been used in other situations (sixth consideration of Preamble, Articles 3.2, 8.1, 40.2, 40.3, 40.4, 63.1, 63.2, 65.3, 65.5, 67 and 70.4).
D. **ANNEX 2: UNDERSTANDING ON RULES AND PROCEDURES FOR THE RESOLUTION OF DISPUTES**

**ANNEX 2**

**UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES**

*Members hereby agree as follows:*

**Article 1**

**Coverage and Application**

1. The rules and procedures of this Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Understanding") shall apply to disputes brought pursuant to the consultation and dispute settlement rules and procedures provisions of the agreements listed in Appendix 1 to this Understanding, hereinafter (hereinafter referred to as the "covered agreements."). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the WTO Agreement Establishing the Multilateral Trade Organization (MTO) and of this Understanding taken in isolation or in combination with any other covered agreement.

2. These The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered Agreement agreement, if there is a conflict between special or additional rules and procedures of such Agreements agreements under review, and where the parties to the dispute cannot agree on rules and procedures within twenty 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body (hereinafter referred to as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within ten 10 days after a request by either Member. The Chairman of the Dispute Settlement Body DSB shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

**Article 2**

**Administration**

1. The Dispute Settlement Body (DSB) The DSB is hereby established pursuant to the Agreement Establishing the MTO shall administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under covered agreements contained in a covered agreement which is a Plurilateral Trade Agreement in Annex 4 to the MTO WTO Agreement, the term "Member" as used herein shall refer only to those...
Members that are parties to the relevant Annex 4 Agreements are Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a covered agreement contained in Annex 4 which is a Plurilateral Trade Agreement, only those Members that are parties to that agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2.2 The DSB shall inform the relevant MTO councils and committees of any developments in disputes related to provisions of the respective covered agreements.

2.3 The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.

2.4 Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.¹

Article 3

General Provisions

3.1 The members of the MTO (hereinafter referred to as “Members”) affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of the GATT 1947, and the procedures as further elaborated and modified herein.

3.2 The dispute settlement system of the MTO WTO is a central element in providing security and predictability to the multilateral trading system. The Members of the MTO recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

3.3 The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the MTO WTO and the maintenance of a proper balance between the rights and obligations of Members.

3.4 Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.

3.5 All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.

3.6 Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant councils and committees, where any Member may raise any point relating thereto.

3.7 Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive

¹The Dispute Settlement Body DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the Dispute Settlement Body DSB when the decision is taken, formally objects to the proposed decision.
solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with
the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the
first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures
concerned if these are found to be inconsistent with the provisions of any of the covered agreements.
The provision of compensation should be resorted to only if the immediate withdrawal of the measure
is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent
with a covered agreement. The last resort which this Understanding provides to the Member invoking
the dispute settlement procedures is the possibility of suspending the application of concessions or other
obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject
to authorization by the DSB of such measures.

3.8 In cases where there is an infringement of the obligations assumed under a covered agreement,
the action is considered prima facie to constitute a case of nullification or impairment. This means
that there is normally a presumption that a breach of the rules has an adverse impact on other Members
parties to that covered agreement, and in such cases, it shall be up to the Member against whom the
complaint has been brought to rebut the charge.

3.9 The provisions of this Understanding are without prejudice to the rights of Members to seek
authoritative interpretation of provisions of a covered agreement through decision-making under the
WTO Agreement Establishing the WTO or a covered agreement.

3.10 It is understood that requests for conciliation and the use of the dispute settlement procedures
should not be intended or considered as contentious acts and that, if disputes arise, each Member will engage in these procedures in good faith in an effort to resolve the disputes. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

3.11 This Understanding shall be applied only with respect to new requests for consultations under
the consultation provisions of the covered agreements made on or after the date of entry into force
of this Understanding the WTO Agreement. With respect to disputes for which the request for
consultations was made under the GATT 1947 or under any other predecessor agreement to the covered
agreements before the date of entry into force of this Understanding the WTO Agreement, the relevant
dispute settlement rules and procedures in effect immediately prior to the date of entry into force of
this Understanding shall continue to apply.

3.12 Notwithstanding paragraph 3.11 above, if a complaint based on any of the Agreements
agreements covered by this Understanding is brought by a developing country Member against a
developed country Member, the complaining party shall have the right to invoke, as an alternative
to the provisions rules and procedures contained in paragraphs Articles 4, 5, 6 and 12 of this
Understanding, the corresponding provisions rules and procedures of the Decision of the GATT 1947
CONTRACTING PARTIES of 5 April 1966 (BISD 14S/18), except that where the Panel considers
that the time-frame provided for in paragraph 7 of that decision is insufficient to provide its
report and with the agreement of the complaining party, that time-frame may be extended. To the
extent that there is a difference between the rules and procedures of those paragraphs Articles 4, 5, 6
and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

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2This paragraph shall also be applied to disputes on which panel reports have not been adopted or fully implemented.
Article 4

Consultations

1.4.1—The Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

4.2 2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of the any covered agreements agreement taken within the territory of the former.3

4.3 3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than thirty 30 days from after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within ten days 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than thirty 30 days, or a period otherwise mutually agreed, from after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4.4 4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

4.5 5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

4.6 6. Consultations shall be confidential, and without prejudice to the rights of either any Member in any further proceedings.

4.7 7. If the consultations fail to settle a dispute within sixty 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the sixty 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

4.8 8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than ten 10 days from after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of twenty 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

4.9 9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the -appellate body Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

4.10 10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

4.11 11. Whenever a Member other than the consulting Members considers that it has a substantial

3Where the provisions of any other covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such other covered agreement shall prevail.
trade interest in consultations being held pursuant to paragraph 1 of Article XXII:1 of the GATT, Article XXII:1 of the GATS Agreement of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements, such Member may notify the consulting Members and the DSB, within ten days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under Article XXII:1 or XXIII:1 of the GATS Agreement, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

Article 5

Good Offices, Conciliation and Mediation

5.1 Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

5.2 Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.

5.3 Good offices, conciliation and mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can subject to the provisions of paragraphs 4 and 5, once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.

5.4 When good offices, conciliation or mediation are entered into within sixty days after the date of receipt of a request for consultations, the complaining party must allow a period of sixty days from after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the sixty-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

5.5 If the parties to a dispute agree, procedures for good offices, conciliation or mediation may

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The corresponding consultations provisions in the covered agreements are listed hereunder: Agreement on Rules of Origin, Article 7; Agreement on Preshipment Inspection, Article 7; Agreement on Implementation of Article VI of the GATT, Article 18.6; Agreement on Technical Barriers to Trade, Article 14.1; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Articles 13 and 30; Agreement on Agriculture, Article 18.1, and Part C; Agreement on Sanitary and Phytosanitary Measures, paragraph 35; Trade-Related Aspects of Investment Measures, Article 8.1 of Article 11; Agreement on Textiles and Clothing Article 8.4; paragraph 4 of Article 8; Agreement on Technical Barriers to Trade, Article 14.1; Agreement on Anti-Dumping Measures, paragraph 2 of Article 17; Agreement on Customs Valuation, paragraph 2 of Article 19; Agreement on Preshipment Inspection, Article 7; Agreement on Rules of Origin, Article 7; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Article 30; Agreement on Safeguards, Article 13; Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, Article 64; Agreement on Trade in Civil Aircraft Article 8.8; Agreement on Government Procurement, Article VII.3; International Diary Arrangement, Article VIII.1; Arrangement Regarding Bovine Meat, Article VI.6. Article 64.1; and any corresponding consultation provisions in Multilateral Trade Agreements as determined by the competent bodies of each Agreement and as notified to the DSB.
continue while the panel process proceeds.

5.6. The Director-General may, acting in an ex officio capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

**Article 6**

Establishment of Panels

6.1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.

6.2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

**Article 7**

Terms of Reference of Panels

7.1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel:

"To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document DS/... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

7.2. Panels shall address the relevant provisions in any covered agreement(s) cited by the parties to the dispute.

7.3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 7.1 above of Article 7. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

**Article 8**

Composition of Panels

8.1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of an MTO or a Member or of a contracting party to the GATT 1947 or as a representative to a council.

*If the complaining party so requests, a meeting of the Dispute Settlement Body DSB shall be convened for this purpose within fifteen days of the request, provided that at least ten days' advance notice of the meeting is given.*
or committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

8.2 Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

8.3 Citizens of Members whose governments\(^6\) are parties to the dispute or third parties as defined in paragraph 49.2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

8.4 To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1 above, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists that was established by the GATT CONTRACTING PARTIES to the GATT 1947 on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of this Understanding. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

8.5 Panels shall be composed of three panelists unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.

8.6 The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.

8.7 If there is no agreement on the panelists within twenty days from after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB, and the Chairman of the relevant committee or council, shall form Council or Committee shall determine the composition of the panel by appointing the panelists whom he or she the Director-General considers most appropriate in accordance with any relevant special or additional procedures of the covered agreement or agreements at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than ten days from after the date he or she the Chairman receives such a request.

8.8 Members shall undertake, as a general rule, to permit their officials to serve as panelists.

8.9 Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

8.10 When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

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\(^6\)In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.
Panelists' expenses, including travel and subsistence allowance, shall be met from the **WTO** budget in accordance with criteria to be adopted by the General Council of the **MTO**, based on recommendations of the Committee on Budget, Finance and Administration.

**Article 9**

*Procedures for Multiple Complainants*

9.1 Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

9.2 The single panel shall organize its examination and present its findings to the **DSB** so in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its view to the panel.

9.3 If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

**Article 10**

*Third Parties*

10.1 The interests of the parties to a dispute and those of other Members of a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

10.2 Any Member of a covered agreement at issue in a dispute, having a substantial interest in a matter before a panel and having notified its interest to the **DSB**, (hereinafter referred to as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

10.3 Such third parties shall receive the submissions of the parties to the dispute for the first meeting of the panel.

10.4 If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

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7With respect to disputes arising under covered agreements contained in Annex 4 to the **MTO Agreement**, a covered agreement which is a **Plurilateral Trade Agreement**, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Annex 4 Agreements such Agreement. Where the **DSB** administers the dispute settlement provisions of a covered agreement contained in Annex 4 which is a **Plurilateral Trade Agreement**, only those Members that are parties to that Agreement may participate in decisions or actions taken by the **DSB** with respect to that dispute.
Function of Panels

44.1 The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Panel Procedures

42-11. Panels shall follow the Working Procedures appended hereto in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.

42-22. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

42-33. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 4-9 of Article 4, if relevant.

42-44. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

42-55. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.

42-66. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 4-3 above and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

42-77. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

42-88. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time date that the composition and terms of reference of the panel have been agreed upon until the time date the final report is provided issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable
goods, the panel shall aim to provide its report to the parties to the dispute within three months.

42.99. When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission circulation of the report to the Members exceed nine months.

42.1010. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 4.7 and 4.8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraphs 20.1 and 21.4 paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

42.1111. Where one or more of the parties is a developing country Member, the panel’s report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

42.12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed twelve months. In the event of such a suspension, the time frames set out in paragraphs 12.8, 12.9, 20.1 and 21.4 paragraph 1 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than twelve months, the authority for establishment of the panel shall lapse.

**Article 13**

**Right to Seek Information**

43. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.
Article 14
Confidentiality

14.1 Panel deliberations shall be confidential.

14.2 The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.

14.3 Opinions expressed in the panel report by individual panelists shall be anonymous.

Article 15
Interim Review Stage

15.1 Following the consideration of rebuttal submissions and oral arguments, the panel shall submit the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.

15.2 Following the deadline at the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel’s findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.

15.3 The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time period set out in paragraph 12.8 of Article 12.

Article 16
Adoption of Panel Reports

16.1 In order to provide sufficient time for the Members of the DSB to consider panel reports, the reports shall not be considered for adoption by the DSB until twenty 20 days after the date they have been issued circulated to the Members.

16.2 A Member having objections to a panel report shall give written reasons to explain their objections for circulation at least ten 10 days prior to the DSB meeting at which the panel report will be considered.

16.3 The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.

16.4 Within sixty 60 days of after the issuance date of circulation of a panel report to the Members,
the report shall be adopted at a DSB meeting unless one of the parties formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its intention to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

**Article 17**

**Standing Appellate Body**

17-11. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

17-22. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of this Understanding shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of his or her predecessor's term.

17-33. The Appellate Body shall be comprised of persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

17-44. Only parties to the dispute, not third parties, may appeal a panel decision report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2-2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

17-55. As a general rule, the proceedings shall not exceed sixty days from the date a party to the dispute formally notifies its intention to appeal to the date the Appellate Body issues its decision report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 4-9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within sixty days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed ninety days.

17-66. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

17-77. The Appellate Body shall be provided with appropriate administrative and legal support as

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8If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 16.4 and 16.4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.
it requires.

47.8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council of the WTO, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

47.9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

47.10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

47.11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

47.12. The Appellate Body shall address each of the issues raised in accordance with paragraph 47.6 during the appellate proceeding.

47.13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

47.14. An appellate Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate Appellate Body report within thirty days following its issuance to the Members. This adoption procedure is without prejudice to the right of Members to express their views on an appellate Appellate Body report.

Article 18

Communications with the panel or Appellate Body

48.1. There shall be no ex parte communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.

48.2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

*If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.
Article 19

Panel and Appellate Body Recommendations

19.11. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement, or give a ruling on the matter, as appropriate. In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.

19.22. In accordance with paragraph 3.2 above of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20

Time-Frame for DSB Decisions

20.1. Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the Panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall not as a general rule exceed nine months where the panel report is not appealed or 12 months where the report is not appealed or twelve months where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 12.9 or 17.5 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

Article 21

Surveillance of Implementation of Recommendations and Rulings

21.11. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.

21.22. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.

21.33. At a DSB meeting held within thirty days of the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,

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10 The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

11 With respect to recommendations in cases not involving a violation of the GATT and 1994 or any other covered agreement, see section Article 26.

12 If a meeting of the DSB in not scheduled during this period, such a meeting of the DSB shall be held for this purpose.
(b) a period of time mutually agreed by the parties to the dispute within forty-five 45 days following after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within ninety 90 days following after the date of adoption of the recommendations and rulings. 13 In such arbitration, a guideline for the arbitrator 14 should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed fifteen months from the adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.

24.44. Except where the panel or the Appellate Body has extended, pursuant to paragraph 12.9 or 17.5 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed fifteen months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the fifteen-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed eighteen months.

24.55. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, involving including wherever possible resort to the original panel wherever possible. The panel shall issue circulate its decision report within ninety 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

24.66. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 24.3 3 and shall remain on the DSB’s agenda until the issue is resolved. At least ten 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

24.77. If the matter is one which has been raised by a developing country Member the DSB shall consider what further action it might take which would be appropriate to the circumstances.

24.88. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

13 If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

14 The expression “arbitrator” shall be interpreted as referring either to an individual or a group.
Compensation and the Suspension of Concessions

22.1 Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

22.2 If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 21.3 above of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within twenty 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

22.3 In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

(a) The general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment.

(b) If that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sectors, it may seek to suspend concessions or other obligations in other sectors under the same agreement.

(c) If that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement.

(d) In applying the above principles, that party shall take into account:

(i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;

(ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations.

(e) If that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c) above, it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies.

(f) For purposes of this paragraph, "sector" means:
with respect to goods, all goods;

(ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List"—which identifies such sectors;\(^\text{15}\) in Appendix 5:

(iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods ("Agreement on TRIPS"). TRIPS.

For purposes of this paragraph, "agreement" means:

(i) with respect to goods, the agreements listed in Annex 1A of the MTO WTO Agreement, taken as a whole, as well as the agreements listed in Annex 4 of the MTO Agreement Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;

(ii) with respect to services, the GATS;

(iii) with respect to intellectual property rights, the Agreement on TRIPS.

4.22.4 The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5.22.5 The Dispute Settlement Body The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

22.66. When the situation described in paragraph 22.2 above occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within thirty 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 22.3 above have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 22.3(b) 3(b) or (c) above, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator\(^\text{16}\) appointed by the Director-General and shall be completed within sixty 60 days of after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

22.77. The arbitrator\(^\text{17}\) acting pursuant to paragraph 22.6 above shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement.\(^\text{16}\) However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 22.3 above have not been followed, the arbitrator shall examine that claim. In

\(^{15}\) The list in document MTN.GNS/W/120 identifies eleven sectors.

\(^{16}\) The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

\(^{17}\) The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator.
the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 22.3 above. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

22.8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 21.6 above 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

22.9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance. 18

Article 23

Strengthening of the Multilateral System

23.1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

23.2. In such cases, Members shall:

(a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

(b) follow the procedures set forth in Section 21 of this Understanding Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

(c) follow the procedures set forth in Section 22 of the Understanding Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB

18Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail.
authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

**Article 24**

*Special Procedures involving Least-Developed Country Members*

24.1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.

24.2. In dispute settlement cases involving a least-developed country Member where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which they deem appropriate.

**Article 25**

*Arbitration*

25.1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

25.2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.

25.3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or committee of any relevant agreement where any Member may raise any point relating thereto.

4. 25.4. Sections Articles 21 and 22 of this Understanding shall apply mutatis mutandis to arbitration awards.
Article 26

Non-Violation

Complaints of the Type Described in Paragraph 1(b) of Article XXIII 1+{b} of GATT 1994

Where the provisions of paragraph 1(b) of Article XXIII 1+{b} of the GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII 1+{b} of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

(a) The complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement.

(b) Where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment.

(c) Notwithstanding the provisions of paragraph Article 21, the arbitration provided for in paragraph 24 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute.

(d) Notwithstanding the provisions of paragraph 22 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

Complaints of the Type Described in Paragraph 1(c) of Article XXIII 1+(c) of GATT 1994

Where the provisions of paragraph 1(c) of Article XXIII 1+(c) of the GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII 1+{(a) and (b)} of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been issued to the Members. The dispute settlement rules and procedures contained in the Decision of the GATT Council of Representatives 1947 CONTRACTING PARTIES of 12 April 1989 (BISD 36S/61) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:
(a) The complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph.

(b) In cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall issue a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27

Responsibilities of the Secretariat

27.1 The WTO Secretariat shall have the responsibility of assisting the panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.

27.2 While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical co-operation services to any developing country Member which so requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

27.3 The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.
APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

A)(A) Agreement Establishing the **Multilateral** World Trade Organization

B)(B) **Multilateral Trade Agreements annexed to the WTO Agreement:**

- **Annex 1A:** Agreements on trade in goods
- **Annex 1B:** General Agreement on Trade in Services
- **Annex 1C:** Agreement on Trade-Related Aspects of Intellectual Property Rights, including trade in counterfeit goods
- **Annex 2:** Understanding on Rules and Procedures Governing the Settlement of Disputes

C)(C) **Plurilateral Trade Agreements annexed to the WTO Agreement:**

- **Annex 4:** Agreement on Trade in Civil Aircraft
  Agreement on Government Procurement
  International Dairy Arrangement
  Arrangement Regarding Bovine Meat

The applicability of this Understanding to **Annex 4** the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the Signatories of **parties to each Agreement** setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the Dispute Settlement Body, **DSB**.
APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES CONTAINED IN THE COVERED AGREEMENTS

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Rules and Procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Dumping</td>
<td>17.4 to 17.7</td>
</tr>
<tr>
<td>Technical Barriers to Trade</td>
<td>14.2 to 14.4, Annex 2</td>
</tr>
<tr>
<td>Subsidies and Countervailing Measures</td>
<td>4.2 to 4.12, 6.6, 7.2 to 7.10, 8.5,</td>
</tr>
<tr>
<td></td>
<td>footnote 33, 25.3 to 25.4, 28.6, Annex V</td>
</tr>
<tr>
<td>Customs Valuation</td>
<td>19.3 to 19.5, Annex II.2(f), 3, 9, 21</td>
</tr>
<tr>
<td>Sanitary-and-Phytosanitary Regulations</td>
<td>36</td>
</tr>
<tr>
<td>Textiles</td>
<td>2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 to 8.12</td>
</tr>
<tr>
<td>General Agreement on Trade in Services</td>
<td>XXII.3, XXIII.3</td>
</tr>
<tr>
<td>Financial Services</td>
<td>4.1</td>
</tr>
<tr>
<td>Air Transport Services</td>
<td>4</td>
</tr>
<tr>
<td>Ministerial Decision on Services Disputes</td>
<td>1 to 5</td>
</tr>
<tr>
<td>Agreement on Sanitary and Phytosanitary Measures</td>
<td>11.2</td>
</tr>
<tr>
<td>Agreement on Textiles and Clothing</td>
<td>2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 8.1 to 8.12</td>
</tr>
<tr>
<td>Agreement on Technical Barriers to Trade</td>
<td>14.2 to 14.4, Annex 2</td>
</tr>
<tr>
<td>Agreement on Anti-Dumping Measures</td>
<td>17.4 to 17.7</td>
</tr>
<tr>
<td>Agreement on Customs Valuation</td>
<td>19.3 to 19.5, Annex II.2(f), 3, 9, 21</td>
</tr>
<tr>
<td>Agreement on Subsidies and Countervailing Measures</td>
<td>4.2 to 4.12, 6.6, 7.2 to 7.10, 8.5, footnote 33, 24.3 to 24.4, 27.6, Annex V</td>
</tr>
<tr>
<td>General Agreement on Trade in Services</td>
<td>XXII.3, XXIII.3</td>
</tr>
<tr>
<td>Annex on Financial Services</td>
<td>4</td>
</tr>
<tr>
<td>Annex on Air Transport Services</td>
<td>4</td>
</tr>
<tr>
<td>Decision on Certain Dispute Settlement</td>
<td>1 to 5</td>
</tr>
</tbody>
</table>

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in ANNEX 4 the Plurilateral Trade Agreements as determined by the competent bodies of each Agreement agreement and as notified to the DSB.
APPENDIX 3

WORKING PROCEDURES

1. In its proceedings the panel will follow the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes. In addition, the following working procedures will apply.

2. The panel will meet in closed session. The parties to the dispute, or other interested parties, will be present at the meetings only when invited by the panel to appear before it.

3. The deliberations of the panel and the documents submitted to it will be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the panel with the parties, both the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.

6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.

7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. Both the parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Section 8 Article 10 of the Understanding shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 above shall be made in the presence of both the parties. Moreover, each party’s written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.
12. The panel proposes the following Proposed timetable for its panel work:

(a) Receipt of first written submissions of the parties:
   (1) complaining Party: __________ 3-6 weeks
   (2) Party complained against: __________ 2-3 weeks

(b) Date, time and place of first substantive meeting with the parties; third party session: __________ 1-2 weeks

(c) Receipt of written rebuttals of the parties: __________ 2-3 weeks

(d) Date, time and place of second substantive meeting with the parties: __________ 1-2 weeks

(e) Submission of descriptive part of the report to the parties: __________ 2-4 weeks

(f) Receipt of comments by the parties on the descriptive part of the report: __________ 2 weeks

(g) Submission Issuance of the interim report, including the findings and conclusions, to the parties: __________ 2-4 weeks

(h) Deadline for party to request review of part(s) of report: __________ 1 week

(i) Period of review by panel, including possible additional meeting with parties: __________ 2 weeks

(j) Submission Issuance of final report to parties to dispute: __________ 2 weeks

(k) Circulation of the final report to the Members: __________ 3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the Parties shall be scheduled if required.
The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.2.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.

4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.

5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.
## APPENDIX 5

### SERVICES SECTORAL CLASSIFICATION LIST

**Notes:**

- * indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.
- ** indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g., voice mail is only a component of CPC item 7523).

### Sectors and subsectors

<table>
<thead>
<tr>
<th>Sectors and subsectors</th>
<th>Corresponding CPC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. BUSINESS SERVICES</strong></td>
<td>Section B</td>
</tr>
<tr>
<td><strong>A. Professional Services</strong></td>
<td></td>
</tr>
<tr>
<td>a. Legal Services</td>
<td>861</td>
</tr>
<tr>
<td>b. Accounting, auditing and bookkeeping services</td>
<td>862</td>
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<tr>
<td>c. Taxation Services</td>
<td>863</td>
</tr>
<tr>
<td>d. Architectural services</td>
<td>8671</td>
</tr>
<tr>
<td>e. Engineering services</td>
<td>8672</td>
</tr>
<tr>
<td>f. Integrated engineering services</td>
<td>8673</td>
</tr>
<tr>
<td>g. Urban planning and landscape architectural services</td>
<td>8674</td>
</tr>
<tr>
<td>h. Medical and dental services</td>
<td>9312</td>
</tr>
<tr>
<td>i. Veterinary services</td>
<td>932</td>
</tr>
<tr>
<td>j. Services provided by midwives, nurses, physiotherapists and para-medical personnel</td>
<td>93191</td>
</tr>
<tr>
<td>k. Other</td>
<td></td>
</tr>
<tr>
<td><strong>B. Computer and Related Services</strong></td>
<td></td>
</tr>
<tr>
<td>a. Consultancy services related to the installation of computer hardware</td>
<td>841</td>
</tr>
<tr>
<td>b. Software implementation services</td>
<td>842</td>
</tr>
<tr>
<td>c. Data processing services</td>
<td>843</td>
</tr>
<tr>
<td>d. Data base services</td>
<td>844</td>
</tr>
<tr>
<td>e. Other</td>
<td>845+849</td>
</tr>
<tr>
<td><strong>C. Research and Development Services</strong></td>
<td></td>
</tr>
<tr>
<td>a. R&amp;D services on natural sciences</td>
<td>851</td>
</tr>
<tr>
<td>b. R&amp;D services on social sciences and humanities</td>
<td>852</td>
</tr>
<tr>
<td>c. Interdisciplinary R&amp;D services</td>
<td>853</td>
</tr>
<tr>
<td><strong>D. Real Estate Services</strong></td>
<td></td>
</tr>
<tr>
<td>Sectors and subsectors</td>
<td>Corresponding CPC</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>a. Involving own or leased property</td>
<td>821</td>
</tr>
<tr>
<td>b. On a fee or contract basis</td>
<td>822</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>E. Rental/Leasing Services without Operators</td>
<td></td>
</tr>
<tr>
<td>a. Relating to ships</td>
<td>83103</td>
</tr>
<tr>
<td>b. Relating to aircraft</td>
<td>83104</td>
</tr>
<tr>
<td>c. Relating to other transport equipment</td>
<td>83101+83102+</td>
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<td></td>
<td>83105</td>
</tr>
<tr>
<td>d. Relating to other machinery and equipment</td>
<td>83106-83109</td>
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<tr>
<td>e. Other</td>
<td>832</td>
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<td></td>
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<tr>
<td>F. Other Business Services</td>
<td></td>
</tr>
<tr>
<td>a. Advertising services</td>
<td>871</td>
</tr>
<tr>
<td>b. Market research and public opinion polling services</td>
<td>864</td>
</tr>
<tr>
<td>c. Management consulting service</td>
<td>865</td>
</tr>
<tr>
<td>d. Services related to management consulting</td>
<td>866</td>
</tr>
<tr>
<td>e. Technical testing and analysis services</td>
<td>8676</td>
</tr>
<tr>
<td>f. Services incidental to agriculture, hunting and forestry</td>
<td>881</td>
</tr>
<tr>
<td>g. Services incidental to fishing</td>
<td>882</td>
</tr>
<tr>
<td>h. Services incidental to mining</td>
<td>883+5115</td>
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<tr>
<td>i. Services incidental to manufacturing</td>
<td>884+885 (except for 88442)</td>
</tr>
<tr>
<td>j. Services incidental to energy distribution</td>
<td>887</td>
</tr>
<tr>
<td>k. Placement and supply services of personnel</td>
<td>872</td>
</tr>
<tr>
<td>l. Investigation and security</td>
<td>873</td>
</tr>
<tr>
<td>m. Related scientific and technical consulting services</td>
<td>8675</td>
</tr>
<tr>
<td>n. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)</td>
<td>8861-8866</td>
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<tr>
<td>o. Building-cleaning services</td>
<td>874</td>
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<tr>
<td>p. Photographic services</td>
<td>875</td>
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<tr>
<td>q. Packaging services</td>
<td>876</td>
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<tr>
<td>r. Printing, publishing</td>
<td>88442</td>
</tr>
<tr>
<td>s. Convention services</td>
<td>87909*</td>
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<tr>
<td>t. Other</td>
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### Sectors and subsectors

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<thead>
<tr>
<th>2. COMMUNICATION SERVICES</th>
<th>Corresponding CPC</th>
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<tr>
<td>A. Postal services</td>
<td>7511</td>
</tr>
<tr>
<td>B. Courier services</td>
<td>7512</td>
</tr>
<tr>
<td>C. Telecommunication services</td>
<td></td>
</tr>
<tr>
<td>a. Voice telephone services</td>
<td>7521</td>
</tr>
<tr>
<td>b. Packet-switched data transmission services</td>
<td>7523**</td>
</tr>
<tr>
<td>c. Circuit-switched data transmission services</td>
<td>7523**</td>
</tr>
<tr>
<td>d. Telex services</td>
<td>7523**</td>
</tr>
<tr>
<td>e. Telegraph services</td>
<td>7522</td>
</tr>
<tr>
<td>f. Facsimile services</td>
<td>7521** + 7529**</td>
</tr>
<tr>
<td>g. Private leased circuit services</td>
<td>7522** + 7523**</td>
</tr>
<tr>
<td>h. Electronic mail</td>
<td>7523**</td>
</tr>
<tr>
<td>i. Voice mail</td>
<td>7523**</td>
</tr>
<tr>
<td>j. On-line information and data base retrieval</td>
<td>7523**</td>
</tr>
<tr>
<td>k. Electronic data interchange (EDI)</td>
<td>7523**</td>
</tr>
<tr>
<td>l. Enhanced/value-added facsimile services, including store and forward, store and retrieve</td>
<td>7523**</td>
</tr>
<tr>
<td>m. Code and protocol conversion</td>
<td>n.a.</td>
</tr>
<tr>
<td>n. On-line information and/or data processing (including transaction processing)</td>
<td>843**</td>
</tr>
<tr>
<td>o. Other</td>
<td></td>
</tr>
<tr>
<td>D. Audiovisual services</td>
<td></td>
</tr>
<tr>
<td>a. Motion picture and video tape production and distribution services</td>
<td>9611</td>
</tr>
<tr>
<td>b. Motion picture projection service</td>
<td>9612</td>
</tr>
<tr>
<td>c. Radio and television services</td>
<td>9613</td>
</tr>
<tr>
<td>d. Radio and television transmission services</td>
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</tr>
<tr>
<td>e. Sound recording</td>
<td>n.a.</td>
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<tr>
<td>f. Other</td>
<td></td>
</tr>
<tr>
<td>E. Other</td>
<td></td>
</tr>
</tbody>
</table>

### 3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

| A. General construction work for buildings | 512 |
| B. General construction work for civil engineering | 513 |
| C. Installation and assembly work | 514 + 516 |
### Sectors and subsectors

<table>
<thead>
<tr>
<th>Sectors and subsectors</th>
<th>Corresponding CPC</th>
</tr>
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<tbody>
<tr>
<td>D. Building completion and finishing work</td>
<td>517</td>
</tr>
<tr>
<td>E. Other</td>
<td>511+515+518</td>
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#### 4. DISTRIBUTION SERVICES

<table>
<thead>
<tr>
<th>Subsector</th>
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<tbody>
<tr>
<td>A. Commission agents' services</td>
<td>621</td>
</tr>
<tr>
<td>B. Wholesale trade services</td>
<td>622</td>
</tr>
<tr>
<td>C. Retailing services</td>
<td>631+632</td>
</tr>
<tr>
<td></td>
<td>6111+6113+6121</td>
</tr>
<tr>
<td>D. Franchising</td>
<td>8929</td>
</tr>
<tr>
<td>E. Other</td>
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</table>

#### 5. EDUCATIONAL SERVICES

<table>
<thead>
<tr>
<th>Subsector</th>
<th>CPC</th>
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<tbody>
<tr>
<td>A. Primary education services</td>
<td>921</td>
</tr>
<tr>
<td>B. Secondary education services</td>
<td>922</td>
</tr>
<tr>
<td>C. Higher education services</td>
<td>923</td>
</tr>
<tr>
<td>D. Adult education</td>
<td>924</td>
</tr>
<tr>
<td>E. Other education services</td>
<td>929</td>
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#### 6. ENVIRONMENTAL SERVICES

<table>
<thead>
<tr>
<th>Subsector</th>
<th>CPC</th>
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</thead>
<tbody>
<tr>
<td>A. Sewage services</td>
<td>9401</td>
</tr>
<tr>
<td>B. Refuse disposal services</td>
<td>9402</td>
</tr>
<tr>
<td>C. Sanitation and similar services</td>
<td>9403</td>
</tr>
<tr>
<td>D. Other</td>
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</table>

#### 7. FINANCIAL SERVICES

<table>
<thead>
<tr>
<th>Subsector</th>
<th>CPC</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. All insurance and insurance-related services</td>
<td>812**</td>
</tr>
<tr>
<td>a. Life, accident and health insurance services</td>
<td>8121</td>
</tr>
<tr>
<td>b. Non-life insurance services</td>
<td>8129</td>
</tr>
<tr>
<td>c. Reinsurance and retrocession</td>
<td>81299*</td>
</tr>
<tr>
<td>d. Services auxiliary to insurance (including broking and agency services)</td>
<td>8140</td>
</tr>
<tr>
<td>B. Banking and other financial services (excl. insurance)</td>
<td></td>
</tr>
<tr>
<td>a. Acceptance of deposits and other repayable funds from the public</td>
<td>81115-81119</td>
</tr>
<tr>
<td>b. Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transactions</td>
<td>8113</td>
</tr>
<tr>
<td>c. Financial leasing</td>
<td>8112</td>
</tr>
<tr>
<td>d. All payment and money transmission services</td>
<td>81339**</td>
</tr>
</tbody>
</table>
e. Guarantees and commitments 81199**
f. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
   - money market instruments (cheques, bills, certificate of deposits, etc.) 81339**
   - foreign exchange 81333
   - derivative products including, but not limited to, futures and options 81339**
   - exchange rate and interest rate instruments, including products such as swaps, forward rate agreements, etc. 81339**
   - transferable securities 81321*
   - other negotiable instruments and financial assets, including bullion 81339**
g. Participation in issues of all kinds of securities, including under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues 8132
h. Money broking 81339**
i. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services 8119+** 81323*
j. Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments 81339** or 81319**
k. Advisory and other auxiliary financial services on all the activities listed in sub-paragraphs 5(v) to 5(xv) of the Annex on Financial Services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisition and on corporate restructuring and strategy 8131 or 8133
l. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services 8131

C. Other

8. HEALTH-RELATED AND SOCIAL SERVICES
   (other than those listed under 1.A.h.-j.)
   A. Hospital services 9311
<table>
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<tr>
<th>Sectors and subsectors</th>
<th>Corresponding CPC</th>
</tr>
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<tbody>
<tr>
<td>B. Other Human Health Services</td>
<td>9319 (other than 93191)</td>
</tr>
<tr>
<td>C. Social Services</td>
<td>933</td>
</tr>
<tr>
<td>D. Other</td>
<td></td>
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</tbody>
</table>

9. TOURISM AND TRAVEL RELATED SERVICES

A. Hotels and restaurants (incl. catering) | 641-643 |
B. Travel agencies and tour operators services | 7471 |
C. Tourist guides services | 7472 |
D. Other | |

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES

(Other than audiovisual services)

A. Entertainment services (including theatre, live bands and circus services) | 9619 |
B. News agency services | 962 |
C. Libraries, archives, museums and other cultural services | 963 |
D. Sporting and other recreational services | 964 |
E. Other | |

11. TRANSPORT SERVICES

A. Maritime Transport Services
   a. Passenger transportation | 7211 |
   b. Freight transportation | 7212 |
   c. Rental of vessels with crew | 7213 |
   d. Maintenance and repair of vessels | 8868** |
   e. Pushing and towing services | 7214 |
   f. Supporting services for maritime transport | 745** |
B. Internal Waterways Transport
   a. Passenger transportation | 7221 |
   b. Freight transportation | 7222 |
   c. Rental of vessels with crew | 7223 |
   d. Maintenance and repair of vessels | 8868** |
   e. Pushing and towing services | 7224 |
   f. Supporting services for internal waterway transport | 745** |
C. Air Transport Services |
<table>
<thead>
<tr>
<th>Sectors and subsectors</th>
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<tbody>
<tr>
<td>a. Passenger transportation</td>
<td>731</td>
</tr>
<tr>
<td>b. Freight transportation</td>
<td>732</td>
</tr>
<tr>
<td>c. Rental of aircraft with crew</td>
<td>734</td>
</tr>
<tr>
<td>d. Maintenance and repair of aircraft</td>
<td>8868**</td>
</tr>
<tr>
<td>e. Supporting services for air transport</td>
<td>746</td>
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<tr>
<td>D. Space Transport</td>
<td>733</td>
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<tr>
<td>E. Rail Transport Services</td>
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<td>a. Passenger transportation</td>
<td>7111</td>
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<tr>
<td>b. Freight transportation</td>
<td>7112</td>
</tr>
<tr>
<td>c. Pushing and towing services</td>
<td>7113</td>
</tr>
<tr>
<td>d. Maintenance and repair of rail transport equipment</td>
<td>8868**</td>
</tr>
<tr>
<td>e. Supporting services for rail transport services</td>
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<tr>
<td>F. Road Transport Services</td>
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<td>a. Passenger transportation</td>
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<td>b. Freight transportation</td>
<td>7123</td>
</tr>
<tr>
<td>c. Rental of commercial vehicles with operator</td>
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<tr>
<td>d. Maintenance and repair of road transport equipment</td>
<td>6112+8867</td>
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<tr>
<td>e. Supporting services for road transport services</td>
<td>744</td>
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<td>G. Pipeline Transport</td>
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<tr>
<td>a. Transportation of fuels</td>
<td>7131</td>
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<td>b. Transportation of other goods</td>
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</tr>
<tr>
<td>H. Services auxiliary to all modes of transport</td>
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<tr>
<td>a. Cargo-handling services</td>
<td>741</td>
</tr>
<tr>
<td>b. Storage and warehouse services</td>
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</tr>
<tr>
<td>c. Freight transport agency services</td>
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</tr>
<tr>
<td>d. Other</td>
<td>749</td>
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<tr>
<td>I. Other Transport Services</td>
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</tr>
<tr>
<td>12. OTHER SERVICES NOT INCLUDED ELSEWHERE</td>
<td>95+97+98+99</td>
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</table>
NOTES ON THE RECTIFIED TEXT:

1. General:

(a) The Understanding has been put into article form to correspond to its context, and for consistency with the treatment of similar texts in the Final Act (the DSU had been drafted in paragraph format because of its original form as a CONTRACTING PARTIES decision). The articles and paragraphs correspond to the former sections and paragraphs of the DSU text in the 15 December version of the Final Act.

(b) In Article 1:1 "rules and procedures of the agreements" are rectified as "provisions of the agreements" for consistency with the usage in Articles 1:2, 2:1, 2:2, 2:4, 3:2, 3:6, 3:11, 3:12, 4:5, 4:11, 22:9, 23:1, 23:2 and 26:2 and to reflect agreement reached in the Institutions Group: the distinction made is between the consultation and dispute settlement "provisions" of the covered agreements, and the "rules and procedures" used in conducting a dispute, which are contained in the DSU, the 1966 Decision referred to in Article 3:12, the 1989 Decision referred to in Article 26:2 and the special and additional rules and procedures listed in Appendix 2. Rectifications based on the same distinction have been made in Articles 3:5, 3:12 and 8:7.

(c) References to treatment of reports have been rectified on the principle that when a document is given to a limited number of parties it is "issued" and when it is given to all Members (or the DSB), it is "circulated". Accordingly, in the text as rectified:

(i) interim panel reports are "issued" to the parties to the dispute in Article 15:2 and item 12(g) of Appendix 3;

(ii) reports of expert groups are "issued" to the parties to the dispute in paragraph 6 of Appendix 4;

(iii) final panel reports are "issued" to the parties to the dispute in Article 12:8 and item 12(j) of Appendix 3;

(iv) panel reports are "circulated" to the DSB in Articles 12:7, 12:9, 15:2, 16:1, 16:4, 16:2 (chapeau and subparagraph (b)) and item 12(k) of Appendix 3;

(v) Appellate Body reports are "circulated" to the DSB in Articles 17:5 and 17:14; and

(vi) the report of a reconvened panel is "circulated" in Article 21:5.

(d) References to the output of various bodies in the dispute settlement process have been rectified on the following lines for the sake of consistency:

(i) a panel produces:

-- "descriptive sections of its draft report" referred to in Article 15:1;

-- an "interim panel report", referred to in Article 15:2 and item 12(g) of Appendix 3; and

-- a "panel report", referred to in footnote 2; Articles 2:1, 10:2, 12:2, 14:3, 15:2, 15:3, 16:1, 16:2, 16:3, 16:4, 17:4, 17:6, 20, 21:3 chapeau, 21:3(c), 21:4, and
26:2 chapeau; and paragraphs 10 and items 12(e), (f), (h), (j), and (k) of Appendix 3; references to "panel decision" have been correspondingly aligned;

(ii) an expert review group produces a "report", referred to in paragraph 6 of Appendix 4;

(iii) the Appellate Body produces an "Appellate Body report", referred to in Articles 2:1, 17:5, 17:10, 17:11, 17:14 and heading thereto, 20, 21:3 chapeau, 21:3(c) and 21:4;

(iv) a panel reconvened under Article 21:5 produces a "report".

(e) In the 15 December text varying references are used to describe the starting point for periods of time. These have been conformed on the pattern of "[number] days after the date of [event]".

(f) References to "Councils and Committees" have been conformed in Articles 2:1, 3:6, 4:4, 8:7 and 25:3; the reference in Article 8:1 is general, and therefore in lower case; the reference in Article 22:3(e) remains more limited as intended.

(g) References to "Annex 4 Agreements" have been conformed to "Plurilateral Trade Agreements", consistent with the usage in the WTO Agreement which refers in Article II:2 to "the agreements and associated legal instruments included in Annex 4 (hereinafter referred to as 'Plurilateral Trade Agreements')": see Article 2:1, footnote 4, footnote 7, Article 22:3(g), and references at the end of Appendix 1 and Appendix 2.

Preamble

2. Preamble: addition of words of agreement to clarify that the rules and procedures provided in the Understanding are agreed to be binding on Members.

Article 1

3. Article 1, paragraph 1: addition of introduction of short title of the Understanding and of short title of the WTO Agreement. See also general point concerning "rules and procedures" in note 1(b).

4. Article 1, paragraph 2: reference to "rules and procedures" of this Understanding: see general note 1(b) above. References to "agreement" conformed to term "covered agreements" defined in Article 1, paragraph 1. Introduction of short title of the DSB.

Article 2

5. Addition of clause in Article 2:1 establishing the DSB, since Article IV, paragraph 3 of the WTO Agreement does not establish the DSB but refers to the DSB as being provided for in the DSU (a parallel rectification has been made to the TPRM). Conforming of references to "covered agreements" (see preceding note). Rectification to reference to Annex 4 agreements to conform to their description as "Plurilateral Trade Agreements" in Article II, paragraph 3 of the WTO Agreement.

Article 3


7. Article 3:5: see general note 1(b) above.
8. Article 3:8: rectification to "parties": reference to "Members" is unnecessary since all Members of the WTO are parties to the Multilateral Trade Agreements and dispute settlement in the Plurilateral Trade Agreements is dealt with in Article 2:1.

9. Article 3:10: rectification to "each Member" to clarify that the obligation is not collective but assumed by each Member individually; consequential rectification to "a dispute arises ... the dispute".

10. Article 3:12: rectification conforming to "covered agreements" in Article 1:1; rectification to "right to invoke" to correct grammar; rectification to "Articles 4, 5, 6 and 12" for greater precision; rectification to "rules and procedures" in first sentence to conform with usage in second sentence.

 ARTICLE 4

11. Article 4:1: conform reference to "Members" for consistency with other such references in Final Act texts.

12. Article 4:2: rectification to "any covered agreement": singular includes the plural.

13. Article 4:3, 4:7, 4:8: rectification of date references so that deadlines run from the date of receipt of the request for consultations; conforming of date references.

14. Article 4:4: see general note 1(f) above.

15. Article 4:6: rectified to "any Member" to allow for disputes with more than two parties.


17. Article 4:11: footnote 4: references to provisions correspond to provisions in rectified texts of agreements in MTN/FA/Corr.2-4; final sentence rectified for consistency with last sentence of Appendix 1.

 ARTICLE 5

18. Article 5:2: rectification to "any party" to allow for disputes with more than two parties.

19. Article 5:3: rectification to "or" in first sentence to avoid requiring all of these to be requested. Second sentence: addition of "subject to the provisions of paragraphs 4 and 5" to clarify relationship between good offices, mediation and/or conciliation and the panel process; addition of "procedures for good offices, conciliation or mediation" to clarify reference point for "terminated"; rectification to "a" complaining party to allow for multi-complainant disputes.

20. Article 5:4: rectification of date references to date of receipt of the request (see note 13 above); rectification to "a" complaining party to allow for multi-complainant disputes; clarification that request is for "the establishment of a panel".

 ARTICLE 7

21. Article 7:1: standard terms of reference rectified from "agreement/s" to "agreement(s)" to conform with usage elsewhere in Final Act; terms of reference in any given dispute will use either the word "agreement" or the word "agreements". Deletion of reference to DS/ document series to avoid prejudging document symbol for these documents and avoid confusion (DS/ documents may continue to be issued under GATT 1947).
22. Article 7:2: see preceding note concerning "agreement/s".

Article 8

23. Article 8:1: deletion of "WTO" as redundant (all "Members" are Members of the WTO).

24. Article 8:5: reference to "panel" in lower case for consistency.

25. Article 8:7: rectification to "determine the composition of" for greater precision. Rectifications to "the Director-General" and "the Chairman" instead of "he or she" for greater precision; addition of reference to "special and additional rules or procedures of the covered agreement or agreements at issue in the dispute" for greater precision (reflecting the context which refers to only those covered agreements that are at issue in the dispute).

26. Article 8:9: rectification of "governments" to "Members" for consistency with usage in Article 8:8 and elsewhere in the Final Act.

Article 9

27. Article 9:2: rectification to "in such a manner" and to "any one of the other complainants presents its views" for clarification; rectification for consistency of the descriptive references to "will" to the prescriptive "shall".

Article 10

28. Articles 10:1, 10:2: Reference to Members rectified to reflect the general use of "Members" in the Final Act to refer to Members of the WTO; status of parties to Plurilateral Trade Agreements is dealt with inter alia in footnote 7.

Article 12

29. Article 12:1: clarification of which Working Procedures are referred to.

30. Article 12:7: Addition of "to the DSB" to clarify where the panel sends its report.

31. Article 12:8: rectification of "provided" and "provide" to "issued" and "issue": see general note 1(c) above. Rectification of "to" to "until" to conform to Article 20:1.

32. Article 12:9: First sentence: rectification of "provide its report" and "submit its report" to "issue its report" for consistency with Article 12:8 and in line with approach in general note 1(c) above. Second sentence: rectification of "submission" to "circulation" in line with approach in general note 1(c) above.

Article 15

33. Articles 15:1 and 15:2: clarification that descriptive sections of the draft panel report are submitted to the parties to the dispute.

34. Article 15:2: Rectification of "following the deadline" to "at the expiration of the set period of time" for consistency with second sentence of preceding paragraph.

Article 16
35. Article 16:1: deletion of "of the DSB" since the DSU provides for the DSB as its decision-making body: "Members" are Members of the WTO.

36. Article 16:2: Rectification to clarify that the obligation is not collective but binds each Member. Rectification of "panel reports" to "a panel report" in conformity with later reference in the same sentence to "the panel report".

37. Article 16:4: Rectification of "one of the parties" to "a party" in first sentence to allow for appeals by more than one party to a dispute; rectification of "intention" to "decision" in second sentence for consistency with first sentence; rectification of date references as per general note 1(e) above.

Article 17

38. Article 17:2: rectification to reflect that the DSU does not enter into force independently of the WTO Agreement.

39. Article 17:3: rectification of "shall be comprised of" to "shall comprise": grammatical simplification.

40. Article 17:5: rectification of "intent" to "decision" for consistency with first reference in Article 16:4, first sentence; rectification of "issues" to "circulates" in line with approach in general note 1(c) above.

41. Article 17:14 and heading above it: conform references to "Appellate Body report" (capitalized in the heading as "Appellate Body Report") for consistency with Article 17:5 and Article 17:11; rectification of "issuance" to "circulation" in line with approach in general note 1(c) above.

Article 18

42. Article 18:2: rectification of "statement" to "statements" and deletion of comma after "confidential": grammatical correction and conformity with Appendix 3.

Article 19

43. Article 19:1: reference supplied to "or give a ruling on the matter, as appropriate" for conformity with GATT Article XXIII:2, and with the references to "recommendations and rulings" in the title of Article 21 and in Articles 21:1, 21:3, 21:5, 21:6, 22:1, 22:2, and 22:8.

Article 20

44. Greater precision in date references; clarification that it is the panel report that is appealed, not the Appellate Body report.

Articles 21 and 22


46. Article 21:5: rectification of "involving resort to the original panel wherever possible" to "including wherever possible resort to the original panel": clarification. Clarification that the panel report is "circulated" (to the DSB) in line with approach in general note 1(c) above.
47. Article 21:6: clarification of "on the agenda of the DSB meeting" to "placed on the agenda of the DSB".

48. Article 22:3(f)(ii), Services Sector Classification List: because the decision on the number of sectors is now final, and to avoid including a reference in the formal text of the DSU to a Uruguay Round negotiating document, footnote 15 would be deleted and the text of this List would be attached as a new Appendix 5 (included in this Corrigendum). The reference under item 7.A.k of this list to a further negotiating document, MTN.TNC/W/50, has been rectified to indicate the corresponding subsectors listed in the GATS Annex on Financial Services.


Article 24

50. Article 24:2: clarification to "which either deems appropriate".

Article 26

51. Article 26:1(c): insertion of "to the dispute" at end of sentence for clarity and consistency with rest of DSU.

52. Article 26:2(b): insertion of "to the DSB" to clarify the addressee of the report.

Appendix 1

53. Last sentence: on references to Annex 4 Agreements see general note 1(g) above.

Appendix 2

54. The changes in the list of agreements reflect the following: rearrangement of the agreements to reflect their order in the Final Act; rectification to reflect correct titles of agreements and renaming of some agreements; rectification of cross-references to Agreements on SPS and Safeguards; rechecking of references to Subsidies Agreement and others; moving Decision on Certain Dispute Settlement Procedures for the GATS to the left margin to reflect that this does not appear in the Final Act as part of the GATS.

55. Last sentence: on references to Annex 4 Agreements see general note 1(g) above.

Appendix 3

56. Rectifications to reflect change of this text from a draft for a decision to be issued by an individual panel on its own working procedures, to a set of general prescriptions giving direction to all panels:

-- Paragraphs 1, 2, 3, 5, 7, 10: rectification of "will" to "shall";

-- paragraph 12: rectification of "the Panel proposes the following timetable for its work" to heading "Proposed timetable for panel work".

57. Rectifications in paragraphs 4, 7 and 10 to allow for disputes with more than two parties.
Appendix 4

58. Paragraph 6: rectification to "issued" in line with approach in general note 1(c) above.

Appendix 5

59. See note above on Article 22:3(f)(ii).
E. ANNEX 3: TRADE POLICY REVIEW MECHANISM

TRADE POLICY REVIEW MECHANISM

A. Objectives

(i) The purpose of the Trade Policy Review Mechanism (hereinafter referred to as the “TPRM”) is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. Accordingly, the review mechanism will enable the regular collective appreciation and evaluation by the Ministerial Conference of the full range of individual Members’ trade policies and practices and their impact on the functioning of the multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members.

(ii) The assessment to be carried out under the review mechanism will take place, to the extent relevant, against the background of the wider economic and developmental needs, policies and objectives of the Member concerned, as well as of its external environment. However, the function of the review mechanism is to examine the impact of a Member’s trade policies and practices on the multilateral trading system.

B. Domestic transparency

Members recognize the inherent value of domestic transparency of government decision-making on trade policy matters for both Members’ economies and the multilateral trading system, and agree to encourage and promote greater transparency within their own systems, acknowledging that the implementation of domestic transparency must be on a voluntary basis and take account of each Member’s legal and political systems.

C. Procedures for review

(i) Trade policy reviews will be carried out by the Trade Policy Review Body (TPRB) (hereinafter referred to as the “TPRB”) is hereby established to carry out trade policy reviews.

(ii) The trade policies and practices of all Members shall be subject to periodic review. The impact of individual Members on the functioning of the multilateral trading system, defined in terms of their share of world trade in a recent representative period, will be the determining factor in deciding on the frequency of reviews. The first four trading entities so identified (counting the European Communities as one) shall be subject to review every two years. The next sixteen shall be reviewed every four years. Other Members will be reviewed every six years, except that a longer period may be fixed for least-developed country Members. It is understood that the review of entities having a common external policy covering more than one Member shall cover all components of policy affecting trade including relevant policies and practices of the individual Members. Exceptionally, in the event of changes in a Member’s trade policies or practices which may have a significant impact on its trading partners, the Member concerned may be requested by the TPRB, after consultation, to bring forward its next
(iii) In the light of the objectives set out in A above, discussions in the meeting of the TPRB will, to the extent relevant, take place against the background of the wider economic and developmental needs, policies and objectives of the Member concerned, as well as of its external environment. Discussions in the meetings of the TPRB shall be governed by the objectives set forth in paragraph A. The focus of these discussions will be on the Member's trade policies and practices, which are the subject of the assessment under the review mechanism.

(iv) The TPRB shall establish a basic plan for the conduct of the reviews. It may also discuss and take note of update reports from Members. The TPRB shall establish a programme of reviews for each year in consultation with the Members directly concerned. In consultation with the Member or Members under review, the Chairman may choose discussants who, acting in their personal capacity, will introduce the discussions in the TPRB.

(v) The TPRB will base its work on the following documentation:

(a) A full report, referred to in paragraph D(i) below, supplied by the Member or Members under review.

(b) A report, to be drawn up by the Secretariat on its own responsibility, based on the information available to it and that provided by the Member or Members concerned. The Secretariat should seek clarification from the Member or Members concerned of their trade policies and practices.

(vi) The reports by the Member under review and by the Secretariat, together with the minutes of the respective meeting of the TPRB, will be published promptly after the review.

(vii) These documents will be forwarded to the Ministerial Conference, which shall take note of them.

D. Reporting

(i) In order to achieve the fullest possible degree of transparency, each Member shall report regularly to the TPRB. Full reports shall describe the trade policies and practices pursued by the Member or Members concerned, based on an agreed format to be decided upon by the TPRB. This format shall be based on the Outline Format for Country Reports established by the Decision of the GATT 1947 CONTRACTING PARTIES of 19 July 1989 (BISD 36S/406), amended as necessary to extend the coverage of reports to all aspects of trade policies covered by the Multilateral Trade Agreements in Annex 1 and, where applicable, the Plurilateral Trade Agreements. This format may be revised by the TPRB in the light of experience. Between reviews, Members shall provide brief reports when there are any significant changes in their trade policies; an annual update of statistical information shall be provided according to the agreed format. Particular account shall be taken of difficulties presented to least-developed country Members in compiling their reports. The Secretariat shall make available technical assistance on request to developing country Members, and in particular to the least-developed country Members. Information contained in reports should to the greatest extent possible be coordinated with notifications made under provisions of the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements.
E. **Relationship with the balance-of-payments provisions of the GATT 1994 and the GATS**

Members recognize the need to minimize the burden for governments also subject to full consultations under the balance-of-payments provisions of the GATT 1994 or the GATS. To this end, the Chairman of the TPRB shall, in consultation with the Member or Members concerned, and with the Chairman of the Committee on Balance-of-Payments Restrictions, devise administrative arrangements which would harmonize the normal rhythm of the trade policy reviews with the timetable for balance-of-payments consultations but would not postpone the trade policy review by more than twelve 12 months.

F. **Appraisal of the Mechanism**

The TPRB will undertake an appraisal of the operation of the TPRM not more than five years after the entry into force of the Agreement Establishing the WTO. The results of the appraisal will be presented to the Ministerial Conference. It may subsequently undertake appraisals of the TPRM at intervals to be determined by it or as requested by the Ministerial Conference.

G. **Overview of Developments in the International Trading Environment**

An annual overview of developments in the international trading environment which are having an impact on the multilateral trading system will also be undertaken by the TPRB. It will be assisted by an annual report by the Director-General setting out major activities of the WTO and highlighting significant policy issues affecting the trading system.

**NOTES ON THE RECTIFIED TEXT:**

The drafting of the text has been updated to reflect the fact that the TPRM is ongoing, and to conform the style to that of a prescriptive text giving direction for the future operation of the TPRM. The method of referring to the 1989 Decision on the TPRM conforms to the practice used elsewhere in the Final Act of identifying by date and BISD citation.

Language in paragraph C(iii) that duplicated the listing of objectives in paragraph A has been abbreviated. A clause formally establishing the TPRB has been added to paragraph C(i), since Article IV:4 of the WTO Agreement does not establish the TPRB but instead refers to it as "provided for in the Trade Policy Review Mechanism". The numbering has been deleted from paragraph D(i) as it is unnecessary.
II. DECISIONS FOR ADOPTION AT THE MARRAKESH MINISTERIAL MEETING

1. Decision on Measures in Favour of Least-Developed Countries

DECISION ON MEASURES IN FAVOUR OF LEAST-DEVELOPED COUNTRIES

Ministers,

Recognizing the plight of the least-developed countries and the need to ensure their effective participation in the world trading system, and to take further measures to improve their trading opportunities;

Recognizing the specific needs of the least-developed countries in the area of market access where continued preferential access remains an essential means for improving their trading opportunities;

Reaffirming their commitment to implement fully the provisions concerning the least-developed countries contained in paragraphs 2(d), 6 and 8 of the Decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

Having regard to the commitment of the participants as set out in Section B (vii) of Part I of the Punta del Este Ministerial Declaration on the Uruguay Round;

1. Decide that, if not already provided for in the instruments negotiated in the course of the Uruguay Round, notwithstanding their acceptance of these instruments, the least-developed countries, and for so long as they remain in that category, while complying with the general rules set out in the aforesaid instruments, will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities. The least-developed countries shall be given additional time of one year from the date of the Special Ministerial Session concluding the Uruguay Round of Multilateral Trade Negotiations 15 April 1994 to submit their schedules as required in Article XI of the Agreement Establishing the Multilateral World Trade Organization.

2. Agree that:

(i) Expeditious implementation of all special and differential measures taken in favour of least-developed countries including those taken within the context of the Uruguay Round shall be ensured through, inter alia, regular reviews.

(ii) To the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the least-developed countries may be implemented autonomously, in advance and without staging. Consideration shall be given to further improve GSP and other schemes for products of particular export interest to least-developed countries.

(iii) The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least-developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least-developed countries in the appropriate Councils and Committees. Committees and Councils.
(iv) In the application of import relief measures and other measures referred to in Article XXXVII:3(c) of GATT 1947 (and the corresponding Article of GATT 1994) paragraph 3(c) of Article XXXVII of GATT 1947 and the corresponding provision of GATT 1994, special consideration shall be given to the export interests of least-developed countries.

(v) Least-developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.

3 Agree to keep under review the specific needs of the least-developed countries and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of these countries.

NOTES TO THE RECTIFIED TEXT:

The rectifications to this text consist of: rectification to the formal title of the Ministerial Declaration on the Uruguay Round; rectification of the date in paragraph 1; rectification of the reference in paragraph 2(iii) to "committees and councils" to "Councils and Committees" consistent with other texts in the Final Act; rectification of references to GATT provisions in paragraph 2(iv); and addition of a paragraph number to paragraph 3.
2. Declaration on the Contribution of the MTO to Achieving Greater Coherence in Global Economic Policymaking

DECLARATION ON THE CONTRIBUTION OF THE MTO WTO TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICYMakinG

1. Ministers recognize that the globalization of the world economy has led to ever-growing interactions between the economic policies pursued by individual countries, including interactions between the structural, macroeconomic, trade, financial and development aspects of economic policymaking. The task of achieving harmony between these policies falls primarily on governments at the national level, but their coherence internationally is an important and valuable element in increasing the effectiveness of these policies at national level. The Agreements reached in the Uruguay Round show that all the participating governments recognize the contribution that liberal trading policies can make to the healthy growth and development of their own economies and of the world economy as a whole.

2. Successful cooperation in each area of economic policy contributes to progress in other areas. Greater exchange rate stability, based on more orderly underlying economic and financial conditions, should contribute towards the expansion of trade, sustainable growth and development, and the correction of external imbalances. There is also a need for an adequate and timely flow of concessional and non-concessional financial and real investment resources to developing countries and for further efforts to address debt problems, to help ensure economic growth and development. Trade liberalization forms an increasingly important component in the success of the adjustment programmes that many countries are undertaking, often involving significant transitional social costs. In this connection, Ministers note the rôle of the World Bank and the IMF in supporting adjustment to trade liberalization, including support to net food-importing developing countries facing short-term costs arising from agricultural trade reforms.

3. The positive outcome of the Uruguay Round is a major contribution towards more coherent and complementary international economic policies. The results of the Uruguay Round ensure an expansion of market access to the benefit of all countries, as well as a framework of strengthened multilateral disciplines for trade. They also guarantee that trade policy will be conducted in a more transparent manner and with greater awareness of the benefits for domestic competitiveness of an open trading environment. The strengthened multilateral trading system emerging from the Uruguay Round has the capacity to provide an improved forum for liberalization, to contribute to more effective surveillance, and to ensure strict observance of multilaterally agreed rules and disciplines. These improvements mean that trade policy can in the future play a more substantial rôle in ensuring the coherence of global economic policymaking.

4. Ministers recognize, however, that difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone. This underscores the importance of efforts to improve other elements of global economic policymaking to complement the effective implementation of the results achieved in the Uruguay Round.

5. The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. The MTO WTO should therefore pursue and develop cooperation with the international organizations responsible for monetary and financial matters, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions. Ministers further invite the Director-General of the MTO WTO to review with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the MTO WTO's
responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policymaking.
3. Decision on Notification Procedures

DECISION ON NOTIFICATION PROCEDURES

Ministers decide to recommend approval and adoption by the Ministerial Conference of the decision on improvement and review of notification procedures as set out below.

Members,

Desiring to improve the operation of notification procedures under the MTO Agreement Establishing the WTO (hereinafter referred to as the "WTO Agreement"), and thereby to contribute to the transparency of Members' trade policies and to the effectiveness of surveillance arrangements established to that end;

Recalling obligations under the MTO WTO Agreement to publish and notify, including obligations assumed under the terms of specific Protocols of Accession, waivers, and other agreements entered into by Members;

Agree as follows:

I. General obligation to notify

Members affirm their commitment to obligations under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, regarding publication and notification.

Members recall their undertakings set out in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted by the CONTRACTING PARTIES to the GATT 1947 on 28 November 1979 (BISD 26S/210). With regard to their undertaking therein to notify, to the maximum extent possible, their adoption of trade measures affecting the operation of the GATT 1994, such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, Members agree to be guided, as appropriate, by the annexed list of measures. Members therefore agree that the introduction or modification of such measures is subject to the notification requirements of the 1979 Understanding.

II. Central registry of notifications

A central registry of notifications shall be established under the responsibility of the MTO WTO Secretariat. While Members will continue to follow existing notification procedures, the Secretariat shall ensure that the central registry records such elements of the information provided on the measure by the Member concerned as its purpose, its trade coverage, and the requirement under which it has been notified. The central registry shall cross-reference its records of notifications by Member and obligation.

The central registry shall inform each Member annually of the regular notification obligations to which that Member will be expected to respond in the course of the following year.

The central registry shall draw the attention of individual Members to regular notification requirements which remain unfulfilled.
Information in the central registry regarding individual notifications shall be made available on request to any Member entitled to receive the notification concerned.

III. Review of notification obligations and procedures

The Council for Trade in Goods will undertake a review of notification obligations and procedures under the Agreements in Annex 1A of the WTO Agreement. The review will be carried out by a working group, membership in which will be open to all Members. The group will be established immediately after the date of entry into force of the Agreement Establishing the MTO.

The terms of reference of the working group will be:

—(a) to undertake a thorough review of all existing notification obligations of Members established under the Agreements in Annex 1A of the WTO Agreement, with a view to simplifying, standardizing and consolidating these obligations to the greatest extent practicable, as well as to improving compliance with these obligations, bearing in mind the overall objective of improving the transparency of the trade policies of Members and the effectiveness of surveillance arrangements established to this end, and also bearing in mind the possible need of some developing country Members for assistance in meeting their notification obligations;

—(b) to make recommendations to the Council for Trade in Goods not later than two years after the entry into force of the Agreement Establishing the MTO.

ANNEX

INDICATIVE LIST\(^1\) OF NOTIFIABLE MEASURES

Tariffs (including range and scope of bindings, GSP provisions, rates applied to members of free-trade areas/customs unions, other preferences)

Tariff quotas and surcharges

Quantitative restrictions, including voluntary export restraints and orderly marketing arrangements affecting imports

Other non-tariff measures such as licensing and mixing requirements; variable levies

Customs valuation

Rules of origin

Government Procurement procurement

Technical barriers

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\(^1\)This list does not alter existing notification requirements in the Multilateral Trade Agreements in Annex 1A to the Agreement Establishing the MTO WTO Agreement or, where applicable, the Preferential Trade Agreements in Annex 4 of the WTO Agreement.
Safeguard actions

Anti-dumping actions

Countervailing actions

Export taxes

Export subsidies, tax exemptions and concessionary export financing

Free-trade zones, including in-bond manufacturing

Export restrictions, including voluntary export restraints and orderly marketing arrangements

Other government assistance, including subsidies, tax exemptions

Role of State state-trading enterprises

Foreign exchange controls related to imports and exports

Government-mandated countertrade

Any other measure covered by the Multilateral Trade Agreements in Annex 1A to the WTO Agreement Establishing the MTO.
4. Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries

DECISION ON MEASURES CONCERNING THE POSSIBLE NEGATIVE EFFECTS OF THE REFORM PROGRAMME ON LEAST-DEVELOPED AND NET FOOD-IMPORTING DEVELOPING COUNTRIES

1. Ministers recognize that the progressive implementation of the results of the Uruguay Round as a whole will generate increasing opportunities for trade expansion and economic growth to the benefit of all participants.

2. Ministers recognize that during the reform programme leading to greater liberalization of trade in agriculture least-developed and net food-importing developing countries may experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports of basic foodstuffs.

3. Ministers accordingly agree to establish appropriate mechanisms to ensure that the implementation of the results of the Uruguay Round on trade in agriculture does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting the food needs of developing countries, especially least-developed and net food-importing developing countries. To this end Ministers agree:

   (i) to review the level of food aid established periodically by the Committee on Food Aid under the Food Aid Convention 1986 and to initiate negotiations in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries during the reform programme;

   (ii) to adopt guidelines to ensure that an increasing proportion of basic foodstuffs is provided to least-developed and net food-importing developing countries in fully grant form and/or on appropriate concessional terms in line with Article IV of the Food Aid Convention;

   (iii) to give full consideration in the context of their aid programmes to requests for the provision of technical and financial assistance to least-developed and net food-importing developing countries to improve their agricultural productivity and infrastructure.

4. Ministers further agree to ensure that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries.

5. Ministers recognize that as a result of the Uruguay Round certain developing countries may experience short-term difficulties in financing normal levels of commercial imports and that these countries may be eligible to draw on the resources of international financial institutions under existing facilities, or such facilities as may be established, in the context of adjustment programmes, in order to address such financing difficulties. In this regard Ministers take note of paragraph 37 of the report of the Director-General of the GATT (MTN.GNG/NG14/W/35) on his consultations with the Managing Director of the International Monetary Fund and the President of the World Bank (MTN.GNG/NG14/W/35).
6. The provisions of this Decision will be subject to regular review by the Ministerial Conference, and the follow-up to this Decision shall be monitored, as appropriate, by the Committee on Agriculture.
5. Decisions Relating to the Agreement on Technical Barriers to Trade

(a) Decision on Proposed Understanding on MTO-ISO Standards Information System

**DECISION ON PROPOSED UNDERSTANDING ON MTO WTO-ISO STANDARDS INFORMATION SYSTEM**

Ministers decide to recommend that the MTO WTO Secretariat reach an understanding with the ISO International Standards Organization to establish an information system under which:

1. ISONET members shall transmit to the ISO/IEC Information Centre in Geneva the notifications referred to in paragraphs C and J of the Code of good practice for the preparation, adoption and application of standards Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the Agreement on Technical Barriers to Trade, in the manner indicated there;

2. the following (alpha)numeric classification systems shall be used in the work programmes mentioned above referred to in paragraph J:

   (a) a standards classification system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the subject matter;

   (b) a stage code system which would allow standardizing bodies to give for each standard mentioned in the work programme in paragraph J of Annex 3 an (alpha)numeric indication of the stage of development of the standard; for this purpose, at least five stages of development should be distinguished: (1) the stage at which the decision to develop a standard has been taken, but technical work has not yet begun; (2) the stage at which technical work has begun, but the period for the submission of comments has not yet started; (3) the stage at which the period for the submission of comments has started, but has not yet been completed; (4) the stage at which the period for the submission of comments has been completed, but the standard has not yet been adopted; and (5) the stage at which the standard has been adopted;

   (c) an identification system covering all international standards which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the international standard(s) used as a basis;

3. the ISO/IEC Information Centre shall promptly convey to the MTO WTO Secretariat copies of any notifications referred to in paragraph C of the Code of good practice Good Practice;

4. the ISO/IEC Information Centre shall regularly publish the information received in the notifications made to it under paragraphs C and J of the Code of Good Practice; this publication, for which a reasonable fee may be charged, shall be available to ISONET members and through the MTO WTO Secretariat, to the Members of the MTO WTO.

NOTE TO THE RECTIFIED TEXT: Rectifications clarify the references and the institutional context.
(b) Decision on Review of the ISO/IEC Information Centre Publication

DECISION ON REVIEW OF THE ISO/IEC INFORMATION CENTRE PUBLICATION

Ministers decide that in conformity with paragraph 1 of Article 13 of the Committee Agreement on Technical Barriers to Trade in Annex 1A of the WTO Agreement, the Committee on Technical Barriers to Trade established thereunder shall, without prejudice to provisions on consultation and dispute settlement, at least once a year review the publication provided by the ISO/IEC Information Centre on information received according to the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 of the Agreement, for the purpose of affording Members opportunity of discussing any matters relating to the operation of that Code.

In order to facilitate this discussion, the WTO Secretariat is requested to provide a list by Member of all standardizing bodies that have accepted the Code of good practice, as well as a list of those standardizing bodies that have accepted or withdrawn from the Code since the previous review.

The WTO Secretariat is also requested to distribute promptly to the Members copies of the notifications it receives from the ISO/IEC Information Centre.
6. Decisions Relating to the Agreement on Anti-Dumping Measures

NOTE TO THE RECTIFIED TEXTS: Texts appearing as "statements" in the 15 December version of the Final Act have been redrafted as Decisions or Declarations so that they can be adopted by Ministers.

(a) Decision on Future Work on the Problem of Circumvention of Anti-Dumping Measures

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF GATT 1994
STATEMENT ON ANTI-CIRCUMVENTION

DECISION ON FUTURE WORK ON THE PROBLEM OF CIRCUMVENTION OF ANTI-DUMPING MEASURES

Ministers,

"The Noting that while the problem of circumvention of anti-dumping duty measures formed part of the negotiations which preceded this Agreement, Negotiators were, however, unable to agree on specific text, and, given the desirability of the applicability of uniform rules in this area as soon as possible, the

Decide to refer this matter is referred to the Committee on Anti-Dumping Practices for resolution."

(b) Decision on Review of Paragraph 6 of Article 17 of the Agreement on Anti-Dumping Measures

DECISION ON REVIEW OF PARAGRAPH 6 OF ARTICLE 17 OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF GATT 1994 ANTI-DUMPING MEASURES

STATEMENT ON STANDARD OF REVIEW FOR DISPUTE SETTLEMENT PANELS

Ministers,

Decide as follows:

"The standard of review in Article 17.6 paragraph 6 of Article 17 of the Agreement will be reviewed after a period of three years with a view to considering the question of whether it is capable of general application."
(c) Declaration on Dispute Settlement Pursuant to the Agreement on Anti-Dumping Measures or Part V of the Agreement on Subsidies and Countervailing Measures

STATEMENT DECLARATION ON DISPUTE SETTLEMENT PURSUANT TO THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VI 1994 ANTI-DUMPING MEASURES OR PART V OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES 1994

Ministers Recognize, with respect to dispute settlement pursuant to the Agreement on Implementation of Article VI of GATT 1994, Anti-Dumping Measures or Part V of the Agreement on Subsidies and Countervailing Measures 1994, Ministers recognize, the need for the consistent resolution of disputes arising from anti-dumping and countervailing duty measures.
7. Decisions Relating to the Agreement on Customs Valuation

(a) Decision Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value

DECISION REGARDING CASES WHERE CUSTOMS ADMINISTRATIONS HAVE REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

Ministers invite the Committee on Customs Valuation established under the Agreement on Customs Valuation in Annex 1A of the WTO Agreement to take the following decision:

The Committee on Customs Valuation,

Reaffirming that the transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of the GATT 1994 (the Agreement) Customs Valuation (hereinafter referred to as the "Agreement");

Recognizing that the customs administration may have to address cases where it has reason to doubt the truth or accuracy of the particulars or of documents produced by traders in support of a declared value;

Emphasizing that in so doing the customs administration should not prejudice the legitimate commercial interests of traders;

Taking into account Article 17 of the Agreement, paragraph 6 of Annex III to the Agreement, and the relevant decisions of the Technical Committee on Customs Valuation;

The Committee on Customs Valuation decides as follows:

1. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.

2. It is entirely appropriate in applying the Agreement for one Member to assist another Member on mutually agreed terms.
(b) Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires

DECISION ON TEXTS RELATING TO MINIMUM VALUES AND IMPORTS BY SOLE AGENTS, SOLE DISTRIBUTORS AND SOLE CONCESSIONAIRENS

Ministers decide to refer the following texts to the Committee on Customs Valuation established under the Agreement on Customs Valuation in Annex 1A of the WTO Agreement, for adoption:

I

1. Where a developing country Member makes a reservation to retain officially established minimum values within the terms of paragraph 2 of Annex III and shows good cause, the Committee shall give the request for the reservation sympathetic consideration.

2. Where a reservation is consented to, the terms and conditions referred to in paragraph 2 of Annex III shall take full account of the development, financial and trade needs of the developing country Member concerned.

II

1. A number of developing countries considering accession to the Agreement have expressed a concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under paragraph 1 of Article 20, developing country Members have a period of delay of up to five years prior to the application of the Agreement. In this context, developing country Members availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.

2. In consideration of this, the Committee recommends that the Customs Co-operation Council assist developing country Members, in accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.

NOTE TO THE RECTIFIED TEXT: The reference to "accession to the Agreement" in the second text has been deleted since accession to the Agreement on Customs Valuation will no longer independently take place. The first sentence of paragraph 1 in the second text has been rectified to reflect the point that the concern cannot be expressed if it does not exist. The second sentence of paragraph 1 in the first text, and the third sentence of paragraph 2 in the second text, have been rectified to refer to "developing country Members" as these provisions are only relevant for them.
8. Decisions Relating to the General Agreement on Trade in Services

NOTE ON THE RECTIFIED TEXTS OF THE DECISIONS RELATING TO THE GATS: The titles referred to within the Decisions on Institutional Arrangements, Certain Dispute Settlement Procedures, and Trade in Services and the Environment have been deleted as redundant. A reference to negotiations has been added to the titles of the Decisions which deal with negotiations on movement of natural persons and on financial services, to conform them with the Decisions on negotiations on maritime transport services and basic telecommunications.

(a) Decision on Institutional Arrangements for the General Agreement on Trade in Services

DECISION ON INSTITUTIONAL ARRANGEMENTS FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

Ministers decide to recommend that the Council for Trade in Services at its first meeting shall adopt the decision on subsidiary bodies set out below.

INSTITUTIONAL ARRANGEMENTS FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES

The Council for Trade in Services, acting pursuant to Article XXIV with a view to facilitating the operation and furthering the objectives of the General Agreement on Trade in Services,

Decides as follows:

1. Any subsidiary bodies, that the Council may establish shall report to the Council annually or more often as necessary. Each such body shall establish its own rules of procedure, and may set up its own subsidiary bodies as appropriate.

2. Any sectoral committee shall carry out responsibilities as assigned to it by the Council, and shall afford Members the opportunity to consult on any matters relating to trade in services in the sector concerned and the operation of the sectoral annex to which it may pertain. Such responsibilities shall include:

   (a) to keep under continuous review and surveillance the application of the Agreement with respect to the sector concerned;

   (b) to formulate proposals or recommendations for consideration by the Council in connection with any matter relating to trade in the sector concerned;

   (c) if there is an annex pertaining to the sector, to consider proposals for amendment of that sectoral annex, and to make appropriate recommendations to the Council;

   (d) to provide a forum for technical discussions, to conduct studies on measures of Members and to conduct examinations of any other technical matters affecting trade in services in the sector concerned;

   (e) to provide technical assistance to developing country Members and developing countries
negotiating accession to the Agreement Establishing the WTO MTO in respect of the application of obligations or other matters affecting trade in services in the sector concerned; and

(f) to cooperate with any other subsidiary bodies established under this Agreement or any international organizations active in any sector concerned.

3. There is hereby established a Committee on Trade in Financial Services which will have the responsibilities listed in paragraph 2 above.

(b) **Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services**

**DECISION ON CERTAIN DISPUTE SETTLEMENT PROCEDURES FOR THE GENERAL AGREEMENT ON TRADE IN SERVICES**

*Ministers decide* to recommend that the Council for Trade in Services at its first meeting shall adopt the decision set out below.

**DISPUTE SETTLEMENT PANELS**

*The Council for Trade in Services,*

*Taking into account* the specific nature of the obligations and specific commitments of the Agreement and of trade in services with respect to dispute settlement under Articles XXII and XXIII,

*Decides* as follows:

1. A roster of panelists shall be established to assist in the selection of panelists.

2. To this end, Members may suggest names of individuals possessing the qualifications referred to in paragraph 3 below for inclusion on the roster, and shall provide a curriculum vitae of their qualifications including, if applicable, indication of sector-specific expertise.

3. Panels shall be composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to the General Agreement on Trade in Services and/or trade in services, including associated regulatory matters. Panelists shall serve in their individual capacities and not as representatives of any government or organisation.

4. Panels for disputes regarding sectoral matters shall have the necessary expertise relevant to the specific services sectors which the dispute concerns.

5. The WTO Secretariat shall maintain the roster and shall develop procedures for its administration in consultation with the Chairman of the Council.
(c) Decision on Trade in Services and the Environment

DECISION CONCERNING PARAGRAPH (b) OF ARTICLE XIV OF THE GENERAL AGREEMENT ON TRADE IN SERVICES AND THE ENVIRONMENT

Ministers decide to recommend that the Council for Trade in Services at its first meeting shall adopt the decision set out below.

WORKING PARTY ON TRADE IN SERVICES AND THE ENVIRONMENT

The Council for Trade in Services,

Acknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement and

Noting that since measures necessary to protect the environment typically have as their objective the protection of human, animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV,

Decides as follows:

1. In order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures, a Working Party on Trade in Services and the Environment shall be established and shall examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Working Party shall also examine the relevance of inter-governmental agreements on the environment and their relationship to the Agreement.

2. The Working Party shall report the results of its work within three years of the entry into force of the Agreement Establishing the WTO.

NOTE TO THE RECTIFIED TEXT: It is proposed to change the name of this decision to one that is more immediately communicative of its subject matter.
(d) **Decision on Negotiations on Movement of Natural Persons**

**DECISION ON NEGOTIATIONS ON MOVEMENT OF NATURAL PERSONS**

*Ministers meeting on the occasion of the conclusion of the Uruguay Round,*

*Noting* the commitments resulting from the Uruguay Round negotiations on the movement of natural persons for the purpose of supplying services;

*Mindful* of the objectives of the General Agreement on Trade in Services, including inter alia the increasing participation of developing countries in trade in services and the expansion of their service exports;

*Recognizing* the importance of achieving higher levels of commitments on the movement of natural persons, in order to provide for a balance of benefits under the General Agreement on Trade in Services;

*Decide* as follows:

1. Negotiations on further liberalization of movement of natural persons for the purpose of supplying services shall continue beyond the conclusion of the Uruguay Round, with a view to allowing the achievement of higher levels of commitments by participants under the General Agreement on Trade in Services.

2. A negotiating group on movement of natural persons **Negotiating Group on Movement of Natural Persons** is established to carry out the negotiations. The group shall establish its own procedures and shall report periodically to the Council on Trade in Services.

3. The negotiating group shall hold its first negotiating session no later than one month from the date of this Decision 16 May 1994. It shall conclude these negotiations and produce a final report no later than six months after the entry into force of the WTO Agreement establishing the MTO.

4. Commitments resulting from these negotiations shall be inscribed in Members’ schedules **Schedules** of specific commitments.
(e) Decision on Negotiations on Financial Services

DECISION ON NEGOTIATIONS ON FINANCIAL SERVICES

Ministers,

Noting that commitments scheduled by participants on Financial Services at the conclusion of the Uruguay Round shall enter into force on an MFN basis at the same time as the WTO Agreement;

Decide as follows:

1. At the conclusion of a period ending no later than six months after the entry into force of the WTO Agreement, Members shall be free to improve, modify or withdraw all or part of their commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI of the GATS. At the same time Members shall finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. From the date of entry into force of the WTO Agreement and until the end of the period referred to above, exemptions listed in the Annex on Article II Exemptions which are conditional upon the level of commitments undertaken by other participants or upon exemptions by other participants will not be applied.

2. The Committee on Trade in Financial Services shall monitor the progress of any negotiations undertaken under the terms of this Decision and shall report thereon to the Council for Trade in Services no later than four months after the entry into force of the Agreement.
(f) Decision on Negotiations on Maritime Services

DECISION ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

Ministers, meeting on the occasion of the conclusion of the Uruguay Round,

Noting that commitments scheduled by participants on Maritime Transport Services at the conclusion of the Uruguay Round shall enter into force on an MFN basis at the same time as the General Agreement on Trade in Services. Establishing the WTO;

Decide as follows:

1. Negotiations shall be entered into on a voluntary basis in the sector of maritime transport services within the framework of the General Agreement on Trade in Services. The negotiations shall be comprehensive in scope, aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time scale.

2. A Negotiating Group on Maritime Transport Services (NGMTS) (hereinafter referred to as the “NGMTS”) is established to carry out this mandate. The NGMTS shall report periodically on the progress of these negotiations.

3. The negotiations in the NGMTS shall be open to all governments and the European Community Communities which announce their intention to participate. To date, the following governments have announced their intention to take part in the negotiations:

   Argentina, Canada, European Community Communities and its member States thereof, Finland, Iceland, Indonesia, Korea, Malaysia, Mexico, Poland, New Zealand, Norway, Philippines, Romania, Singapore, Sweden, Thailand, Turkey, United States.

   Further notifications of intention to participate shall be addressed to the depositary of the WTO Agreement.

4. The NGMTS shall hold its first negotiating session no later than one month from the date of this Decision 16 May 1994. It shall conclude these negotiations and make a final report no later than June 1996. The final report of the NGMTS shall include a date for the implementation of results of these negotiations.

5. Until the conclusion of the negotiations paragraph 1 of Article II and paragraph paragraphs 1 and 2 of the Annex on Article II Exemptions are suspended in their application to this sector, and it is not necessary to list MFN exemptions. At the conclusion of the negotiations, Members shall be free to improve, modify or withdraw any commitments made in this sector during the Uruguay Round without offering compensation, notwithstanding the provisions of Article XXI of the GATS Agreement. At the same time Members shall finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. Should negotiations not succeed, the Council for Trade in Services shall decide whether to continue the negotiations according to the mandate.

6. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the schedules annexed to the General Agreement on Trade in Services and be subject to all the provisions of the Agreement.
7. Commencing immediately and continuing until the date (referred to in paragraph 4 above) of implementation of the results of these negotiations, implementation date to be determined under paragraph 4, it is understood that participants shall not apply any measure affecting trade in maritime transport services except in response to measures applied by other countries and with a view to maintaining or improving the freedom of provision of maritime transport services, nor in such a manner as would improve their negotiating position and leverage.

8. The implementation of paragraph 7 above shall be subject to surveillance in the NGMTS. Any participant may bring to the attention of the NGMTS any action or omission which it believes to be relevant to the fulfilment of paragraph 7. Such notifications shall be deemed to have been submitted to the NGMTS upon their receipt by the Secretariat.
(g) Decision on Negotiations on Basic Telecommunications

DECISION ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

Ministers, meeting on the occasion of the conclusion of the Uruguay Round, decided as follows:

1. Negotiations shall be entered into on a voluntary basis with a view to the progressive liberalization of trade in telecommunications transport networks and services (hereinafter called "basic telecommunications") within the framework of the General Agreement on Trade in Services.

2. Without prejudice to their outcome, the negotiations shall be comprehensive in scope, with no basic telecommunications excluded a priori.

3. A Negotiating Group on Basic Telecommunications (NGBT) (hereinafter referred to as the "NGBT") is established to carry out this mandate. The NGBT shall report periodically on the progress of these negotiations.

4. The negotiations in the NGBT shall be open to all governments and the European Communities which announce their intention to participate. To date, the following governments have announced their intention to take part in the negotiations:

   Australia, Austria, Canada, Chile, European Communities and member States thereof, Finland, Hong Kong, Hungary, Japan, Korea, Mexico, New Zealand, Norway, Slovak Republic, Sweden, Switzerland, Turkey, United States.

Further notifications of intention to participate shall be addressed to the depositary of the WTO Agreement Establishing the MTO.

5. The NGBT shall hold its first negotiating session no later than one month from the date of this Decision 16 May 1994. It shall conclude these negotiations and make a final report no later than 30 April 1996. The final report of the NGBT shall include a date for the implementation of results of these negotiations.

6. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the schedules annexed to the General Agreement on Trade in Services and be subject to all the provisions of the Agreement.

7. Commencing immediately and continuing until the date (referred to in paragraph 5 above) of implementation of the results of these negotiations, it is understood that no participant shall apply any measure affecting trade in basic telecommunications in such a manner as would improve its negotiating position and leverage. It is understood that this provision shall not prevent the pursuit of commercial and governmental arrangements regarding the provision of basic telecommunications services.

8. The implementation of paragraph 7 above shall be subject to surveillance in the NGBT. Any participant may bring to the attention of the NGBT any action or omission which it believes to be relevant to the fulfilment of paragraph 7. Such notifications shall be deemed to have been submitted to the NGBT upon their receipt by the Secretariat.
(h) Decision on Professional Services

DECISION CONCERNING ON PROFESSIONAL SERVICES

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the decision set out below.

The Council for Trade in Services,

Recognizing the impact of regulatory measures relating to professional qualifications, technical standards and licensing on the expansion of trade in professional services;

Desiring to establish multilateral disciplines with a view to ensuring that, when specific commitments are undertaken, such regulatory measures do not constitute unnecessary barriers to the supply of professional services;

Decides as follows:

1. The work programme foreseen in paragraph 4 of Article VI, paragraph 4 on domestic Regulations on Domestic Regulation should be put into effect immediately. To this end, a Working Party on Professional Services shall be established to examine and report, with recommendations, on the disciplines necessary to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements in the field of professional services do not constitute unnecessary barriers to trade.

2. As a matter of priority, the Working Party shall make recommendations for the elaboration of multilateral disciplines in the accountancy sector, so as to give operational effect to specific commitments. In making these recommendations, the Working Party shall concentrate on:

- (a) developing multilateral disciplines relating to market access so as to ensure that domestic regulatory requirements are: (a) based on objective and transparent criteria, such as competence and the ability to supply the service; (b) not more burdensome than necessary to ensure the quality of the service, thereby facilitating the effective liberalization of accountancy services;

- (b) the use of international standards and, in doing so, it shall encourage the cooperation with the relevant international organizations as defined under paragraph 5(b) of Article VI, paragraph 5; VII;

- (c) facilitating the effective application of paragraph 6 of Article VI, paragraph 6, of the Agreement by establishing guidelines for the recognition of qualifications.

In elaborating these disciplines, the Working Party shall take account of the importance of the governmental and non-governmental bodies regulating professional services.
9. Understanding on Commitments in Financial Services

UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES

Participants in the Uruguay Round have been enabled to take on specific commitments with respect to Financial Services under the General Agreement on Trade in Services on the basis of an alternative approach to that covered by the provisions of Part III of the Agreement. It was agreed that this approach could be applied subject to the following understanding:

- it does not conflict with the provisions of the Agreement;
- it does not prejudice the right of any Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;
- resulting specific commitments shall apply on a most-favoured-nation basis;
- no presumption has been created as to the degree of liberalization to which a Member is committing itself under the Agreement.

Interested Members, on the basis of negotiations, and subject to conditions and qualifications where specified, have inscribed in their schedule specific commitments conforming to the approach set out below.

Standstill

Any conditions, limitations and qualifications to the commitments noted below shall be limited to existing non-conforming measures.

Market Access

Monopoly Rights

1. In addition to Article VIII of the Agreement, the following shall apply:

Each Member shall list in its schedule pertaining to financial services existing monopoly rights and shall endeavour to eliminate them or reduce their scope. Notwithstanding paragraph 4.2 (b) of the Annex on Financial Services, this paragraph applies to the activities referred to in sub-paragraph 4.2.2 (b)(ii) of the Annex.

Financial Services purchased by Public Entities

2. Notwithstanding Article XIII of the Agreement, each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded most-favoured-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Member in its territory.

Cross-border Trade

3. Each Member shall permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, and under terms and conditions that accord national
treatment, the following services:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession and the services auxiliary to insurance as referred to in sub-paragraph 5.1(d) 5(a)(iv) of the Annex;

(c) provision and transfer of financial information and financial data processing as referred to in sub-paragraph 5.1(e) 5(a)(xv) of the Annex and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in sub-paragraph 5.1(p) 5(a)(xvi) of the Annex.

4. Each Member shall permit its residents to purchase in the territory of any other Member the financial services indicated in:

(a) sub-paragraph 3(a);

(b) sub-paragraph 3(b); and

(c) sub-paragraphs 5.1(e) 5(a)(v) to (p)(xvi) of the Annex.

Commercial Presence

5. Each Member shall grant financial service suppliers of any other Member the right to establish or expand within its territory, including through the acquisition of existing enterprises, a commercial presence.

6. A Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Member's obligation under paragraph 5 and they are consistent with the other obligations of this Agreement.

New Financial Services

7. A Member shall permit financial service suppliers of any other Member established in its territory to offer in its territory any new financial service.

Transfers of Information and Processing of Information

8. No Member shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the Agreement.
Temporary Entry of Personnel

9. (a) Each Member shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Member that is establishing or has established a commercial presence in the territory of the Member:

(i) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and

(ii) specialists in the operation of the financial service supplier.

(b) Each Member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Member:

(i) specialists in computer services, telecommunication services and accounts of the financial service supplier; and

(ii) actuarial and legal specialists.

Non-discriminatory Measures

10. Each Member shall endeavour to remove or to limit any significant adverse effects on financial service suppliers of any other Member of:

(a) non-discriminatory measures that prevent financial service suppliers from offering in the Member’s territory, in the form determined by the Member, all the financial services permitted by the Member;

(b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the Member;

(c) measures of a Member, when such a Member applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other Member concentrates its activities in the provision of securities services; and

(d) other measures that, although respecting the provisions of this Agreement, affect adversely the ability of financial service suppliers of any other Member to operate, compete or enter the Member’s market;

provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the Member taking such action.

11. With respect to the non-discriminatory measures referred to in sub-paragraphs 10(a) and (b), a Member shall endeavour not to limit or restrict the present degree of market opportunities nor the benefits already enjoyed by financial service suppliers of all other Members as a class in the territory of the Member, provided that this commitment does not result in unfair discrimination against financial service suppliers of the Member applying such measures.
National Treatment

1. Under terms and conditions that accord national treatment, each Member shall grant to financial service suppliers of any other Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Member’s lender of last resort facilities.

2. When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member, or when the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Member shall ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member.

Definitions

For the purposes of this approach:

1. A non-resident supplier of financial services is a financial service supplier of a Member which supplies a financial service into the territory of another Member from an establishment located in the territory of another Member, regardless of whether such a financial service supplier has or has not a commercial presence in the territory of the Member in which the financial service is supplied.

2. "Commercial presence" means an enterprise within a Member’s territory for the supply of financial services and includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations.

3. A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Member but which is supplied in the territory of another Member.
10. Decision on Accession to the Agreement on Government Procurement

**DECISION ON ACCESSION TO IMPLEMENTATION OF ARTICLE XXIV:2 OF THE AGREEMENT ON GOVERNMENT PROCUREMENT**

1. Ministers *invite* the Committee on Government Procurement established under the Agreement on Government Procurement in Annex 4 of the WTO Agreement to clarify that:

   (i) a Member interested in accession according to paragraph 2 of Article XXIV:2 of the Agreement on Government Procurement would communicate its interest to the Director-General of the WTO, submitting relevant information, including an offer by way of a list of entities a coverage offer for incorporation in Appendix I having regard to the relevant provisions of the Agreement, in particular Article I and, where appropriate, Article V;

   (ii) the communication would be circulated to Parties to the Agreement;

   (iii) the Member interested in accession would hold consultations with the Parties on the terms for its accession to the Agreement;

   (iv) with a view to facilitating accession, the Committee would establish a working party if the Member in question, or any of the Parties to the Agreement, so requests. The working party should examine: (a) the coverage offer made by the applicant Member; and (b) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant Member and export opportunities for the Parties in the market of the applicant Member;

   (v) upon a decision by the Committee agreeing to the terms of accession including the list of entities coverage lists of the acceding Member, the acceding Member would deposit with the Director-General of the WTO an instrument of accession which states the terms so agreed. Until the The acceding Member's coverage lists in English, French and Spanish would be appended to the Agreement;

   (vi) prior to the date of entry into force of the Agreement Establishing the WTO, the instrument would be deposited with WTO Agreement, the above procedures would apply mutatis mutandis to contracting parties to the GATT 1947 interested in accession and the tasks assigned to the Director-General of the WTO would be carried out by the Director-General to the CONTRACTING PARTIES to the GATT. The text of the acceding Member's list of entities in English, French and Spanish would be annexed to the Agreement 1947.

2. It is noted that the Committee decisions are arrived at on the basis of consensus. It is also noted that the non-application clause of paragraph 11 of Article XXIV:14 is available to any Party.
NOTES TO THE RECTIFIED TEXT:

In line with the general practice, the title has been amended to make the subject of the Decision more explicit.

References to "lists of entities" have been substituted by references to "coverage offers" or "coverage lists", in order to take into account the fact that the Schedules of Parties to the new Procurement Agreement no longer consist simply of a list of entities, as under the old Agreement, but consist of five lists of entities and covered services together with general notes.

Subparagraph 1(f) has been incorporated in order to reflect the accession provisions of the Agreement on Government Procurement which allow for the possibility of accession to the new Agreement on Government Procurement prior to the entry into force of the WTO.
11. Decisions Relating to the Understanding on Rules and Procedures Governing the Settlement of Disputes

(a) Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes

DECISION ON THE APPLICATION AND REVIEW OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

The Ministers,

Agree Recognizing the Decision of the CONTRACTING PARTIES of 22 February 1994 that existing rules and procedures of the GATT 1947 in the field of dispute settlement shall remain in effect until the date of entry into force of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the Multilateral Trade Organization. It is further agreed that in respect of disputes Agreement Establishing the World Trade Organization;

Invite the relevant Councils and Committees to decide that they shall remain in operation for the purpose of dealing with any dispute for which the request for consultation was made before the that date;

Invite the Ministerial Conference to complete a full review of dispute settlement rules and procedures under the World Trade Organization within four years after the entry into force of the Agreement Establishing the World said Understanding, the relevant Councils or Committees shall remain in operation for the purpose of dealing with those disputes. Agree that a full review of dispute settlement rules and procedures under the Multilateral Trade Organization, as set out in the said Understanding, shall be completed within four years after its entry into force, and to take a decision shall be taken on the occasion of the its first meeting at Ministerial level after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures.

NOTE ON THE RECTIFIED TEXT:

The text is rectified on the assumption of Council approval of the Decision proposed in document C/W/783 of 4 February 1994 (see notes to following text). The text also reflects the need for each Council or Committee (such as the bodies established under the Tokyo Round Agreements and Arrangements) to decide that it shall remain in operation to service such disputes; and structures the review as one that the Ministerial Conference will undertake. While earlier drafts of the DSU may have provided for such a review, the present text does not, and so the reference to a review "set out in" the DSU is deleted.
(b) Decision on Improvements to the GATT Dispute Settlement Rules and Procedures

DECISION ON IMPROVEMENTS TO THE GATT DISPUTE SETTLEMENT RULES AND PROCEDURES

The Ministers,

Recalling the CONTRACTING PARTIES’ Decision of 12 April 1989;

Noting that the improvements to the GATT dispute settlement rules and procedures are being applied on a trial basis until the end of the Uruguay Round and that a decision on their adoption should be taken before the end of the Round;

Considering that the continuation of the improved rules and procedures is necessary for the effectiveness of the dispute settlement mechanism;

Decide,

To invite the CONTRACTING PARTIES to keep the above mentioned improvements in effect until the entry into force of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the Agreement Establishing the Multilateral Trade Organization.

NOTE ON THE RECTIFIED TEXT:

In document C/W/783 of 4 February 1994, it has been proposed that since the matters dealt with in this Decision concern essentially current dispute settlement procedures and their continued application, the decision should be submitted to the Council, acting on behalf of the CONTRACTING PARTIES, for action rather than to Ministers at Marrakesh. A draft of such a decision is annexed to C/W/783. This matter is on the agenda for consideration at the next regular Council meeting on 22 February. It is proposed that if the decision is adopted at that meeting, the text in the Final Act be deleted.