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PREFACE

The 1998 volume of the WTO Basic Instruments and Selected Documents (BISD) contains Protocols, Decisions and Reports adopted in 1998. Certain documents have been numbered or renumbered to simplify indexing. WTO panel and Appellate Body reports, as well as arbitration awards, can be found in the Dispute Settlement Reports (DSR) series co-published by the WTO and Cambridge University Press.
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OFFICERS OF THE MINISTERIAL CONFERENCE

Second Session
(Geneva, 18 and 20 May 1998)

Chairperson:
Mr. Pascal Couchepin
Minister for Economy of Switzerland

Vice-Chairpersons:
Mr. Juan M. Wurmser
Minister for Economy of Guatemala

Mr. Han Duck-soo
Minister of State for Trade of Korea

Mr. Nathan M. Shamuyarira
Minister for Industry and Commerce of Zimbabwe
OFFICERS OF OTHER WTO BODIES

(1998)

General Council
Mr. John Weekes (Canada)

Dispute Settlement Body
Mr. Kamel Morjane (Tunisia)

Trade Policy Review Body
Mr. Ali Said Mchumo (Tanzania)

Council for Trade in Goods
- Committee on Agriculture
  Mr. Ronald Saborio Soto (Costa Rica)
  Mr. Nestor Osorio Londoño (Colombia)
- Committee on Anti-Dumping Practices
  Mr. José Antonio S. Buencamino (Philippines)
- Committee on Customs Valuation
  Mr. Mohamed Bentaja (Morocco)
- Committee on Import Licensing
  Mrs. Marie Gosset (Côte d’Ivoire)
- Committee on Market Access
  Mr. Ole Lundby (Norway)
- Committee on Rules of Origin
  Mr. Ric Wells (Australia)
- Committee on Safeguards
  Mr. Shishir Priyadarshi (India)
- Committee on Sanitary and Phytosanitary Measures
  Mr. Alex Thiermann (United States)
  Mr. Carlos Antonio da Rocha (Paranhos, Brazil)
- Committee on Subsidies and Countervailing Measures
  Mr. Otto Th. Genee (Netherlands)
- Committee on Technical Barriers to Trade
  Mr. Dimitrij Grčar (Slovenia)
- Committee on Trade-Related Investment Measures
  Mr. Edward Brown (United Kingdom)
- Working Party on Preshipment Inspection
  Mr. Jacques Teyssier d’Orfeuil (France)
- Working Party on State Trading Enterprises
- Committee of Participants on the Expansion of Trade in Information Technology Products
  Mr. Martin Harvey (New Zealand)

Council for Trade in Services
- Committee on Specific Commitments
  Mr. Nobutoshi Akao (Japan)
  Mr. Juan A. Marchetti (Argentina)
- Committee on Trade in Financial Services
  Mr. Yoshio Okubo (Japan)
- Working Party on GATS Rules
  Mr. Harald Fries (Sweden)
- Working Party on Professional Services
  Mr. Michael Stone (Hong Kong, China)

Council for Trade-Related Aspects of Intellectual Property Rights
Mr. István Major (Hungary)

Committee on Balance-of-Payments Restrictions
Mr. Peter R. Jenkins (United Kingdom)

Committee on Budget, Finance and Administration
Mr. Wilhelm Meier (Switzerland)

Committee on Regional Trade Agreements
Mr. Jean-Marie Noirfalisse (Belgium)

Committee on Trade and Development
Mr. Iftekhar Ahmed Chowdhury (Bangladesh)

- Sub-Committee on Least-Developed Countries
  Mr. Hans Henrik Bruun (Denmark)

Committee on Trade and Environment
Mr. Chak Mun See (Singapore)

Working Group on the Relationship between Trade and Investment
Mr. Krirk-Krai Jirapaet (Thailand)

Working Group on the Interaction between Trade and Competition Policy
Mr. Frédéric Jenny (France)

Working Group on Transparency in Government Procurement
Mr. Werner Corrales Leal (Venezuela)

Plurilateral Trade Agreements:
Committee on Government Procurement
Mrs. Helle Klem (Norway)
followed by
Mr. Dick Mak (Hong Kong, China)

Committee on Trade in Civil Aircraft
Mr. Didier Chambovey (Switzerland)
LEGAL INSTRUMENTS

PROTOCOL OF ACCESSION OF THE KYRGYZ REPUBLIC TO THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION
(WT/ACC/KGZ/29)

The World Trade Organization (hereinafter referred to as the “WTO”), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as “WTO Agreement”), and the Kyrgyz Republic,


Having regard to the results of the negotiations on the accession of the Kyrgyz Republic to the WTO,

Agree as follows:

Part I - General

1. Upon entry into force of this Protocol, the Kyrgyz Republic accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

2. The WTO Agreement to which the Kyrgyz Republic accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall comprise the commitments referred to in paragraph 173 of the Working Party Report, shall be an integral part of the WTO Agreement.

3. Except as otherwise provided for in the paragraphs referred to in paragraph 173 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by the Kyrgyz Republic as if it had accepted that Agreement on the date of its entry into force.

4. The Kyrgyz Republic may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure is recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.
Part II - Schedules

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

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

Part III - Final Provisions

7. This Protocol shall be open for acceptance, by signature or otherwise, by the Kyrgyz Republic until 1 December 1998.

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

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

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

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

1 Not reproduced.
PROTOCOL OF ACCESSION OF LATVIA TO THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION
(WT/ACC/LVA/35)

The World Trade Organization (hereinafter referred to as the “WTO”), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as “WTO Agreement”), and the Republic of Latvia (hereinafter referred to as “Latvia”),

Taking note of the report of the Working Party on the accession of Latvia to the WTO in document WT/ACC/LVA/32 (hereinafter referred to as the “Working Party report”),

Having regard to the results of the negotiations on the accession of Latvia to the WTO,

Agree as follows:

Part I - General

1. Upon entry into force of this Protocol, Latvia accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

2. The WTO Agreement to which Latvia accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph 131 of the Working Party report, shall be an integral part of the WTO Agreement.

3. Except as otherwise provided for in the paragraphs referred to in paragraph 131 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Latvia as if it had accepted that Agreement on the date of its entry into force.

4. Latvia may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure is recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.
Part II - Schedules

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

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

Part III - Final Provisions

7. This Protocol shall be open for acceptance, by signature or otherwise, by Latvia until 1 May 1999.

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

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

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

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

1 Not reproduced.
GENERAL AGREEMENT ON TRADE IN SERVICES

FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES

(S/L/45)

Members of the World Trade Organization (hereinafter referred to as the “WTO") whose Schedules of Specific Commitments and Lists of Exemptions from Article II of the General Agreement on Trade in Services concerning financial services are annexed to this Protocol (hereinafter referred to as “Members concerned")

Having carried out negotiations under the terms of the Second Decision on Financial Services adopted by the Council for Trade in Services on 21 July 1995 (S/L/9),

Agree as follows:

1. A Schedule of Specific Commitments and a List of Exemptions from Article II concerning financial services annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace the financial services sections of the Schedule of Specific Commitments and the List of Article II Exemptions of that Member.

2. This Protocol shall be open for acceptance, by signature or otherwise, by the Members concerned until 29 January 1999.

3. This Protocol shall enter into force on the 30th day following the date of its acceptance by all Members concerned. If by 30 January 1999 it has not been accepted by all Members concerned, those Members which have accepted it before that date may, within a period of 30 days thereafter, decide on its entry into force.

4. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish to each Member of the WTO a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.

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

Done at Geneva this --- day of [month] one thousand nine hundred and ninety-[---], in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.
FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES DONE AT GENEVA ON 27 FEBRUARY 1998

PROCES-VERBAL OF RECTIFICATION
(WT/Let/221)

I, the undersigned, Renato Ruggiero, Director-General of the World Trade Organization, having examined the authentic text of the Fifth Protocol to the General Agreement on Trade in Services, have found typographical errors which should be rectified.

The errors which require rectification are the following:
Page 3 (Spanish version): paragraphs 6, 7, 8, 9 and 10 should be renumbered as paragraphs 1, 2, 3, 4 and 5.

Acting as depositary of the Fifth Protocol to the General Agreement on Trade in Services, having notified the Members of my intention and having received no objection thereto, I have caused the corrections to be made and have initialled these corrections in the margin of the authentic text of the Protocol.

In WITNESS WHEREOF I have signed the present Procès-Verbal of Rectification, drawn up in the English, French and Spanish languages, on 21 May 1998.

Renato Ruggiero
Director-General
CERTIFICATIONS OF MODIFICATIONS AND RECTIFICATIONS OF SCHEDULES OF CONCESSIONS GATT 1994

The following table lists all the modifications and rectifications to Schedules of Concessions to GATT 1994 certified in 1998. Modifications resulting from the introduction of the Harmonized System, and from commitments undertaken in the context of the Ministerial Declaration on Trade in Information Technology Products have been indicated in brackets after the date of certification.

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<th>Date of certification</th>
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1. This Second Session of the Ministerial Conference of the WTO is taking place at a particularly significant time for the multilateral trading system, when the fiftieth anniversary of its establishment is being commemorated. On this occasion we pay tribute to the system’s important contribution over the past half-century to growth, employment and stability by promoting the liberalization and expansion of trade and providing a framework for the conduct of international trade relations, in accordance with the objectives embodied in the Preambles to the General Agreement on Tariffs and Trade and the World Trade Organization Agreement. We agree, however, that more remains to be done to enable all the world’s peoples to share fully and equitably in these achievements.

2. We underline the crucial importance of the multilateral rule-based trading system. We reaffirm the commitments and assessments we made at Singapore, and we note that the work under existing agreements and decisions has resulted in significant new steps forward since we last met. In particular, we welcome the successful conclusion of the negotiations on basic telecommunications and financial services and we take note of the implementation of the Information Technology Agreement. We renew our commitment to achieve progressive liberalization of trade in goods and services.

3. The fiftieth anniversary comes at a time when the economies of a number of WTO Members are experiencing difficulties as a result of disturbances in financial markets. We take this opportunity to underline that keeping all markets open must be a key element in a durable solution to these difficulties. With this in mind, we reject the use of any protectionist measures and agree to work together in the WTO as in the IMF and the World Bank to improve the coherence of international economic policy-making with a view to maximizing the contribution that an open, rule-based trading system can make to fostering stable growth for economies at all levels of development.

4. We recognize the importance of enhancing public understanding of the benefits of the multilateral trading system in order to build support for it and agree to work towards this end. In this context we will consider how to improve the transparency of WTO operations. We shall also continue to improve our
efforts towards the objectives of sustained economic growth and sustainable development.

5. We renew our commitment to ensuring that the benefits of the multilateral trading system are extended as widely as possible. We recognize the need for the system to make its own contribution in response to the particular trade interests and development needs of developing-country Members. We welcome the work already underway in the Committee on Trade and Development for reviewing the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular the least-developed among them. We agree on the need for effective implementation of these special provisions.

6. We remain deeply concerned over the marginalization of least-developed countries and certain small economies, and recognize the urgent need to address this issue which has been compounded by the chronic foreign debt problem facing many of them. In this context we welcome the initiatives taken by the WTO in cooperation with other agencies to implement in an integrated manner the Plan of Action for the least-developed countries which we agreed at Singapore, especially through the High-Level Meeting on Least-Developed Countries held in Geneva in October 1997. We also welcome the report of the Director-General on the follow-up of this initiative, to which we attach great importance. We commit ourselves to continue to improve market access conditions for products exported by the least-developed countries on as broad and liberal a basis as possible. We urge Members to implement the market-access commitments that they have undertaken at the High-Level Meeting.

7. We welcome the WTO Members who have joined since we met in Singapore: Congo, Democratic Republic of Congo, Mongolia, Niger and Panama. We welcome the progress made with 31 applicants currently negotiating their accession and renew our resolution to ensure that the accession processes proceed as rapidly as possible. We recall that accession to the WTO requires full respect of WTO rules and disciplines as well as meaningful market access commitments on the part of acceding candidates.

8. Full and faithful implementation of the WTO Agreement and Ministerial Decisions is imperative for the credibility of the multilateral trading system and indispensable for maintaining the momentum for expanding global trade, fostering job creation and raising standards of living in all parts of the world. When we meet at the Third Session we shall further pursue our evaluation of the implementation of individual agreements and the realization of their objectives. Such evaluation would cover, inter alia, the problems encountered in implementation and the consequent impact on the trade and development prospects of Members. We reaffirm our commitment to respect the existing schedules for reviews, negotiations and other work to which we have already agreed.
9. We recall that the Marrakesh Agreement Establishing the World Trade Organization states that the WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to the Agreement, and that it may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference. In the light of paragraphs 1-8 above, we decide that a process will be established under the direction of the General Council to ensure full and faithful implementation of existing agreements, and to prepare for the Third Session of the Ministerial Conference. This process shall enable the General Council to submit recommendations regarding the WTO’s work programme, including further liberalization sufficiently broad-based to respond to the range of interests and concerns of all Members, within the WTO framework, that will enable us to take decisions at the Third Session of the Ministerial Conference. In this regard, the General Council will meet in special session in September 1998 and periodically thereafter to ensure full and timely completion of its work, fully respecting the principle of decision-making by consensus. The General Council’s work programme shall encompass the following:

(a) recommendations concerning:
   (i) the issues, including those brought forward by Members, relating to implementation of existing agreements and decisions;
   (ii) the negotiations already mandated at Marrakesh, to ensure that such negotiations begin on schedule;
   (iii) future work already provided for under other existing agreements and decisions taken at Marrakesh;
(b) recommendations concerning other possible future work on the basis of the work programme initiated at Singapore;
(c) recommendations on the follow-up to the High-Level Meeting on Least-Developed Countries;
(d) recommendations arising from consideration of other matters proposed and agreed to by Members concerning their multilateral trade relations.

10. The General Council will also submit to the Third Session of the Ministerial Conference, on the basis of consensus, recommendations for decision concerning the further organization and management of the work programme arising from the above, including the scope, structure and time-frames, that will ensure that the work programme is begun and concluded expeditiously.

11. The above work programme shall be aimed at achieving overall balance of interests of all Members.
DECLARATION ON GLOBAL ELECTRONIC COMMERCE

Adopted by the Ministerial Conference on 20 May 1998
WT/MIN(98)/DEC/2

Ministers,

Recognizing that global electronic commerce is growing and creating new opportunities for trade,

Declare that:

The General Council shall, by its next meeting in special session, establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce, including those issues identified by Members. The work programme will involve the relevant World Trade Organization ("WTO") bodies, take into account the economic, financial, and development needs of developing countries, and recognize that work is also being undertaken in other international fora. The General Council should produce a report on the progress of the work programme and any recommendations for action to be submitted at our third session. Without prejudice to the outcome of the work programme or the rights and obligations of Members under the WTO Agreements, we also declare that Members will continue their current practice of not imposing customs duties on electronic transmissions. When reporting to our third session, the General Council will review this declaration, the extension of which will be decided by consensus, taking into account the progress of the work programme.
ACCESSIONS

ACCESSION OF THE KYRGYZ REPUBLIC

Report of the Working Party
Adopted by the General Council on 14 October 1998
(WT/ACC/KGZ/26 and Corr.1)

I. INTRODUCTION

1. On 13 February 1996, the Government of the Kyrgyz Republic requested accession to the World Trade Organization (WTO). At its meeting on 16 April 1996 the General Council established a Working Party to examine the application of the Government of the Kyrgyz Republic to accede to the WTO Agreement under Article XII, and to submit to the General Council recommendations which could include a draft Protocol of Accession. Membership of the Working Party was open to all WTO Members. The terms of reference and the membership of the Working Party were reproduced in document WT/ACC/KGZ/2/Rev.2.


II. DOCUMENTATION

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade regime of the Kyrgyz Republic (WT/ACC/KGZ/3) and the questions submitted by Members of the Working Party on the foreign trade regime of the Kyrgyz Republic, together with the replies thereto (WT/ACC/KGZ/5 and Addendum 2, WT/ACC/KGZ/7, WT/ACC/KGZ/9, WT/ACC/KGZ/10 and Addendum 1, WT/ACC/KGZ/13, WT/ACC/KGZ/15 and WT/ACC/KGZ/16) and other information provided by the Kyrgyz Republic authorities.

The Government of the Kyrgyz Republic made available to the Working Party the following documentation:

- The Constitution of the Kyrgyz Republic

Laws and Resolutions:

- The Civil Code of the Kyrgyz Republic,
- Bankruptcy Law in force since 19 April 1994 Law on Bankruptcy of 15 October 1997
- Law No. 1057-XII of 12 December 1992 On Banks and Banking
Decisions and Reports

(with amendments No. 1394-XII of 12 January 1994)

- Law No. 1357-XII of 10 January 1994 On the Principles of the Budget
- Law No. 6 of 2 April 1996 On Certification of Goods and Services
- Resolution of the Government of the Kyrgyz Republic No. 520 of 2 December 1995 On Adoption of the Regulation on the Procedure of Control of the Goods Imported to the Kyrgyz Republic
- Resolution of the Government No. 260 of 28 April 1994 On Adoption of the List of Goods (Works and Services), Produced On the Territory of the Kyrgyz Republic and Imported to its Territory, Which are Subject to Certification On the Indicators of Safety
- Law No. 915-XII of 29 June 1992 On Commodity Exchange and Exchange Trade in the Kyrgyz Republic
- Law On Pledge of 6 March 1992
- Law of 6 March 1992 On Concessions and Foreign Concession Enterprises
- Law On implementation of the Custom Code
- Resolution of the Supreme Soviet of the Kyrgyz Republic No 769-XII of 28 February 1992 - On Implementing the Law On Consumers Rights Protection
- Law No. 6-1 of 5 July 1995 On Operations in Foreign Currency
- Resolution of the Supreme Soviet of the Kyrgyz Republic No. 1077-XII of 16 December 1992 On implementation of the Law of the Kyrgyz Republic On FEZ in the Kyrgyz Republic
- Law No. 536-XII of 28 June 1991 On Foreign Investments in the Kyrgyz Republic (as amended by the Law of the Kyrgyz Republic No. 1221-XII of 7 May 1993 and No. 20-1 of 26 September 1995)
- Resolution of the Supreme Soviet of the Kyrgyz Republic No. 537-XII of 28 June 1991 On Order of Implementing the Law of the Kyrgyz Republic On Foreign Investments in the Kyrgyz Republic
- Law No. 943-XII of 2 July 1992 On People’s Health Protection (as amended by Law of the Kyrgyz Republic No. 1091-XII of 18 December 1992)
- Resolution Of the Supreme Soviet of the Kyrgyz Republic No 944-XII Regulations for Enforcement of the Law of the Kyrgyz Republic On People’s Health Protection in the Kyrgyz Republic
- Law No. 670-XII of 18 December 1991 On Insurance
- Law No. 1548-XII of 27 May 1994 On Making, Ratifying, Implementing and Denouncing International Agreements of the Kyrgyz Republic
- Resolution No. 1549-XII of 27 May 1994 On bringing into force the Law of the Kyrgyz Republic On making, ratifying, implementing and denouncing the International Agreements of the
Kyrgyz Republic
- Law No. 1478-XII of 14 April 1994 On the Local Taxes and Fees
- Resolution of the Parliament of the Kyrgyz Republic of the 14 April 1994 On the implementation procedure of the Law of the Kyrgyz Republic On local taxes and fees (No. 1479-XII)
- Law No. 7 of 2 April 1996 On Providing Unity of Measurements
- Law On the National Bank
- Law No. 1481-XII of 14 April 1994 On Non-Tax Payments
- Law No. 34 of 1 July 1996 On Normative Legal Acts of the Kyrgyz Republic
- Law of the Kyrgyz Republic of 2 April 1996 On Standardization
- Law No. 874-XII of 6 March 1992 On the State Tax Service
- Law No. 1553-XII of 28 May 1994 On the Basic Principles of the Treasury of the Kyrgyz Republic
- Law No. 1472-XII of 14 April 1994 On Principles of Taxation System in the Kyrgyz Republic
- Law on Subsurface Resources of 2 July 1997
- Law on State Regulations of Foreign Economic Activities of 2 July 1997
- Law on Banks and Banking Activities of 29 July 1997
- Law on National Bank of 29 July 1997
- Amendments to the Customs Tariff Law of 30 July 1997
- Law on Foreign Investment of 24 September 1997
- Civil Code Part II (section on intellectual property) of 5 January 1998
- Criminal Code (section on intellectual property) of 1 January 1998
- Law on Copyrights and Neighbouring Rights of 14 January 1998
- Amendments to Part I of the Civil Code of 15 October 1997
- Law on Integrated Circuits Topology of 30 March 1998
- Law on Commercial Secrets of 30 March 1998
- Law on Legal Protection of Software for Computers and Databases of 31 March 1998

Presidential Decrees:
- Presidential Decree No. 134 of 5 May 1993 On Regulating Currency Transactions
- Presidential Decree of 9 June 6 September 1994 On Additional Guarantees for Foreign Investors in the Kyrgyz Republic
- Presidential Decree No. 246 of 27 July 1992 On the State Commission of the Kyrgyz Republic for Foreign Investments and Economic Assistance
- Presidential Decree No. 270 of 9 September 1992 On Measures for Organization of Expert Examinations of Foreign Investments
- Presidential Decree No. 121 of 2 April 1992 On Regulation of Foreign Economic Activity in the Kyrgyz Republic
- Presidential Decree No. 140 of 11 April 1996 On Measures to Improve Coordination of Privatization with Attraction of Foreign Investment to the Kyrgyz Republic
- Presidential Decree No. VII-165 of 13 May 1996 On Additional Measures on Introduction of State Monopoly to the Production, Storage, Sale of Alcohol and Alcoholic Products
- Presidential Decree No. 234 of 9 June 1994 On Additional Guarantees for Foreign Investors in the Kyrgyz Republic
- Presidential Decree No. VII-301 of 12 November 1994 On the Arrangements for Increasing Control Over the Market of Securities of the Kyrgyz Republic
- Presidential Decree No. 319 of 9 December 1994 On the Bishkek Foreign Investments Attraction Zone
- Presidential Decree No. 34 On Some Measures for Protection and Development of Private Entrepreneurship of 25 March 1994
- Presidential Decree No. 42 of 27 February 1995 On Improving Taxation in Agriculture
- Presidential Decree No. 45 of 4 March 1996 On the Structure and Composition of the Cabinet of Ministers of the Republic
Resolutions:

- Resolution of the Cabinet of Ministers No. 373 of 25 August 1995 On Strengthening Responsibility for Unauthorized Purchase, Sale of Scrap and Fragments of Non-Ferrous and Ferrous Metals and Their Industrial Scrap (as amended by Resolution of the Cabinet of Ministers No. 268 of 17 June 1996)


- Resolution of the Cabinet of Ministers No. 440 of 23 October 1995 On Approving the Regulations on the Procedure for Delivery of Goods and Rendering Services within the Framework of Productional Cooperation of Enterprises and Branches of the Kyrgyz Republic and Other States - the CIS Participants


- Resolution of the Cabinet of Ministers No. 49 of 1 February 1996 On the Draft Law of the Kyrgyz Republic On the Customs Tariff of the Kyrgyz Republic

- Resolution of the Cabinet of Ministers No. 52 of 2 February 1996 On Measures of Extraordinary Financial Support of Agriculture

- Resolution of the Government No. 520 of 2 December 1996 On Adoption of the Regulation on the Procedure of Control of the Goods Imported to the Kyrgyz Republic

- Resolution of the Government No. 523 of 18 July 1994 On the Rates of the Author’s Award for Public Performance and Other Kinds of Usage the Productions of Literature and Arts

- Resolution of the Government No. 56 of 6 February 1996 On the Procedure for the Export and Import of Commodities (Goods and Services) in the Kyrgyz Republic

- Resolution of the Government No. 57 of 5 February 1993 On Procedures of Transfer of Articles, Property, Currency, Auto-motor Vehicles and Other Valuables Through the Customs Border of the Kyrgyz Republic
Decisions and Reports

- Resolution of the Cabinet of Ministers No. 571 of 27 December 1995 On Introduction of Applying Excise Marks on Production, Importation and Sale of Tobacco Products and Alcoholic Beverages in the Kyrgyz Republic
- Resolution of the Government No. 622 of 18 August 1992 On Customs Regime of Processing of Tolling Raw Materials and Goods Within the Customs Territory of the Kyrgyz Republic
- Resolution of the Government No. 119 of 20 March 1996 On Adoption of Regulations on Equipping Transport Vehicles (Containers) for Carriage of Goods with Customs Stamps and Seals
- Resolution of the Government No. 725 of 23 September 1994 On Regulations on the State Inspection for Standardization and Metrology at the Government of the Kyrgyz Republic
- Resolution of the Government No. 901 of 30 December 1994 On Regulating the Import of Goods, Things and Other Objects by Physical Persons in the Kyrgyz Republic
- Resolution of the Government No. 97 of 22 March 1995 On Main Directions of Foreign Economic Activity of the Kyrgyz Republic
- Resolution of the Government No. 10 of 9 January 1996 On Temporary Regulation On Applying Excise Seals On Oil Products Imported to the Kyrgyz Republic
Implementation of Professional Stock Market Activities and for Collecting Other Fees, on Procedures for Maintaining the General State Registry of Joint Stock Companies, Recording and Accountability in Joint Stock Companies

- Resolution of the Supreme Soviet of the Kyrgyz Republic No. 1126-XII of 18 December 1992 On Introduction of State Licensing in Construction Activity in the Kyrgyz Republic

- Resolution of the Government No. 29 of 24 January 1994 On Creation of the State Regulation of Production, Storage and Distribution of Ethyl Spiritus and Establishing Control over Production and Sale of Strong Drinks in the Kyrgyz Republic


- Presidential Decree No. 121 of 2 April 1992 On Regulation of Foreign Economic Activity in the Kyrgyz Republic

- Resolution of the Supreme Soviet No. 1220-XII of 7 May 1993 On Karakol, Alai, Chon-Alai and Kara-Kuldji Free Economic Zones


- Resolution of the Government No. 146 of 5 April 1996 On Supplement of the List of the Productions (Works, Services) Produced in the Kyrgyz Republic and Imported to its Territory Be Subject to Obligatory Certification of the Index Safety, Stipulated to Introduce on the III Stage, Approved by the Resolution of the Government of the Kyrgyz Republic No. 260 of 28 April 1994

- Resolution of the Legislative Assembly of Jogorku Kenesh of the Kyrgyz Republic No. 151-1 of 23 June 1995 On Creation of Free Economic Zones of Bishkek City

- Resolution of the Cabinet of Ministers No. 559 of 21 December 1995 On the Development Programme for Export of the Kyrgyz Republic for 1996 and Middle-Term Prospects

- Resolution of the Cabinet of Ministers No. 167 of 16 May 1995 On the Work of the Ministry of Communication on Carrying Out First Project of Telecommunication in the Republic Financed by the World Bank/MAR and European Bank of Reconstruction and Development

- Resolution of the Government No. 209 of 10 May 1996 On the
Concept of Development of Free and Private Market for Grain in the Kyrgyz Republic

- Resolution of the Cabinet of Ministers No. 242 of 2 June 1993 On Approving the Regulation on the Procedure of Licensing Attraction (Hiring) of Manpower from Abroad

- Resolution of the Government No. 260 of 28 April 1994 On Approval of the Products’ List (Works, Services) Produced in the Territory of the Kyrgyz Republic and Imported to its Territory, Being Subject for Compulsory Certification on Safety Indications

- Resolution of the Cabinet of Ministers No. 270 of 7 July 1995 On Approving the Procedure for Calculation and Collection of Excise Tax on Produced and Imported Alcohol and Liquor-Vodka Products

- Resolution of the Cabinet of Ministers No. 290 of 7 May 1993 On Creation of Customs-Tariff Council Under the Cabinet of Ministers

- Resolution of the Government No. 298 of 21 July 1995 On Implementation of the State Regulation of Production, Storage and Distribution of Ethyl Spiritus and Strong Drinks


- Resolution of the Cabinet of Ministers No. 300 of 1 July 1996 On State Customs Inspectorate Under the Cabinet of Ministers

- Resolution of the Cabinet of Ministers No. 327 of 17 July 1996 On the Course of Implementing Regulations of the Parliament and the Cabinet of Ministers On Issues of Introduction of State Monopoly in the Sphere of Production, Storage and Sale of Alcohol and Alcoholic Products

Instructions and Regulations:

- Instruction On Customs Procedures for Transit Cargo (approved by Order No. 145 of the State Customs Inspection on 23 August 1993)

- Instruction of the Order to Fill the Cargo Customs Declaration (approved by Decree No. 05-06/13 of the State Customs Inspection on 24 January 1996)

- Instruction On Application of Personal Examination (approved by Order No. 176-1 of the State Customs Inspection on 17 September 1993)
- Order No. 45 of 14 February 1994 On the Procedure for Licensing Entrepreneurship Activity of Paid (i.e. for pay) Medical, Pharmaceutical and Educational Institutions and Persons Engaged in Private Medical, Pharmaceutical Practice and Paid Training

- Instruction No. 99-p of 19 March 1993 to approve “Statute on the Order of Design, Expert Examination and Adoption of Investment Projects for the Construction Sector in the Territory of the Kyrgyz Republic”

- Regulations for Opening Commercial Banks in the Kyrgyz Republic (approved by the Board of the National Bank of the Kyrgyz Republic No. 1/8 of 23 July 1994 with amendments and additions No. 16/4 of 30 June 1995

- Order No. 05-06/12 of 24 January 1996 On Approval of the Regulation on Procedure of Control Over the Goods Exported from the Territory of the Customs Union (State Customs Inspectorate Under the Government of the Kyrgyz Republic)


- Document Regulations On Activities of the Branches Representative Offices of Foreign Banks in the Kyrgyz Republic of 30 June 1994

- Regulation On State Licensing of Construction Activities in the Kyrgyz Republic (with amendments by Decree of the Gosstroii of the Kyrgyz Republic No. 16 of 30 March 1994 and No. 30 of 28 September 1995)

- Temporary Provisions on Industrial Property of the Kyrgyz Republic (adopted by Decree of the State Committee on Science and New Technologies No. 3 of 2 August 1993)

- Temporary Provisions On Work Inventions, Utility Models and Industrial Designs

- Order of Receiving Payments for Licence Extradition


- Regulations on the State Inspection for Standardization and Metrology At the Government of the Kyrgyz Republic (passed by Resolution of the Government No. 725 of 23 September 1994)
Decisions and Reports

- Temporary Regulations On the State Fund of Industrial Property (approved by the Ministry of Education and Science on 24 July 1995)
- Regulation On Department of Patent Agency for Trademark and Industrial Model Examination
- Regulation on Equipping Transport Vehicles (Containers) for Carriage of Goods With Customs Stamps and Seals (approved by the Resolution of the Government of the Kyrgyz Republic No. 119 of 20 March 1996)

Draft Laws and Regulations:
- Draft Law on Anti-Dumping
- Draft Law on Subsidies and Countervailing Measures
- Draft Law on Safeguards
- Draft Law On Selection Achievements
- Draft Amendments to the Law On Certification
- Draft Amendments to the Law On Standardization
- Draft Amendments to the Law On Plant Quarantine
- Draft Amendments to the Law On Veterinary
- Draft Amendments to the Customs Code
- Draft Amendments to the Tax Code
- Draft Regulations On Import/Export Licensing
- Draft Regulations on Amendments to Certain Decisions of the Government
- Draft Amendments on Introducing Changes and Amendments to some Legislative Acts of the Kyrgyz Republic (amendments to the Law on Normative Acts and the Law on Publication of Laws)

III. ECONOMIC POLICIES

Foreign exchange and payments system

4. In response to requests for information, the representative of the Kyrgyz Republic informed members of the Working Party that a highly pro-active monetary policy was being pursued by the National Bank of the Kyrgyz Republic (NBKR) to stabilize the foreign exchange value of the Som. The Kyrgyz Republic did not maintain any exchange restrictions on current account or capital transactions. Individuals and legal entities could import and export foreign currency without
The representative of the Kyrgyz Republic added that the Kyrgyz Republic had joined the IMF on 8 May 1992. The Kyrgyz Republic accepted the obligations of Article VIII of the IMF Articles of Agreement in March 1995 and maintained a fully convertible currency. The Kyrgyz Republic’s quota was Special Drawing Rights (SDR) 64.5 million (about US$96 million) and its outstanding use of IMF credit currently totalled SDR 83.6 million (about US$120 million). He further noted that on 11 December 1995, the International Monetary Fund (IMF) had approved a first Enhanced Structural Adjustment Facility (ESAF) loan in the amount of SDR 88.15 million.

### Investment regime

Some members of the Working Party enquired whether there were any restrictions to the national treatment principle in relation to investments by foreign persons in the Kyrgyz Republic. The representative of the Kyrgyz Republic stated that the new Law on Foreign Investment of 16 September 1997 provided guarantees of national treatment, equitable and fair treatment, and full and constant protection for foreign investors. Exceptions from national treatment, according to the same law, were restrictions connected with defence and the protection of national security, the health of the population, and public moral. At this point, no such restrictions had been introduced. The Law on Denationalization and Privatization of State Property of 12 January 1994 provided the Cabinet of Ministers with the authority to restrict or otherwise limit foreign investors from participating in the privatization of certain industries; the Cabinet of Ministers had not yet exercised this authority, although foreign investors could purchase residential real property only with the permission of the Cabinet of Ministers. Foreign citizens and legal persons could rent immovable property on the same basis as Kyrgyz citizens and legal persons. The Kyrgyz Republic would not use such authority in a manner that was inconsistent with its obligations as a future member of the WTO. Foreign investors could freely repatriate investments made or profits earned in the Kyrgyz Republic in a freely convertible currency.

Some members of the Working Party asked whether foreign investors were protected against expropriation or nationalisation of their assets. In response, the representative of the Kyrgyz Republic stated that Article 5 of the new Law on Foreign Investment of September 1997 guaranteed foreign investments from expropriation (nationalization, requisition or any other equivalent measure), except in cases when such expropriation is carried out for an overriding public purpose, on a non-discriminatory basis. In the event of expropriation of a foreign investment, the Law on Foreign Investment requires that a foreign investor be paid prompt, adequate and effective compensation. Such compensation is freely transferable and payable in a freely useable currency. Rights established under the Law on
Foreign Investment are enforceable against the governmental bodies with any applicable procedure agreed upon between the foreign investor and the authorized governmental bodies of the Kyrgyz Republic. When such agreement is absent an investment dispute between the authorized governmental bodies of the Kyrgyz Republic and a foreign investor shall be settled through arbitration in accordance with one of the following procedures:

- Regulations of the Arbitration Court under the Chamber of Industry and Commerce of the Kyrgyz Republic;
- Convention for the Settlement of Investment Disputes between States and Citizens of any other States, ("Convention ICSID" signed in Washington DC on 19 March 1965) if applicable;
- Arbitration (Auxiliary) Regulations of the International Centre for the Settlement of the Investment Disputes (ICSID), if applicable; and
- Arbitration Regulations of the United Nations Commission on International Trade Law (UNCITRAL Regulations); in this case the appointing body shall be the General Secretary of the ICSID.

8. In response to questions concerning the ownership of land by foreign investors, the representative of the Kyrgyz Republic noted that the Constitution of the Kyrgyz Republic prohibited the private ownership of land by private persons or legal entities, either foreign or local. There were no plans to eliminate that restriction. Foreign citizens and legal entities could purchase residential immovable property attached to land - such as apartments and houses - only with the specific permission of the Cabinet of Ministers. Foreign citizens and legal entities could rent immovable property on the same basis as Kyrgyz citizens and legal entities.

State Ownership and Privatization

9. The representative of the Kyrgyz Republic stated that the Government’s privatization plans were organized according to industrial and sectoral priorities. In the electric energy sector, the plan was to attract foreign investment for the development of hydroelectric power engineering, to privatize sectoral enterprises and to modernize and reconstruct electric grid networks. In the coal industry, the plan was to restructure the sector and sector enterprises by reorganizing and, where necessary, liquidating sector enterprises, to develop coal open-pit mining with the aim of decreasing production costs and to promote energy saving technologies. In the oil and gas sector, the plan was to construct and bring into operation two small oil refineries in the next two years and to develop a package of documents for conducting an international tender intended for the purpose of attracting foreign investment into the exploration and exploitation of oil and gas deposits, to conduct the tender. In the gold extracting industry, the plan was to attract foreign investment
into the exploration and exploitation of gold deposits. Non-ferrous metallurgy (mercury, antimony, tin, tungsten) would be reformed to attract foreign investment into the development of the antimony and mercury metallurgy industry.

10. The representative of the Kyrgyz Republic further added that in the machine building and metal processing sector, the Government planned to reorganize the production of machines, equipment (and the parts thereof) for (i) processing agricultural products, (ii) mechanizing small peasant and family farms and (iii) use in the coal mining industry. The Government also planned to reform the electrotechnical sector to orient enterprises toward the production of complex electrical appliances and equipment for the electric energy industry. Light industry would be reformed to speed up the structural transformation of the sector and to find new markets both within and outside the CIS. More modern equipment would be purchased with the aid of German and Japanese loans. Food production and processing industries would be reformed to establish small and medium-sized on-site production/processing facilities for milk, meat, fruit and vegetable production and processing. The pharmaceuticals sector would be reformed to attract foreign investment into the domestic pharmaceutical industry generally and to complete the construction of “bishkekbiofarm”, a chemical pharmaceutical plant. The agriculture sector would be reformed to attract foreign investment for the purpose of developing export-oriented agricultural enterprises; and to create joint ventures with foreign investors for the production of agricultural products. The construction sector would be reformed to attract foreign investment into the housing construction industry and to encourage the manufacturing of energy-saving construction materials.

11. In response to requests for information concerning restrictions on foreign investors participation in privatization, the representative of the Kyrgyz Republic stated that Article 8 of the Law on Denationalization of State Property of 12 January 1994, provided that during the privatization of State owned assets, the Cabinet of Ministers could “reduce the number of purchasers to guarantee the priority rights of citizens and legal entities of the Kyrgyz Republic.” He noted, however, that this power had not yet been exercised.

12. The representative of the Kyrgyz Republic stated that the status of privatization in the Kyrgyz Republic was provided in Tables 1 and 2 below. As of 1 January 1998, approximately 64 per cent of State-owned objects (base is 1 January 1991) had been privatized. The total value of privatized State objects since 1991 was som 13,418,900 million. The value of remaining State assets was 10.872 billion som. The mass privatization program was completed on 30 June 1997. The shares of 1,056 Joint-Stock Companies were sold using coupon auctions. According to Article 4 of the Kyrgyz Republic Constitution of 5 May 1993, land, minerals, water, air space, forests, plant and animal life and all other natural resources were the exclusive property of the State. According to Article 3 of the Law on Privatization and Denationalization of 12 January 1994,
objects in exclusive ownership of the Kyrgyz Republic could not be subject to privatization. The lease of such property was, however, possible. The Law on Privatization and Denationalization also authorized the Cabinet of Ministers to specify additional objects not subject to denationalization and privatization, even though their privatization and denationalization might not be specifically prohibited in the Kyrgyz Republic Constitution and the Kyrgyz Republic Law On Privatization and Denationalization. The current list of objects not subject to privatization is the following:

- mineral resources, forest fund, water resources, air space;
- protected or used in a special manner natural territories;
- objects of historical and cultural heritage of the people of Kyrgyzstan (unique cultural and natural monuments, objects of nature, history, culture, science and technology, as well as rarities kept in state museums, libraries and their subsidiaries, the association of folk art production “Kyial”);
- property compounds of state power and management bodies;
- funds of the republican budget and foreign currency reserve of the Kyrgyz Republic, Social Fund under the Kyrgyz Republic Government, other State out-of-the-budget funds, as well as the gold reserve;
- National Bank of the Kyrgyz Republic, Treasury, Monetary chamber;
- arms, military equipment and other property of military use, budget-financed entities and organizations (including arsenals), as well as vehicle columns of military type under the operative management of the Ministry of Defense of the Kyrgyz Republic, Ministry of National Security of the Kyrgyz Republic; Ministry on emergencies and civil defense of the Kyrgyz Republic, Ministry of interior of the Kyrgyz Republic, other ministries and agencies that have military units;
- military objects of CIS countries located on the Kyrgyz Republic territory in accordance with existing inter-state agreements;
- objects of the civil defense of the Ministry of Emergencies and Civil Defense of the Kyrgyz Republic;
- science-technical entities and organizations within the system of the State agency on forests under the Kyrgyz Republic Government;
- enterprises and science-technical entities and organizations within the system of the State inspection on standardization and
metrology under the Kyrgyz Republic Government and State archive agency under the Kyrgyz Republic Government;
- entities and organizations subordinate to the National Committee on Statistics of the Kyrgyz Republic;
- enterprises and organizations of hydro-meteorological service, services of control over the state of environment and protection of the nature;
- enterprises and organizations of the mapping-geodesic service;
- enterprises and entities of sanitary-epidemiological and quarantine service of the Kyrgyz Republic, plant protection service;
- objects and equipment for permanent storage of hard industrial and household wastes, hard and liquid radioactive wastes, animal cemeteries;
- cemeteries, enterprises on their service and provision of ritual services; and,
- technical inventory bureau.

The Law on Denationalization and Privatization of State Property of 12 January 1994 provided the Cabinet of Ministers with the authority to restrict or otherwise limit foreign investors from participating in the privatization of certain industries; however the Cabinet of Ministers had not yet exercised this authority. The Kyrgyz Republic would not use such authority in a manner inconsistent with its obligations as a future member of the WTO. Foreign investors currently participated in the privatization process in the Kyrgyz Republic according to the same rules applied to domestic investors. Privatization methods which will be used for privatizing remaining State assets, subject to privatization were:

(i) corporatization (turning a State-owned enterprise into a Joint Stock Company-JSC) followed by privatization through sales of shares using auctions or commercial tenders (used mainly for the privatization of medium and large scale enterprises);
(ii) transformation of a State-owned object into a limited liability partnership followed by sale of partnership rights;
(iii) direct sale (including bidding) to strategic investors (especially foreign companies) of large-scale objects. Companies are invited to bid through international press;
(iv) direct sale (including bidding), auctions, and commercial tenders of any objects;
(v) lease (contract management) for a period of time including the right of purchase by lessee.
During 1998, the Kyrgyz Republic planned to begin privatization and denationalization of large enterprises in strategic sectors of the economy including mining, energy, telecommunications, and systems of supply (oil and gas). These include companies such as Kyrgyztelecom-telecommunications company, Kyrgyz Aba Zholdoru-National airline company, Karabalta-Mining, Kadmajay Antimony, Uchkun JSC-Printing, Akyl JSC-Printing, Kyrgyz Energy Holding, Kyrgyzgasmunaizat, and Bishkek Machinery JSC. Also, the Kyrgyz Republic plans to privatize and denationalize companies and facilities of the non-productive sphere (e.g. movie theatres, recreation objects, resorts) in 1998-2000.

Table 1: Sectoral Privatization Data Profile for 1991-1997

<table>
<thead>
<tr>
<th>Sector</th>
<th>Number of Objects of State Property as of 1 January 1991</th>
<th>Number of Privatized Objects as of 31 December 1997</th>
<th>Percentage of Privatized Objects as of 1 January 1998</th>
</tr>
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<tbody>
<tr>
<td>Industry</td>
<td>602</td>
<td>531</td>
<td>88.2</td>
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<tr>
<td>Consumer Services</td>
<td>1,919</td>
<td>1,917</td>
<td>99.9</td>
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<td>Oil Production Sector</td>
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<td>434</td>
<td>34.6</td>
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<td>Trade and Public Catering</td>
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<tr>
<td>Agriculture</td>
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<td>354</td>
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<tr>
<td>Construction</td>
<td>730</td>
<td>418</td>
<td>57.3</td>
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<tr>
<td>Transport</td>
<td>295</td>
<td>154</td>
<td>52.2</td>
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<tr>
<td>Other sectors</td>
<td>2,306</td>
<td>673</td>
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<tr>
<td>Total</td>
<td>9,989</td>
<td>6,375</td>
<td>63.8</td>
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</table>

Table 2: Sectoral Privatization Data Profile by Privatization Modes for 1991-1997

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<tr>
<th>Sector</th>
<th>Privatization Mode</th>
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<td>Auctioning</td>
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<td>Sale through auctions</td>
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<td></td>
<td>Sale through tenders</td>
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<td>Gratis transfers</td>
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<td>Direct sale to labour collectives (bodies)</td>
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<td></td>
<td>Incorporation (Joint-Stock Companies)</td>
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<tr>
<td>Sector</td>
<td>Privatization Mode</td>
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<tr>
<td>--------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
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<tr>
<td>Consumer Services</td>
<td>Lease with subsequent buy-out</td>
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<td></td>
<td>Auctioning</td>
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<td>Sale through auctions</td>
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<td>Sale through tenders</td>
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<td>Trade and public catering</td>
<td>Lease with subsequent buy-out</td>
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<td>Auctioning</td>
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<td>Sale through auctions</td>
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<td>Sale through tenders</td>
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<td>Direct sale to private entities</td>
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<td>Auctioning</td>
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<td>Sale through auctions</td>
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<td>Sale through tenders</td>
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<td>Direct sale to private entities</td>
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<td>Direct sale to labour collectives (bodies)</td>
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<td>Incorporation (Joint-Stock Companies)</td>
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Decisions and Reports

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</thead>
<tbody>
<tr>
<td>Transport</td>
<td>Auctioning</td>
<td>137</td>
</tr>
<tr>
<td></td>
<td>Direct sale to private entities</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Direct sale to labour collectives (bodies)</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Incorporation (Joint-Stock Companies)</td>
<td>3</td>
</tr>
<tr>
<td>Other sectors</td>
<td>Lease with subsequent buy-out</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>Auctioning</td>
<td>151</td>
</tr>
<tr>
<td></td>
<td>Sale through auctions</td>
<td>77</td>
</tr>
<tr>
<td></td>
<td>Sale through tenders</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>Direct sale to private entities</td>
<td>171</td>
</tr>
<tr>
<td></td>
<td>Direct sale to labour collectives (bodies)</td>
<td>193</td>
</tr>
<tr>
<td></td>
<td>Incorporation (Joint-Stock Companies)</td>
<td>28</td>
</tr>
</tbody>
</table>

He noted that the private sector accounted for 49 per cent of GDP in the industrial sector; 98 per cent of GDP in the agriculture sector; 97 per cent of GDP in the retail sector 79 per cent of GDP in the construction sector and 24 per cent of GDP in the transportation sector.

13. Some members of the Working Party stated that the Kyrgyz Republic should accept a commitment to transparency in this area which was appropriate to its particular situation.

14. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would provide annually to WTO Members information on developments in its privatization for as long as its programme of privatization is in existence along the lines of the information provided to the Working Party during the accession process, and on other issues related to its economic reforms as relevant to its obligations under the WTO. The Working Party took note of this commitment.

Pricing Policy

15. At the earlier stages of the deliberations, the representative of the Kyrgyz Republic stated that all prices had been liberalized except when the concerned item was supplied by an entity that has been classified as either a natural, permitted or temporary monopoly. Certain natural monopolies (electricity, gas pipelines, telecommunications, railroad and aviation) were regulated through either price or profit restrictions by the Anti-Monopoly Department within the Ministry of Finance. Prices of water supply, heat, hot water and public transport were set by city or oblast administrations. Non-natural monopolies with a dominant position in the market (more than 35 per cent market share) were subject to profitability control. The allowable margin of profitability had ranged from 25 per cent to 50 per cent. At
that time, there were 105 companies (mostly goods producers) subject to profitability control. Companies which exceeded their allowable profitability margin had to provide a written justification to the Anti-Monopoly Department.

16. Some members of the Working Party requested further information on which natural monopolies were subject to pricing or profit controls, and how such controls were operated. In response, the representative of the Kyrgyz Republic later on, describing the current situation, stated that tariff rates were required to be approved by the Anti-Monopoly Department at the Ministry of Finance (AMD), on the basis of levels and norms of profitability: cost of operating a specific infrastructure (e.g. power transmission line, pipeline) or producing a specific product plus a profit margin set by the AMD. The following natural monopolies were subject to price and/or profit controls:

- Kyrgyz Energy Holding production, transmission, and distribution of electricity and thermal power;
- Kyrgyzgasmunaizat (natural gas);
- Kyrgyztelecom (communication services);
- Kyrgyzalco (alcohol and alcoholic products - subject only to profit controls);
- Kyrgyztamekesi (tobacco and tobacco products - subject only to profit controls);
- Kyrgyz Aba Joldoru (air transport of passengers and cargo); and
- Kyrgyzrailroad (rail transport of passengers and cargo).

In addition, the prices of services provided by Kyrgyztelecom (e.g. cost for installing a phone, rate of long distance calls/per minute) were set by the AMD. The prices of services provided by Kyrgyzgasmunaizat (only gas for population) and Kyrgyz Energy Holding (e.g. electricity HS 2716 rate/kwh) were established by the State Agency on Energy. Prices for using sewage systems, water, and city public transport were set by city or oblast administrations. All fees for services provided by the state were subject to control (e.g. fee for driver’s license, fee for obtaining phytosanitary certificate, fee for obtaining veterinary certificate). Permitted monopolies (eight companies) and temporary monopolies (34 companies) were companies which had a dominant position in the market (more than 35 per cent market share). Those companies were not subject to price or profitability control. Permitted monopolies were required to notify their prices to the Anti-Monopoly Department at the Ministry of Finance. All other natural monopolies were permitted to set their prices freely.

17. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic’s regime for price and profit control for natural monopolies would be operated in conformity with the requirements of Articles II and III of the GATT 1994 and Article VIII of the GATS.
18. Some members of the Working Party noted that two of the covered entities dealt with the production and sale of alcohol and tobacco: Kyrgyzalco and Kyrgyztamekesi. They requested additional information on the profit controls applied. In response, the representative of the Kyrgyz Republic stated that Kyrgyzalco was a State Joint Stock Company within which there were currently 14 joint stock companies. The domestic market share of companies under the structure of Kyrgyzalco in the sale of alcoholic products was approximately 60 per cent. Wholesale prices of alcoholic products were established separately by each of the enterprises under Kyrgyzalco. Enterprises under Kyrgyzalco were required to declare their prices to the Anti-Monopoly Department under the Ministry of Finance and were subject only to profit control by the Anti-Monopoly Department. Profit could not exceed 20 per cent on products covered by HS code 2204, 2205, 2206, 2207 and 2208. There were no plans to eliminate Kyrgyzalco and take away its authority to license the trade and production of alcohol and alcoholic products.

19. In relation to Kyrgyztamekesi, the representative of the Kyrgyz Republic added that it was a State Joint Stock Company with seven companies under its structure (six were joint stock companies and one was a State enterprise). The domestic market share of Kyrgyztamekesi was approximately 16 per cent for tobacco products. Kyrgyztamekesi was required to declare its prices to the Anti-Monopoly Department under the Ministry of Finance and was subject only to profit control by the Anti-Monopoly Department. Its profit was not permitted to exceed 20 per cent on products covered by HS code 2401, 2402 and 2403.

20. In response to requests from some members of the Working Party, the representative of the Kyrgyz Republic explained that the controls mentioned above were authorized by the Law of the Kyrgyz Republic on Limitation of Monopolistic Activities and the Development and Protection of Competition of 15 April 1994 and sub-central authorities applied such controls in accordance with the same law. The purpose of price and profits control was to regulate natural monopolies and fees for services charged by State bodies. In general, the Government of the Kyrgyz Republic wished to avoid application of such measures, and intended to do so in the future in accordance with the law.

21. The representative of the Kyrgyz Republic stated that all price and profit controls on products and services still in effect, at the central and sub-central level were listed in paragraphs 15, 18 and 19 above by HS code where applicable. All other prices for goods and services in the Kyrgyz Republic were determined by market forces. Any changes in price controls or additional controls would be published in official publications. All price and profit controls would be applied in a WTO-consistent fashion, taking into account the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994 and in Article VIII of the General Agreement on Trade in Services (GATS). The Working Party took note of these commitments.
IV. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Powers of executive, legislative and judiciary, administration of policies on WTO-related issues

22. The representative of the Kyrgyz Republic stated that under the Constitution of the Kyrgyz Republic, governmental power was divided among the executive, legislative and judicial branches, with the President being afforded the most significant power. The President was the Head of State and the highest government official. The executive powers were exercised by the Government (principally, the Cabinet of Ministers) formed by the President. The head of the Government was the Prime Minister. The President was elected to a 5-year term of office on the basis of universal (persons 18 years of age and older), equal and direct suffrage by secret ballot. The Constitution gave the President wide-ranging powers: he was the highest representative of the Kyrgyz Republic both within the country and in international relations; he determined the basic direction of domestic and foreign policy and had the right to propose and veto legislation; his assent was required for any bill passed by the Parliament to become law (unless the Parliament was exercising a presidential veto). He had the power to issue decrees and to suspend or invalidate acts of the Cabinet of Ministers and other executive bodies. The President was responsible for appointing members of the Cabinet of Ministers.

23. The representative of the Kyrgyz Republic further added that the Cabinet of Ministers was the principal institution of Government. Executive power was exercised by the Cabinet of Ministers, as well as the individual ministries, State committees, administrative departments, other central executive bodies and local State administrations under the control of the Cabinet of Ministers. The Cabinet of Ministers consisted of the Prime Minister, all Vice-Prime Ministers, all Ministers and Heads of State Committees. The Government was the highest body within the executive power system of the Kyrgyz Republic, (except the President) and as such directly controls activities of local state administrations on a range of issues, including those involving external trade matters and implementation of provisions of international treaties to which the Kyrgyz Republic is a party. Article 6 of the Civil Code provided that international agreements ratified by the Kyrgyz Republic were to take precedence over conflicting provisions in civil legislation. The Kyrgyz Republic Law “On Government” of 25 March 1997 No. 17 set out the functions and authority of the central government and provides in Article 20 and 21 that the Government shall direct the implementation of all laws and decrees of the Kyrgyz Republic. The Kyrgyz Republic Law “On local self-government and local state administrations in the Kyrgyz Republic” of 19 April 1991 N-437-XII set out the powers of the local governments. These powers were subordinate to those of the national government and did not entail authority concerning trade policy, which is the sole purview of the central authorities.
24. The representative of the Kyrgyz Republic stated that the Parliament exercised legislative power was implemented by the Parliament which consisted of two chambers: the Legislative Assembly and the Assembly of People’s Representatives. Judicial authority was exclusively exercised by the Courts. The Court system consisted of a commercial division and an ordinary division. Generally, the commercial division dealt with business and commercial disputes between legal entities, whereas the ordinary division had exclusive jurisdiction over all other types of disputes, including civil, criminal and administrative law matters, as well as commercial disputes where at least one of the litigants was an individual or a collective farm. Both Court systems were divided into tiers. The commercial division had two tiers. Seven regional commercial Courts of general primary jurisdiction (one for the city of Bishkek and one for each of the six oblasts) constituted the lower tier. The Supreme Commercial Court constituted the upper tier. It had appellate jurisdiction over the decisions of the regional commercial Courts, and primary jurisdiction over disputes involving any “non-normative” aspect of an act of any governmental body, institution or official. The ordinary Court system was divided into three tiers. The lower tier was composed of district Courts. The middle tier was composed of seven regional Courts (one for the city of Bishkek and one for each of the six oblasts), which had initial appellate jurisdiction over the decisions of the district Courts. The Supreme Court alone had final appellate jurisdiction over the decisions of the regional Courts. By virtue of the Constitution judges had immunity when acting in their official capacity. Any member of the three high Courts (the Constitutional Court, the Supreme Court and the Supreme Commercial Court) could be removed from his/her post upon a formal presentation to the Parliament by the President. Lower Court judges could be removed if they failed a qualification test.

25. The representative of the Kyrgyz Republic said that agency actions affecting trade were subject to administrative and appellate review. Article 2(3) of the Civil Code provided for the right to appeal an administrative decision in court. Specifically, Articles 417 to 428 of the Customs Code of 1 October 1997 provided for the right to appeal decisions of the customs bodies. Article 57 of the Tax Code provided for administrative appeals of decisions of an official of the Tax Service. Article 58 provided for appellate review of any final decision of the Tax Service. Article 18 of the Law on Licensing provided for the right to appeal to the Commercial Court for issues relating to the refusal to issue a license.

26. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would provide a right of appeal to an independent body for foreign and domestic importers and exporters of official measures as provided for in WTO Agreements. The Working Party took note of this commitment.
Authority of sub-central governments

27. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic was divided into seven regional executive administrations, under the direct supervision and control of the Cabinet of Ministers. Within each regional executive administration were a number of departments having regional competence over certain specified matters, e.g., a Department of Agriculture, a Department of Economy, which reported both to the regional executive administration and to its corresponding national Ministry. Because the regional executive administrations were under the control and supervision of the Cabinet of Ministers and each national Ministry, local governmental policy affecting trade in goods and services was exclusively determined by the central Government. Governors headed the oblast regional executive administrations, and were appointed by the President with the consent of the corresponding kenesh. At the lowest level of government were the rayon (district) executive administrations. The President, with the consent of the kenesh of the rayon, appointed the head of each rayon administration after considering the recommendation of the concerned governor or mayor. The President could also remove the head of the local rayon administration after taking into account the recommendation of the concerned governor or mayor. In addition to the regional executive administrations, Bishkek and the oblasts each had a locally elected unicameral legislature called a kenesh. Each regional kenesh was responsible for legislation dealing with regional social and economic matters. Each kenesh must also approve the budget prepared by its corresponding regional executive administration. If a kenesh passed a piece of legislation on a matter within its competence, it automatically became law. Each rayon had a local kenesh composed of 15-25 elected representatives, the primary responsibility of which was to adopt legislation dealing with a small range of local matters.

28. The representative of the Kyrgyz Republic confirmed that central authorities would be solely responsible for establishing foreign trade policy and that the central Government would implement the provisions of the WTO relevant to sub-central governments, including Article XXIV:12 of the GATT 1994, the corresponding WTO Understanding and Article 1:3(a) of the GATS. He further confirmed that, from the date of accession, the central government would eliminate or nullify measures taken by sub-central authorities in the Kyrgyz Republic that were inconsistent with the WTO Agreement when those measures were brought to its attention. The Working Party took note of these commitments.

V. POLICIES AFFECTING TRADE IN GOODS

Registration and right to trade

29. The representative of the Kyrgyz Republic stated that, pursuant to the Law on State Registration of Legal Entities dated 12 July 1996, all natural and
legal persons engaging in any type of economic activity in the Kyrgyz Republic were required to be registered. He noted that the Kyrgyz Republic had no special registration requirements for persons engaging in importing or exporting nor were individuals or firms restricted in their ability to import or export based on the scope of business of their registration. There were no restrictions, such as capital or nationality requirements, on persons wishing to engage in foreign trade. The representative of the Kyrgyz Republic also confirmed that the former State monopoly in foreign trade had been abolished.

30. The representative of the Kyrgyz Republic confirmed that from the date of accession, the Kyrgyz Republic would ensure that all of its laws and regulations relating to the right to trade in goods, and all fees, charges or taxes levied on such rights would be in full conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1944 and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of these commitments.

Customs tariff

Ordinary customs duties

31. The Kyrgyz Republic engaged in market access negotiations on goods. The tariff concessions resulting from these negotiations are reproduced in the Schedule annexed to the Protocol of Accession of the Kyrgyz Republic which is reproduced in the Appendix to this Report.

32. In response to requests for information, the representative of the Kyrgyz Republic stated that the Customs Tariff of the Kyrgyz Republic was contained in the Cabinet of Ministers Resolution No. 358 of 28 May 1994 issued pursuant to the Customs Tariff Law of 15 December 1992. The temporary tariff was a flat 10 per cent tariff on all imported goods, except those for which an explicit exemption had been created by the Customs Tariff Law. Under the temporary flat 10 per cent regime, the average trade-weighted level of import duties (after adjusting for exempted items and items qualifying for the Kyrgyz Republic’s preference scheme) was 8.4 per cent in 1995. In 1997, by Government Decision, the Kyrgyz Republic had converted the tariff nomenclature to HS 96 which had not altered the tariff rates set in 1992. Tariff descriptions were coded at the 6 and 9-digit levels. In response to further questions, he noted that the Kyrgyz Republic was engaged in negotiations to join the World Customs Organization.

33. He further added that under the Kyrgyz Republic’s System of Preferences, goods originating in developing countries were subject to a duty rate which was 50 per cent of the tariff rate while goods produced in and imported from least developed countries were free of duty. The system of preferences may be modified from time to time, in accordance with the provisions of the Customs Code of
30 July 1997.

34. In response to questions concerning the seasonal duties, the representative of the Kyrgyz Republic stated that according to the Customs Code of 30 July 1997, the Cabinet of Ministers of the Kyrgyz Republic may establish seasonal duties. The representative of the Kyrgyz Republic stated that if imposed, seasonal duties would not exceed the bound level of tariffs and would be applied in a manner consistent with the requirements of the WTO Agreement. Also, adequate notice would be provided before imposing seasonal duties. The Working Party took note of these commitments.

*Tariff quotas, tariff exemptions*

35. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that any business enterprise operating in the Kyrgyz Republic, (including wholly or partially foreign owned enterprises) could apply to the Ministry of Industry and Foreign Trade to receive tariff exemptions for imports of certain items used in the production of final products, pursuant to Government Resolution No. 358 of 28 May 1994. Applications for tariff exemptions were not automatically approved by the Ministry of Industry and Foreign Trade. The criterion applied in consideration of an application was whether the items will be used in the production of final products. Import substitution or export performance were not factors in consideration of the requests. The exemptions were granted to the requesting enterprise alone. Since 30 March 1994, 436 businesses had enjoyed the benefits of the duty exemptions.

36. Some members of the Working Party noted that exemptions were granted to some products originating in CIS countries. They asked if the Kyrgyz Republic was prepared to enter a commitment that tariff exemptions would only be given to third countries in the context of a WTO compatible Free Trade Agreement or Customs Union Agreement.

37. The representative of the Kyrgyz Republic stated that upon accession to the WTO, any tariff exemptions would only be implemented in conformity with the relevant WTO provisions including Articles I and XXIV of the GATT 1994. The Working Party took note of this commitment.

*Other duties and charges*

38. The representative of the Kyrgyz Republic confirmed that the Kyrgyz Republic levied no duties and charges on imports other than ordinary customs duties. He further confirmed that the Kyrgyz Republic had bound other duties and charges within the meaning of Article II:1(b) of the GATT 1994 at zero in its Schedule of Concessions on Goods which is reproduced in Part I of the Annex to the Protocol of Accession.
Fees for services rendered

39. Some members of the Working Party requested information on any fees applied to imported and exported products. In response, the representative of the Kyrgyz Republic stated that an ad valorem customs processing fee was levied on imported and exported goods. In response, some members of the Working Party stated that the fee did not appear to be consistent with Article VIII of GATT 1994, which required that fees and charges related to importation and exportation be limited to the cost of services rendered. The representative of the Kyrgyz Republic stated that the government was considering how to alter the current customs clearance fee from an ad valorem fee into a fee that recovered the actual cost of the service provided. The Kyrgyz Republic was attempting to calculate the actual cost of the services rendered in connection with importation and exportation. The representative of the Kyrgyz Republic added that the Kyrgyz Republic would ensure that all fees and charges related to importation and exportation reflected the cost of services rendered.

40. Following further requests for information, the representative of the Kyrgyz Republic noted that the Kyrgyz Republic used an ad valorem rate of 0.15 per cent with minimum and maximum (600 som, approximately US$32) limits. The limits would be determined on an annual basis to account for inflation. The minimum and maximum fees were determined using a methodology that was based on internationally recognized cost accounting principles and practices. The minimum fee consisted of two components: direct costs and indirect costs. Direct costs were those that were exclusively incurred to process a declaration, and consisted of employee costs to process a declaration. The time spent by an employee to process various categories of goods was analyzed and the average employee cost to process a declaration was computed. Indirect costs were those that were incurred for various customs activities including import and export processing. These costs, also called overhead costs, were allocated based on approximate total time spent by customs employees. On average, Kyrgyz Customs employees spent about 50 per cent of their time processing import declarations. As a result, 50 per cent of the total overhead costs were allocated to import processing. The maximum fee was based on the total costs of Kyrgyz Customs. It was estimated that approximately 50 per cent of Customs resources were consumed to process import declarations. As a result, about 50 per cent of total costs were allocated to import processing. The Kyrgyz Republic would create a revolving fund to finance import processing activities. All revenues collected from import and export processing fees would be credited to this fund. The proceeds from the fund would be used only to meet the costs of import and export processing of the imports and exports subject to the fee.

41. Following further requests for information on the customs processing fee, the representative of the Kyrgyz Republic stated that in pursuance of Article VIII of the GATT 1994, the new Customs Code of the Kyrgyz Republic put into effect on 1 October 1997, provided that customs fees collected for customs clearance must not
exceed the approximate cost of the services provided.

42. The representative of the Kyrgyz Republic also noted that an import/export License Fee was also charged. The current fee was som 1,000 (US$56). Analysis had revealed that the current fee reflected the cost of services rendered. In response to questions he provided the following table listing all customs fees applied to all imports and exports. The following fees imposed by Government Resolution No. 368 of 19 June 1998 On Establishing the Fees for Customs Processing and Issuance of Certificates of Origin were charged by the Directorate on the Technical Development of the Customs Infrastructure under the State Customs Committee for customs storage:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Units</th>
<th>Price including VAT (in Som)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Storage of trucks containing goods (fee charged per 100 kg of goods: units not divisible (i.e. 120 kg = fee charged for 200 kg): - up to 24 hours - each additional day</td>
<td>100 kg</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100 kg</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>Storage of oil products and other goods at rail yard: per day</td>
<td></td>
<td>0.1 per cent of the value of goods</td>
</tr>
<tr>
<td>3</td>
<td>Storage of goods delivered by air transport over the CIS from the moment of notification: - first 5 days - from 5 days up to 10 days - over 10 days</td>
<td>1 kg of goods</td>
<td>0.20/day</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 kg of goods</td>
<td>0.40/day</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 kg of goods</td>
<td>0.60/day</td>
</tr>
<tr>
<td>4</td>
<td>Parking within the customs control zone: - first hour - for each additional hour and for each further day</td>
<td>1 place</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 place</td>
<td>5</td>
</tr>
</tbody>
</table>

43. The representative of the Kyrgyz Republic stated that prior to the date of accession to the WTO, the Government of the Kyrgyz Republic would adopt, through implementing Regulations, the provisions and methodology for the application of the customs processing fees as described in paragraphs 40, 41 and 42 above. He later stated that those Regulations (On Establishment of the Amount of the Fees for Customs Clearance and Certificate of Origin, No. 368 of 1998) had entered into force on 19 June 1998.

44. The representative of the Kyrgyz Republic confirmed that all fees and charges for services related to importation or exportation would be operated in conformity with the provisions of Article VIII of the GATT 1994 from the date of accession. The Working Party took note of this commitment.
**Tariff rate quotas**

45. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic maintained no tariff quotas, and did not intend to introduce tariff rate quotas in the future. Any tariff rate quotas introduced in the future would be operated in conformity with the relevant WTO provisions, including Article XIII:5 of the GATT 1994.

**Application of internal taxes on imports**

**Value Added Tax**

46. In response to requests for information, the representative of the Kyrgyz Republic stated that a 20 per cent VAT was imposed on all sales of goods within the Kyrgyz Republic, as well as on goods imported from non-CIS countries. The VAT was imposed on non-CIS imports at the time of importation, and was collected by the customs authorities. The base for assessment of the VAT was the sum of (i) the customs value of the goods plus (ii) transportation, insurance and other costs related to the importation of goods where applicable. With respect to goods imported from CIS countries, no VAT was collected until the good was sold within the Kyrgyz Republic; and the seller was permitted to claim a VAT credit for the amount of VAT paid in the exporting CIS country. This VAT-credit mechanism for imports from CIS countries was in effect in all CIS countries. In addition, VAT exemptions were granted for (i) goods imported to render assistance in connection with natural disasters, armed conflicts, or accidents; (ii) goods imported as humanitarian assistance as specified under an order of the Cabinet of Ministers; (iii) imported goods which the importer had previously exported; (iv) goods temporarily imported under bond, provided such goods were exported in an unaltered condition within twelve months; (v) goods mistakenly imported into the Kyrgyz Republic and being returned to the original exporter; (vi) goods in transit through the Kyrgyz Republic; (vii) imported goods intended for official use by foreign embassies or similar representative offices of foreign governments and imported goods intended for the personal use of the diplomatic, administrative or technical personnel of such embassies or representative offices or the family members of such personnel; (viii) pharmaceuticals and medicinal supplies specified by Cabinet of Ministers; (ix) educational supplies and school equipment; (x) baby food; (xi) capital goods imported by a legal entity or entrepreneur for use in its/ his productive economic activity; and (xii) other imported goods specified as VAT-exempt pursuant to the customs legislation of the Kyrgyz Republic.

47. Some members of the Working Party stated that Article XXIV of the GATT 1994 does not exempt regional integration agreements from application of the MFN principle with regard to internal taxation. They requested an indication when the Kyrgyz Republic would bring its system of VAT application into line with...
Article I of the GATT 1994. In response the representative of the Kyrgyz Republic stated that the Kyrgyz Republic understood the need to bring its VAT system into conformity with accepted world practice, i.e. applying the VAT to all goods sold or imported into the Kyrgyz Republic regardless of their country of origin, and exempting exported goods regardless of their country of destination. However, he noted that because it was necessary to obtain the agreement of other CIS countries to do so it was not possible to give a date for elimination of the practice. A bilateral agreement had been reached with Kazakhstan (entry into force 21 July 1997), with the result that Kazakhstan was treated as a “non-CIS” country with respect to the application of VAT. Moreover, analogous agreements had been negotiated but not yet initialled with Armenia, Azerbaijan and Belarus, initialled with Georgia, and concluded with Tadjikistan (entry into force 6 May 1998), Ukraine (entry into force 10 April 1998) and Uzbekistan (entry into force 22 April 1998). A Protocol signed with the Russian Federation recently would change this practice in their trade as of 1 January 1999. Amendments of the Tax Code provided for application of VAT to imports from CIS countries which applied the destination principle to their exports to the Kyrgyz Republic. VAT would also not be applied to exports to CIS countries which applied the destination principle with regard to their exports to the Kyrgyz Republic.

48. The representative of the Kyrgyz Republic stated that the Law on Making Amendments and Supplements to the Tax Code of the Kyrgyz Republic would be adopted and enter into force no later than 1 January 1999 and that as soon as possible from the date of accession but not later than 1 January 1999, the Kyrgyz Republic would ensure that value added taxes would be applied to imports in full conformity with WTO requirements, in particular, the most-favoured-nation requirements of Article I and the national treatment provisions of Article III of the GATT 1994. The Working Party took note of this commitment.

Excise Taxes

49. In response to requests for information on the excise taxes applied in the Kyrgyz Republic, the representative of the Kyrgyz Republic stated that excise taxes were imposed on certain goods whether produced in or imported into the Kyrgyz Republic. He further added that the new Tax Code specified that the following goods were subject to excise taxes: (i) alcoholic beverages, drinks, spirits and liquors; (ii) items destined for wine production; (iii) tobacco and tobacco products; (iv) gold, silver and platinum jewellery; (v) processed and non-processed fur hides (except for the hides of moles, rabbits, dogs, deer, or sheep); (vi) clothing made of natural fur (except for apparel made of the hides of moles, rabbits, dogs, deer, or sheep); (vii) coats, short coats, jackets and cloaks trimmed with fur (except for the fur of moles, rabbits, dogs, or sheep); (viii) clothes made from natural leather; (ix) crystal items, including lighting appliances made of crystal; and (x) firearms, including gas weapons (other than those procured by State authorities).
The following imported goods were exempted from excise tax: (i) goods needed to operate or repair vehicles being used for the international conveyance of passengers, baggage or cargo; (ii) goods which were damaged and thereby made useless prior to their entry into the Kyrgyz Republic; (iii) goods imported as humanitarian aid; (iv) goods imported for charitable or aid purposes, including technical assistance supplied by foreign States and international organizations; (v) goods confiscated by or escheated to the State; (vi) goods in transit through the Kyrgyz Republic; and (vii) goods intended for official use by foreign embassies or similar representative offices of foreign governments and imported goods intended for the personal use of the diplomatic, administrative or technical personnel of such embassies or representative offices or the family members of such personnel.

50. The representative of the Kyrgyz Republic added that some excise taxes were assessed on an ad valorem basis, while others were assessed on a quantity basis. Domestic and imported goods were subject to differing excise tax rates. Imported goods subject to excise tax were exempted from customs duties. Some members also requested information on the methodology used to calculate excise rates for domestic, CIS and other imported products. In response, the representative of the Kyrgyz Republic stated that the Cabinet of Ministers Resolution No. 557 of 26 September 1997, and Resolution No. 702 of 4 December 1997 established the methodology to be used for calculating excise taxes. This methodology was the same for goods produced in the Kyrgyz Republic and imported from other countries including CIS countries.

In cases where the excise tax rate was established in proportion of the wholesale price of goods:

\[ H = \frac{C \times A}{100} \text{ per cent} \]

where

- \( H \) = the amount of excise tax
- \( C \) = the wholesale price of goods (or their customs value at the point of import)
- \( A \) = the rate of excise tax in per cent.

In cases where the excise tax rate was established in US$ to the physical volume of goods:

\[ H = O \times T \times K \]

where

- \( H \) = the amount of excise tax
- \( O \) = the physical volume of manufactured or imported goods (kilogram, litre, units, tons)
- \( T \) = the rate of excise tax in US$ per unit
- \( K \) = the US$ exchange rate to the Kyrgyz Som.

The Som was the only currency that could be used for payment of excise taxes.
for both imports and domestic products. Conversion into Soms was based on the official exchange rate of the National Bank of the Kyrgyz Republic.

51. The representative of the Kyrgyz Republic further added that the new Tax Code, which came into effect on 1 July 1996, substantially changed the list of goods subject to excise tax. However, no rates had been set for the items newly subject to excise tax. In the interim, customs duties applicable to such items had temporarily been increased. He stated that the current system of excise taxation treated imported and domestic products differently. In response, some members of the Working Party stated that although they welcomed the Kyrgyz Republic’s recognition that the current excise tax system treated domestic and imported products differently, which was inconsistent with Article III of the GATT 1994, they asked that the system be brought into conformity with that provision and requested a progress report on the reform of the system. In response, the representative of the Kyrgyz Republic stated that following a review of excise tax rates, the Legislative Assembly had in December 1996 approved the following table of excise tax rates.

### Table 3: Excise Tax Regime

<table>
<thead>
<tr>
<th>Goods</th>
<th>Domestic Rates</th>
<th>Imported Rates</th>
<th>HS Codes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethyl alcohol and purified ethyl alcohol produced from raw materials (except those imported by special consumers within stipulated limits)</td>
<td>US$1.4/litre</td>
<td>US$1.4/litre</td>
<td>2207</td>
</tr>
<tr>
<td>Vodka</td>
<td>US$0.90/litre</td>
<td>US$0.90/litre</td>
<td>220890110-220890390</td>
</tr>
<tr>
<td>Liqueurs and vodka products</td>
<td>US$0.90/litre</td>
<td>$0.90/litre</td>
<td>220810, 220830, 220890510-220890790, 220890910, 220890990</td>
</tr>
<tr>
<td>Alcoholized beverages, juice and balsam*</td>
<td>US$0.90/litre</td>
<td>US$0.90/litre</td>
<td>220840, 220850</td>
</tr>
<tr>
<td>Grape wine</td>
<td>US$0.35/litre</td>
<td>US$0.29/litre</td>
<td></td>
</tr>
<tr>
<td>Wine</td>
<td>US$0.35/litre</td>
<td></td>
<td>220421-220429, 2205-2206</td>
</tr>
<tr>
<td>Cognac</td>
<td>US$0.60/litre</td>
<td>US$0.80/litre</td>
<td>220820100</td>
</tr>
<tr>
<td>Sparkling wines</td>
<td>US$0.40/litre</td>
<td>US$0.45/litre</td>
<td>220410</td>
</tr>
<tr>
<td>Beer:</td>
<td></td>
<td></td>
<td>2203</td>
</tr>
<tr>
<td>- packaged</td>
<td>US$0.80/litre</td>
<td>US$0.25/litre</td>
<td></td>
</tr>
<tr>
<td>- unpackaged</td>
<td>US$0.05/litre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goods</td>
<td>Domestic Rates</td>
<td>Imported Rates</td>
<td>HS Codes</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>----------------------</td>
<td>-----------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Raw materials for wine production</td>
<td>US$0.15/litre</td>
<td>US$0.20/litre</td>
<td>220430</td>
</tr>
<tr>
<td>Tobacco products**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- filter cigarettes</td>
<td>US$1.5/1000 each</td>
<td>US$5/1000 each</td>
<td>2402</td>
</tr>
<tr>
<td>- unfiltered cigarettes</td>
<td>US$0.75/1000 each</td>
<td>US$2/1000 each</td>
<td>2402</td>
</tr>
<tr>
<td>Other tobacco-containing items, including fermented tobacco</td>
<td></td>
<td>12 per cent</td>
<td>240110, 240120, 2403</td>
</tr>
<tr>
<td>Gold, platinum or silver jewellery</td>
<td></td>
<td>20 per cent</td>
<td>7113-7118</td>
</tr>
<tr>
<td>Processed and raw fur hides (other than mole, rabbit, dog and sheep skin)</td>
<td></td>
<td>0 per cent</td>
<td>4110, 4103-4104, 4106-4109</td>
</tr>
<tr>
<td>Wearing apparel made of natural fur, including coats, short-coats, jackets, capes, stoles, scarves, headgear, collars, fur coats and fur pieces (other than apparel made of hides of mode, rabbit, dog, deer or sheep skin)</td>
<td></td>
<td>0 per cent</td>
<td>4303</td>
</tr>
<tr>
<td>Coats, short-coats, jackets and capes trimmed with fur (other than mole, rabbit, dog, deer or sheep skin)</td>
<td></td>
<td>0 per cent</td>
<td>4303</td>
</tr>
<tr>
<td>Clothing made of natural leather</td>
<td></td>
<td>0 per cent</td>
<td>4203</td>
</tr>
<tr>
<td>Crystalware</td>
<td></td>
<td>0 per cent</td>
<td>701321, 701331, 701391</td>
</tr>
<tr>
<td>Firearms and gas weapons (other than those acquired for the needs of State agencies)</td>
<td>10 per cent</td>
<td>9301-9393, 9305-9306</td>
<td></td>
</tr>
<tr>
<td>Oil products:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- gasoline, soft and medium distillates</td>
<td>US$45/ton</td>
<td>$45/ton</td>
<td>2707, 271000330, 271000350, 271000390, 271000110, 271000150, 271000210, 271000250, 271000410, 271000450</td>
</tr>
<tr>
<td>- Aircraft fuel</td>
<td></td>
<td>271000510-271000590</td>
<td></td>
</tr>
</tbody>
</table>

Decisions and Reports
### Goods, Domestic Rates, Imported Rates, HS Codes

<table>
<thead>
<tr>
<th>Goods</th>
<th>Domestic Rates</th>
<th>Imported Rates</th>
<th>HS Codes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diesel fuel</td>
<td>US$0/ton</td>
<td>US$45/ton</td>
<td>271000610, 271000650, 271000690</td>
</tr>
<tr>
<td>Black oil</td>
<td>US$0/ton</td>
<td>US$0/ton</td>
<td>271000710, 271000750, 271000790</td>
</tr>
<tr>
<td>Other</td>
<td>US$0/ton</td>
<td>US$0/ton</td>
<td>271000550, 271000930, 271000990</td>
</tr>
<tr>
<td>Coffee and cocoa products</td>
<td>10 per cent</td>
<td>0901, 1801, 1803-1805</td>
<td></td>
</tr>
<tr>
<td>Carpets and rugs (except floor coverings)</td>
<td>0 per cent</td>
<td>35 per cent</td>
<td>57</td>
</tr>
</tbody>
</table>

* Excise tax rates were calculated based on the content of ethyl alcohol in such items, the base being a beverage containing 45 per cent alcohol.

** Pursuant to Resolution No. 430 of 23 July 1997 of the Kyrgyz Republic for imported tobacco products (topped cigarettes and without tops) with excise stamps, the rate of excise tax is US$1.5 per 1000 cigarettes, pursuant to Resolution No. 430 of 23 July 1997 of the Kyrgyz Republic.

52. Some members of the Working Party stated that the proposed new rates of excise taxation did not appear to resolve the problems of inconsistent rates of taxation, in particular higher rates of taxation for certain imported products. They requested that the system be brought into conformity with Article III of the GATT 1994, and that imported products not be subject to tax rates in excess of those applied to domestic products. In response, the representative of the Kyrgyz Republic stated that the excise tax system prevailing in the Kyrgyz Republic was already in full conformity with WTO most-favoured-nation requirements. He noted that no imported goods to the Kyrgyz Republic were subject to both excise taxes and import duties at the same time, although it was not contrary to international practices or WTO rules to have apply both excise taxes and import duties to an imported good. In response to further statements by members of the Working Party that the rates of excise tax listed in Table 3 discriminated against imported products, the representative of the Kyrgyz Republic said that Government Resolution No. 348 of 13 June 1998 On Rates of Excise Taxes (which required approval by Parliament) had established the following rates of excise taxes:
### Table 4: Harmonized Rates of Excise Tax

<table>
<thead>
<tr>
<th>Goods</th>
<th>Domestic Rates</th>
<th>Imported Rates</th>
<th>HS Codes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethyl alcohol and purified ethyl alcohol produced from raw materials</td>
<td>US$1.4/litre</td>
<td>US$1.4/litre</td>
<td>2207</td>
</tr>
<tr>
<td>(except those imported by special consumers within stipulated limits)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vodka</td>
<td>US$0.90/litre</td>
<td>US$0.90/litre</td>
<td>22089010-220890390</td>
</tr>
<tr>
<td>Liqueurs and vodka products</td>
<td>US$0.90/litre</td>
<td>US$0.90/litre</td>
<td>220810, 220830, 220890510-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>220890790, 220890910, 220890990</td>
</tr>
<tr>
<td>Alcoholized beverages, juice and balsam*</td>
<td>US$0.90/litre</td>
<td>US$0.90/litre</td>
<td>220840, 220850</td>
</tr>
<tr>
<td>Wines</td>
<td>US$0.35/litre</td>
<td>US$0.35/litre</td>
<td></td>
</tr>
<tr>
<td>Cognac</td>
<td>US$0.60/litre</td>
<td>US$0.60/litre</td>
<td>220820100</td>
</tr>
<tr>
<td>Sparkling wines</td>
<td>US$0.40/litre</td>
<td>US$0.40/litre</td>
<td>220410</td>
</tr>
<tr>
<td>Beer:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- packaged</td>
<td>US$0.11/litre</td>
<td></td>
<td>2203</td>
</tr>
<tr>
<td>- unpackaged</td>
<td>US$0.08/litre</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Raw materials for wine production</td>
<td>US$0.15/litre</td>
<td>US$0.15/litre</td>
<td>220430</td>
</tr>
<tr>
<td>Tobacco products</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- filter cigarettes</td>
<td>US$1.6/1000 each</td>
<td>US$1.6/1000 each</td>
<td>2402, 2402</td>
</tr>
<tr>
<td>- unfiltered cigarettes</td>
<td>US$0.75/1000 each</td>
<td>US$0.75/1000 each</td>
<td></td>
</tr>
<tr>
<td>Other tobacco-containing items, including fermented tobacco</td>
<td>US$0.10/1 kg</td>
<td>US$0.10/1 kg</td>
<td>240110, 240120, 2403</td>
</tr>
<tr>
<td>Gold, platinum or silver jewellery</td>
<td>10 per cent</td>
<td>10 per cent</td>
<td>7113-7118</td>
</tr>
<tr>
<td>Processed and raw fur hides (other than mole, rabbit, deer, dog and</td>
<td>5 per cent</td>
<td>5 per cent</td>
<td>4110, 4103-4104, 4106-4109</td>
</tr>
<tr>
<td>sheep skin)</td>
<td>5 per cent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wearing apparel made of natural fur, including coats, short-coats,</td>
<td>5 per cent</td>
<td>5 per cent</td>
<td>4303</td>
</tr>
<tr>
<td>jackets, capes, stoles, scarves, headgear, collars, fur coats and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>fur pieces (other than apparel made of hides of mode, rabbit, dog,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>deer or sheep skin)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goods</td>
<td>Domestic Rates</td>
<td>Imported Rates</td>
<td>HS Codes</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>----------------</td>
<td>----------------</td>
<td>----------</td>
</tr>
<tr>
<td>Coats, short-coats, jackets and capes trimmed with fur (other than mole, rabbit, dog, deer or sheep skin)</td>
<td>5 per cent</td>
<td>5 per cent</td>
<td>4303</td>
</tr>
<tr>
<td>Clothing made of natural leather</td>
<td>5 per cent</td>
<td>5 per cent</td>
<td>4203</td>
</tr>
<tr>
<td>Crystalware, lighting appliances of crystal</td>
<td>20 per cent</td>
<td>20 per cent</td>
<td>701321, 701331, 701391</td>
</tr>
<tr>
<td>Firearms and gas weapons (other than those acquired for the needs of State agencies)</td>
<td>20 per cent</td>
<td>20 per cent</td>
<td>9301-9393, 9305-9306</td>
</tr>
<tr>
<td>Oil products:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- gasoline, soft and medium distillates and other gasoline</td>
<td>US$50/ton</td>
<td>US$50/ton</td>
<td>2707, 271000330, 271000350, 271000390, 271000110, 271000150, 271000210, 271000250, 271000410, 271000450</td>
</tr>
<tr>
<td>- jet fuel (except needs of the “Kyrgyzstan Aba Joldoru” air company)*</td>
<td></td>
<td>US$50/ton</td>
<td>271000610, 271000650, 271000690</td>
</tr>
<tr>
<td>- black oil</td>
<td>US$25/ton</td>
<td>US$25/ton</td>
<td>271000550, 271000910, 271000930, 271000990</td>
</tr>
<tr>
<td>- other</td>
<td>US$35/ton</td>
<td>US$35/ton</td>
<td></td>
</tr>
<tr>
<td>- raw oil and raw oil products got from bituminous materials</td>
<td>US$10/ton</td>
<td>US$10/ton</td>
<td></td>
</tr>
<tr>
<td>Coffee and cocoa*</td>
<td>10 per cent</td>
<td>10 per cent</td>
<td>0901, 1801, 1803-1805</td>
</tr>
<tr>
<td>Carpets and rugs (except floor coverings)</td>
<td>10 per cent</td>
<td>10 per cent</td>
<td>57</td>
</tr>
</tbody>
</table>

* No domestic production of such goods.
53. The representative of the Kyrgyz Republic stated that the Regulations on the Harmonization of Excise Tax Rates (No. 348 of 13 June 1998) had passed the first reading in Parliament on 30 June 1998 and would be adopted by 15 September 1998. He also stated that from the date of accession to the WTO, the Kyrgyz Republic would ensure that excise taxes were applied to imports in full conformity with WTO requirements, in particular the most favoured nation requirements of Article I and the national treatment provisions of Article III of the GATT 1994. The Working Party took note of these commitments.

Quantitative import restrictions

54. In response to questions, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic maintained few quantitative import restrictions and it did not plan to introduce import restrictions except in those circumstances permitted by the WTO Agreements. The Kyrgyz Republic did not foresee balance of payment problems in the next 2 years provided that the current economic situation continued to evolve favourably. Currently, the only import restrictions applied in the Kyrgyz Republic applied to military arms and goods; explosives; nuclear materials and technology for military use; virulent poisons; and narcotics (including those used in pharmaceuticals) and psychotropic substances. The system applied to goods originating in and coming from all countries, including other CIS countries.

55. The representative of the Kyrgyz Republic stated that if the Kyrgyz Republic introduced import quotas as an emergency measure in the future they would be in conformity with Article XIX of the GATT 1994 and the Agreement on Safeguards. If import quotas were introduced for balance of payments purposes they would be in conformity with Article XII and Article XVIII of the GATT 1994, the Understanding on the Application of Restrictions for Balance-of-Payments Purposes and the WTO Agreement.

Import licensing procedures

56. In response to requests for information, the representative of the Kyrgyz Republic stated that previously, import licences had been required for five broad categories of goods. A Draft Regulation finalised and submitted to the Working Party specified in greater detail the goods subject to licensing, and broke down the covered goods into 19 sub-items. The representative of the Kyrgyz Republic provided the Working Party, with the following table listing the covered goods:
**Table 5: List of Specific Goods Imported under Licenses contained in the Regulation on Import/Export Licensing (No. 1100-1, implemented 8 June 1998)**

<table>
<thead>
<tr>
<th>No.</th>
<th>Goods</th>
<th>HS Code</th>
<th>Rationale/Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ciphering devices (including ciphering equipment, spare parts for the ciphering equipment, ciphering programs), normative and technical documents to the ciphering devices (including designing and exploiting)</td>
<td>8471 (ciphering equipment only), 847330000 (ciphering equipment only), 854380900 (ciphering equipment only), 854390900 (ciphering equipment only)</td>
<td>To protect the Republic’s national security</td>
</tr>
<tr>
<td>2.</td>
<td>Arms and weapons, specific parts for their production, works and services in the area of military - technological cooperation</td>
<td>by the list of the Ministry of Defense of the Kyrgyz Republic</td>
<td>To protect the Republic’s national security</td>
</tr>
<tr>
<td>3.</td>
<td>Protection devices from the battle poisoning substances, parts and accessories thereof</td>
<td>by the list of the Ministry of Defense of the Kyrgyz Republic</td>
<td>To protect the Republic’s national security</td>
</tr>
<tr>
<td>4.</td>
<td>Military uniform, clothing and attributes</td>
<td>by the list of the Ministry of Defense of the Kyrgyz Republic</td>
<td>To protect the Republic’s national security</td>
</tr>
<tr>
<td>5.</td>
<td>Normative and technical documents to the military products (construction and exploitation)</td>
<td>by the list of the Ministry of Defense of the Kyrgyz Republic</td>
<td>To protect the Republic’s national security</td>
</tr>
<tr>
<td>6.</td>
<td>Gun powder and explosives, explosive devices and pyrotechnics</td>
<td>3601 (except for the hunting powder), 3602, 3603, 3604</td>
<td>To protect the Republic’s national security</td>
</tr>
<tr>
<td>7.</td>
<td>Nuclear materials, technologies, equipment and plants, special non - nuclear materials, sources for the radioactive radiation, including radioactive waste</td>
<td>by the list approved by the President of the Kyrgyz Republic (Resolution No. 55, 2 June 1996, the Government of the Kyrgyz Republic)</td>
<td>To maintain the Republic’s national security, as well as to adhere to international commitments related to non-proliferation of mass destruction and production technologies thereof</td>
</tr>
<tr>
<td>8.</td>
<td>Materials, equipment and technologies which are intended for peaceful purposes but can not be used while creating weapons for mass extermination</td>
<td>In accordance with the list passed by the President of the Kyrgyz Republic (Resolution No. 55, 2 June 1996, the Government of the Kyrgyz Republic)</td>
<td>To maintain the Republic’s national security, as well as to adhere to international commitments related to non-proliferation of mass destruction and production technologies thereof</td>
</tr>
<tr>
<td>No.</td>
<td>Goods</td>
<td>HS Code</td>
<td>Rationale/Justification</td>
</tr>
<tr>
<td>-----</td>
<td>--------</td>
<td>---------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>9.</td>
<td>Certain types of raw materials, equipment, technologies and scientific information which can be applied while creating weapons and military techniques</td>
<td>by the list approved by the President of the Kyrgyz Republic (Resolution No. 55, 2 June 1996, the Government of the Kyrgyz Republic)</td>
<td>To maintain the Republic’s national security, as well as to adhere to international commitments related to non-proliferation of mass destruction and production technologies thereof</td>
</tr>
<tr>
<td>10.</td>
<td>Precious metals, alloys, goods made from them, metals plated with precious metals and goods made from them; ores; concentrates; scrap and waste</td>
<td>2616 (ores and concentrates), 2843 (metals, junctions, amalgams), 300640000 (from precious metals only), 7106-7112, 711311000, 711319000, 711411000, 711419000, 711510100, 711590100, 711590900, 7118 (from precious metals only), 8544 (only with conductors from precious metals), 960810300, 960839100</td>
<td>To protect national treasures of artistic, historic or archaeological value; to conserve exhaustible natural resources.</td>
</tr>
<tr>
<td>11.</td>
<td>Precious natural stones and goods from them, powder and recuperate of precious natural stones, goods from them.</td>
<td>7101, 7102, 7103 (precious stones only), 7105 (from precious stones only), 7116 (from precious stones only).</td>
<td>To protect national treasures of artistic, historic or archaeological value; to conserve exhaustible natural resources.</td>
</tr>
<tr>
<td>12.</td>
<td>Narcotics and psychotropic drugs, virulent and stupefying concoctions</td>
<td>by the list of the State Commission for Drug Control under the Government of the Kyrgyz Republic</td>
<td>To protect the population’s life and welfare</td>
</tr>
<tr>
<td>13.</td>
<td>Virulent poisons</td>
<td>by the list approved by the Government of the Kyrgyz Republic (Resolution of the Government of the Kyrgyz Republic of 6 February 1996, No. 55)</td>
<td>To protect the population’s life and welfare, as well as flora and fauna in general</td>
</tr>
<tr>
<td>14.</td>
<td>Hazardous wastes</td>
<td>by the list of the Basil Convention on the Control over Trans-border Transportation of hazardous cargo of 22 March 1989, approved by Resolution of the Parliament of the Kyrgyz Republic of 18 January 1996, No. 304-1)</td>
<td>To protect the population’s life and welfare, as well as flora and fauna in general</td>
</tr>
<tr>
<td>15.</td>
<td>Chemical means of protection of plants</td>
<td>3808 (preparations for the plant protection only)</td>
<td>To protect the population’s life and welfare, as well as flora and fauna in general</td>
</tr>
<tr>
<td>16.</td>
<td>Pharmaceuticals</td>
<td>by the list of the Ministry of Health of the Kyrgyz Republic</td>
<td>To protect the population’s life and health</td>
</tr>
</tbody>
</table>
The import licensing system was required to protect public health and safety, the environment, consumer welfare and national security. The licensing procedure was not intended to restrict the quantity or value of imported goods. Imports subject to licensing amounted to about 2 per cent of the value of the Kyrgyz Republic’s total imports. Goods subject to import licensing were designated by the Cabinet of Ministers upon recommendation by interested ministries and government bodies and were not subject to administrative discretion.

57. The representative of the Kyrgyz Republic further added that to obtain a licence for import (and also for the export) of alcohol and alcoholic products (except beer, for which there were no import or export licensing requirements) and tobacco products, an importer was required to submit an application for a license and the following documents: (i) import or export contract; (ii) copy of the purchase-sale contract if the applicant does not own the goods; (iii) copy of the certificate of registration; (iv) certificate of compliance; (v) certificate of origin; (vi) conclusion of expert-organization; (vii) copy of tax-payer registration card. There were no quotas connected with the import and export of alcohol, alcoholic or tobacco products. A licence was required to be issued within ten days of application. A licence could be obtained after goods had arrived at the border. For imports of alcoholic beverages, Kyrgyzalco was the sole agency with responsibility for determination of the licence application. Licenses were required to be granted unless the application for a licence was not complete or the information contained therein was not reliable. Article 8 of the Law on Licensing provided that foreign legal entities or individuals, as well as individuals without citizenship were entitled to receive licences on the same conditions and pursuant to the same procedures as legal entities and individuals of the Kyrgyz Republic. Whenever a licence application was refused, reasons for the refusal were required to be provided to the applicant in writing. In the case of a refusal, applicants had a right of appeal to a Court, per Article 18 of the Law on Licensing of 3 March 1997.
58. In response to further questions concerning the procedure for granting of an import licence, he added that none of the items subject to import licensing were restricted as to the quantity or value of those imports. Licence applications were normally approved in about 1 week. In urgent cases an application could be approved in a shorter time. Applications for an import licence could only be refused in an application did not meet the stipulated criteria. The reasons for refusal were required to be provided in writing to the applicant. A decision to refuse to grant a licence could be appealed to the Ministry which refused the application and further appealed to an independent Court. All persons, firms and institutions were eligible to apply for an import licence under the system of the Kyrgyz Republic. There was no system of registration of persons or firms permitted to engage in importation. The licence was valid for up to six months, or one year in the case of importers having long-term relationships with foreign exporters. The licence could be renewed for a further period of six months. There was no penalty for non-utilization of the licence or a portion of a licence. The licence was not transferable. The current fee to obtain an import license was som 1000 (approximately US$56.00). He provided members of the Working Party with a detailed analysis of the cost of provision of the service recovered by the fee in Attachment A.IV to document WT/ACC/KGZ/13. In his view that fee reflected the cost of services rendered in conformity with Article VIII of the GATT 1994.

59. Some members of the Working Party asked whether the import licensing would be brought into conformity with the Agreement on Import Licensing. In response, the representative of the Kyrgyz Republic stated that the Government of the Kyrgyz Republic was in the process of drafting regulations to establish new import licensing procedures in conformity with WTO requirements, including the Agreement on Import Licensing. That Regulation had been passed by Parliament on 8 June 1998 and was already in force.

60. The representative of the Kyrgyz Republic confirmed that the Kyrgyz Republic would, from the date of accession, eliminate and shall not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreements. He added that the special import licenses listed in items 10 11, 18 and 19 of Table 5 would be issued in conformity with the provisions relating to automatic licensing in the Agreement on Import Licensing Procedures and would not restrict the right to import these products into the Kyrgyz Republic or in any way discriminate against imported products. He further confirmed that the legal authority of the Government of the Kyrgyz Republic to suspend imports and exports or to apply licensing requirements that could be used to suspend, ban or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO, in particular Articles XI, XII, XIII, XIX, XX and XXI of the GATT 1994,
and the Multilateral Trade Agreements on Agriculture, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade. The Working Party took note of these commitments.

Customs valuation

61. In response to requests for information concerning the customs valuation system, the representative of the Kyrgyz Republic stated that the Customs Code put into effect on 1 October 1997 provided for six methods to determine the customs value according to the WTO Customs Valuation Agreement. He further added that the Kyrgyz Republic did not have any import reference prices in place and any such measures would not be reintroduced after accession.

62. The representative of the Kyrgyz Republic also stated that the rules to determine the customs value contained in the Customs Code which came into force on 1 October 1997 were largely in compliance with the WTO requirements. Amendments “On Changes and Amendments to the Customs Code of the Kyrgyz Republic” adopted on 19 June 1998 had brought the Customs Code valuation rules into full conformity with the WTO. He further stated that subsidiary legislation to fully implement the Interpretative Notes contained in Annex I to the Agreement on Implementation of Article VII of the GATT 1994 had been submitted to the State Customs Committee and would enter into force on 1 September 1998.

63. The representative of the Kyrgyz Republic indicated that the Kyrgyz Republic would fully apply the WTO provisions concerning customs valuation from the date of accession, including, in addition to the Agreement on the Implementation of Article VII of the GATT 1994, the provisions for the Valuation of Carrier Media Bearing Software for Data Processing Equipment and the provisions on the Treatment of Interest Charges in Customs Value of Imported Goods. He further confirmed that, as an international agreement, the provisions of the WTO Agreement on the Implementation of Article VII of the GATT 1994 would supersede domestic law after accession. He stated that upon accession, minimum import prices would not be applied for customs valuation purposes. The Working Party took note of these commitments.

Rules of origin

64. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had no country of origin marking requirement. A certificate of origin certified by an authorized governmental body in the country of origin was required for all imported goods. Pursuant to the Customs Code, origin was determined by methods specified in the Kyoto Convention Annex. Once the Customs Code was passed by Parliament, the Kyrgyz Republic would require time to develop implementing regulations on the determination of origin. It was envisaged that the primary method used would be
the tariff shift method. The Customs Code did not define the list of operations that would be considered as sufficient to confer origin. No other specific implementing regulations or rules had been developed. He also added that the Kyrgyz Republic intended to adopt the rules of origin that were being developed in the WTO.

65. In response to further requests for information on the customs origin provisions of the Customs Code, the representative of the Kyrgyz Republic stated that Chapter 55 of the Customs Code provided for issuance of preliminary decisions on various issues including the country of origin. Assessments remained effective for three years. Implementing instructions describing the process in detail would be developed at a later stage. Chapters 58, 59 and 60 of the Customs Code provided that administrative actions taken by customs bodies could be appealed. The Customs Code also provided that goods that are wholly produced in a country are considered as originating in that country. A list of wholly produced goods was adopted from the Kyoto Convention Annex. The Customs Code provided for three methods of determining origin as specified in the Kyoto Convention Annex. However, the tariff shift method of determining origin was, at present, the only method in use. There were no regulations implementing the ad valorem or specific manufacturing or processing methods.

66. The representative of the Kyrgyz Republic confirmed that the Kyrgyz Republic would remedy any departures from full conformity with the WTO Agreement on Rules of Origin prior to its accession, and that by that time, the Kyrgyz Republic’s application of rules of origin for both MFN and preferential trade would be administered in conformity with the provisions of the Agreement. The Kyrgyz Republic would adopt the Harmonized Rules of Origin once finalized by the WTO in co-operation with the World Customs Organization. The Working Party took note of this commitment.

Pre-shipment inspection

67. In response to questions, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had no plans to introduce any pre-shipment inspection requirements; however, if such requirements were introduced, they would be consistent with the requirements of the Agreement on Pre-shipment Inspection. The Working Party took note of this commitment.

Anti-dumping, countervailing and safeguards

68. Some members of the Working Party expressed concern that both the current Customs Tariff Law in force and the proposed law departed from WTO rules on imposition of anti-dumping duties in several respects. These members requested that the legislation be amended so as to be WTO-consistent from the date of the Kyrgyz Republic’s accession to the WTO. In response, the representative of the Kyrgyz Republic stated that dumping, countervailing, and safeguard measures
would be governed by new laws currently being drafted in conformity with respective WTO agreements. Draft laws on dumping, countervailing, and safeguard measures were submitted in October 1997 to the Working Party.

69. Some members of the Working Party requested that the Government of the Kyrgyz Republic undertake a commitment that any anti-dumping, countervailing or safeguards measures would only be taken pursuant to legislation in conformity with the WTO Agreement on Subsidies and Countervailing Measures, the Agreement on Interpretation of Article VI of the GATT 1994, and the Agreement on Safeguards.

70. The representative of the Kyrgyz Republic stated that the Laws on Anti-Dumping, Safeguards and on Subsidies and Countervailing Measures would be adopted in October 1998. Any legislation in place at the time of accession or implemented in the future providing for the application of measures taken for anti-dumping, countervailing duty, or safeguard purposes would conform to the provisions of the WTO Agreements of Anti-Dumping, on Subsidies and Countervailing Measures, and on Safeguards. In the absence of such legislative authority in place at the time of accession, the Kyrgyz Republic would not apply measures for anti-dumping, countervailing duty, of safeguard purposes until legislation in conformity with the provisions of these WTO Agreements had been implemented. The Working Party took note of these commitments.

Export Regulation

Customs tariffs, fees and charges and internal taxes applied to exports

71. In response to requests for information the representative of the Kyrgyz Republic stated that there were no export duties.

72. The representative of the Kyrgyz Republic stated that like all CIS countries - a VAT was charged on exports destined for other CIS countries. The importing CIS country was required to grant the person who first sold the good a VAT credit in the amount of the VAT paid to the Kyrgyz Republic. VAT did not apply on exports to non-CIS countries. He recalled that amendments of the Tax Code provided for application of VAT to imports from CIS countries which applied the destination principle to their exports to the Kyrgyz Republic - in this context VAT would also not be applied to exports to CIS countries which applied the destination principle with regard to their exports to the Kyrgyz Republic. The VAT would be applied to exports in accordance with the destination principle as of 1 January 1999.

Export restrictions

73. The representative of the Kyrgyz Republic stated that with the exception of quantitative restrictions specified in an Agreement with the European Communities on Textiles, the Kyrgyz Republic maintained no quantitative export restrictions, nor
prohibitions on exports.

Export licensing

74. The representative of the Kyrgyz Republic informed members of the Working Party that export licences were required for the export of military arms and goods; explosives; nuclear materials and technology for military use; virulent poisons; narcotics (including those used in pharmaceuticals) and psychotropic substances; works of art and antiquities having historical, cultural or scientific value; ferrous, precious and rare-earth metals extracted and produced in the Kyrgyz Republic and their fragments; and rare types of raw materials of vegetable or animal origin having pharmacological applications. Except for non-ferrous metal fragments and waste, the licensing requirement was not intended to restrict the quantity or value of the exports of these goods, but rather to protect public health, consumer welfare, the environment, national patrimony and national security. He further noted that licensing was mandatory for textile exports to the European Communities.

75. In response to requests for more information concerning the requirement to obtain a licence for the exportation of ferrous, precious and rare-earth metals extracted and/or processed in the Kyrgyz Republic, the representative of the Kyrgyz Republic stated that any manufacturing/mining entity or intermediary entity (regardless of form or ownership) was eligible to apply for such a licence. The licence application was required to be submitted to the Ministry of Industry and Trade. When applying for an export licence, an applicant must submit: (i) an application on a standard form; (ii) a copy of the export contract; (iii) a copy of the applicable bilateral agreement on deliveries, if any; and (iv) a short description of how the transaction benefits the Kyrgyz Republic. Upon receipt of a complete application, a licence would be granted automatically within 20 days. The licence was non-transferable. Once the licence was granted, the recipient must provide it to the State Customs Inspectorate together with a customs declaration. A “single shipment” licence must be used within six months from the date of issuance. A “multiple shipment” licence must be used within 12 months.

76. The representative of the Kyrgyz Republic stated that the following non-ferrous metal and wastes and scrap thereof, and HS tariff number, were subject to export licensing:

<table>
<thead>
<tr>
<th>HS Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7404</td>
<td>Copper wastes and scrap</td>
</tr>
<tr>
<td>7503</td>
<td>Nickel wastes and scrap</td>
</tr>
<tr>
<td>7802</td>
<td>Lead wastes and scrap</td>
</tr>
<tr>
<td>7602</td>
<td>Aluminum wastes and scrap</td>
</tr>
<tr>
<td>7902</td>
<td>Zinc wastes and scrap</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>8002</td>
<td>Tin wastes and scrap</td>
</tr>
<tr>
<td>8101</td>
<td>Wolfram and articles thereof, including wastes and scrap</td>
</tr>
<tr>
<td>2611</td>
<td>Tungsten ores and concentrates</td>
</tr>
<tr>
<td>8102</td>
<td>Molybdenum and articles thereof, including wastes and scrap</td>
</tr>
<tr>
<td>2613</td>
<td>Molybdenum ores and concentrates</td>
</tr>
<tr>
<td>8103</td>
<td>Tantalum wastes and scrap</td>
</tr>
<tr>
<td>8104</td>
<td>Magnum wastes and scrap</td>
</tr>
<tr>
<td>8105</td>
<td>Cobalt wastes and scrap</td>
</tr>
<tr>
<td>8106</td>
<td>Bismuth wastes and scrap</td>
</tr>
<tr>
<td>8107</td>
<td>Cadmium wastes and scrap</td>
</tr>
<tr>
<td>8108</td>
<td>Titanium wastes and scrap</td>
</tr>
<tr>
<td>8109</td>
<td>Zirconium wastes and scrap</td>
</tr>
<tr>
<td>8110</td>
<td>Antimony and articles thereof, including wastes and scrap</td>
</tr>
<tr>
<td>2617</td>
<td>Antimony concentrates</td>
</tr>
<tr>
<td>2825</td>
<td>Antimony oxides</td>
</tr>
<tr>
<td>8111</td>
<td>Manganese wastes and scrap</td>
</tr>
<tr>
<td>8112</td>
<td>Rhenium and articles thereof, including wastes and scrap</td>
</tr>
<tr>
<td>8112</td>
<td>Chrome, germanium, vanadium, beryllium and niobium wastes and scrap</td>
</tr>
</tbody>
</table>

77. Some members of the Working Party requested information on Cabinet of Ministers Resolution No. 56 of 6 February 1996. They noted that the Resolution provided for licensing requirements and controls on exports, including textile goods, wearing apparel, silicon carbide, ammonium nitrate, and raw aluminum, required by bilateral agreements between the Russian Federation and the European Communities, and for general exports of precious stones, precious metals, articles containing precious metals, and precious metal waste. The representative of the Kyrgyz Republic stated that the restrictions set out in that draft Resolution would come into force only if the Kyrgyz Republic became a member of the Customs Union. The goal of the draft legislation would be to protect electric transmission and communication lines and ferrous and non-ferrous metal items from theft by persons desiring to resell those metals to scrap metal processing firms. In the view of the Government of the Kyrgyz Republic, the measures were justifiable on national security grounds.

78. In response to further questions concerning the reason for the requirement to obtain export licences for exports of non-ferrous metal and wastes and scrap thereof, the representative of the Kyrgyz Republic stated that when an application for an export licence was received, the Kyrgyz Republic reviewed the prices of the products to be exported. While the export licences were not refused on the basis of low prices, recommendations were made to the applicant to ensure that prices
were comparable to world market prices. He confirmed that no sanctions were imposed on exporters who continue to export these products that were considered to be below world market prices. The Kyrgyz Government did not consider the export of these products at low prices in its decision to grant or renew an enterprise’s licence to purchase or sell fragments and waste of non-ferrous and ferrous metals. Some members of the Working Party remained concerned that the export licensing regime applied to the items listed in paragraph 76 above could be discretionary, and be employed to protect domestic industry.

79. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would ensure that its system of export licensing was in conformity with the requirements of Article XI of the GATT 1994 as from the date of accession. The Working Party took note of this commitment.

Export subsidies

80. In response to questions, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had no policies or measures to finance exports. Certain limited export promotion programmes were maintained. The Kyrgyz Republic imposed no export performance requirements. Drawback on goods imported for completion, assembly, or processing for re-export must be claimed within a time limit set by the State Customs Inspectorate and the processed goods must be exported within two years after the importation of the concerned items. He further added that the Customs Code also exempted from duties and taxes goods re-exported within six months of importation. If the goods were not re-exported within six months, customs duties, taxes and interest were collected on the goods.

81. Some Working Party members noted that the 1991 Foreign Investment Law granted profit tax exemptions for Kyrgyz legal entities for two to five years based on foreign participation, depending on the nature of its activity. After the expiration of the profits tax exemption, varying reductions in the applicable profits tax are provided for under certain circumstances, including a 25 per cent reduction if at least 50 per cent of the entity’s production is exported. In addition, the Directorate of the Bishkek Free Economic Zone (Information Bulletin No. 2) provides exemptions from lease payments for up to 15 years for establishments which (i) are engaged in export-oriented and import substitution production activities; (ii) use domestic raw materials and spare parts; and (iii) employ a certain number of people per year. In addition, export-oriented production is exempt from quantitative restrictions. Some Working Party members sought a commitment from the Kyrgyz Republic to eliminate these measures, which constituted prohibited subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures.

82. In response to further questions, the representative of the Kyrgyz Republic stated that certain lease payment provisions of the Bishkek Free Economic Zone provide an incentive for import substitution and exportation. However, the
representative of the Kyrgyz Republic stated that there were no explicit restrictions on the sourcing of imports for production in the free economic zones. An enterprise (i) was not prohibited or limited in its ability to import products used in or related to its local production and (ii) was not required to use local products as input for its production. Some members of the Working Party stated that the tax incentives based on export performance provided by Article 24 of the previous Foreign Investment Law of June 1991 should be eliminated prior to accession to the WTO. In response, the representative of the Kyrgyz Republic stated that the new Foreign Investment Law of September 1997 did not provide any tax incentives. He added that the new foreign investment law provided that the tax incentives based on export performance provided by Article 24 of the previous Foreign Investment Law of June 1991 could no longer be offered to new investors in the Kyrgyz Republic. Firms that had been granted the benefit of those tax incentives based on export performance provided by Article 24 of the previous Foreign Investment Law of June 1991 could continue to use them until the expiration of their period of validity. Any attempt to terminate those incentives prior to their expiration would cause significant problems for existing foreign investors. He confirmed that his Government did not intend to apply any export subsidies to industrial goods.

83. The representative of the Kyrgyz Republic stated that the lease payment exemption for export-oriented and import substitution production provided for the Bishkek Free Economic Zone and other such free zones which could be considered to conflict with the requirements of the Agreement on Subsidies and Countervailing Measures would be eliminated by 31 December 2002. He further stated that the Regulations No. 376 On the Amendments to Certain Decisions of the Government, which will have the effect of prohibiting any and all such export performance and import substitution incentives within free economic zones, in conformity with the requirements of the Agreement on Subsidies and Countervailing Measures had been adopted and implemented as of 23 June 1998, prior to the Kyrgyz Republic’s date of accession. The Working Party took note of these commitments.

84. The representative of the Kyrgyz Republic confirmed that no government or public body within the territory of the Kyrgyz Republic provides any other subsidy which was inconsistent with the provisions of Article 3 of the Agreement on Subsidies and Countervailing Measures. He stated that his Government would terminate, by 31 December 2002, all incentives granted under prior foreign investment laws which had retained their validity following enactment of the Foreign Investment Law of September 1997. The Working Party took note of these commitments.
Internal Policies Affecting Trade in Goods

Industrial policy, including subsidies

85. In response to requests for information, the representative of the Kyrgyz Republic stated that the Government had a general policy to create a broad-based market economy and to privatize all government-owned commercial enterprises and assets. The Government also had a general policy to attract foreign investment into the country and to involve, as far as possible, foreign investors, technology and know-how in all sectors of the economy for the purpose of furthering the creation of a broad-based market economy and the privatization of government-owned commercial enterprises and assets. The Government did not intend to maintain any policies which would distort trade; nor protect any industry, market or business entity.

86. Some members of the Working Party asked whether the Kyrgyz Republic would maintain subsidies prohibited by Article 3 of the Subsidies and Countervailing Measures Agreement upon its accession to the WTO and whether it would have recourse to Article 29 of the same Agreement to justify such subsidies. In response, the representative of the Kyrgyz Republic stated that, excepting other subsidies described above, the only subsidies had been certain tax exemptions provided by the Foreign Investment Law of 1991. The new foreign investment law which eliminated tax exemptions based on export performance had been adopted in September 1997.

Technical Barriers to Trade

87. In response to requests for information, the representative of the Kyrgyz Republic stated that standards and certification requirements in the Kyrgyz Republic were not intended to distort or establish technical barriers or to disrupt trade. The object of such standards and certification requirements were to (i) ensure the safety and/or quality of goods, works and services, (ii) to protect the environment and the health, life, work and property of citizens, (iii) to ensure uniformity of measurement and the technical compatibility and interchangeability of products; and (iv) to preserve all types of resources. Both domestic-origin and foreign-origin goods were equally subject to the same requirements on standards and certification. Importers of goods subject to obligatory certification of conformity with national safety requirements and other technical requirements were required to present a certificate at the border stating that the goods met the applicable requirements, along with the import declaration and other supporting documents. If an international agreement to which the Kyrgyz Republic is a party provides for other rules other than those stipulated by the legislation of the Kyrgyz Republic on standardization then the rules of the international agreement would prevail.

88. The representative of the Kyrgyz Republic added that the State Directorate
on Standardization and Metrology under the Cabinet of Ministers (Kyrgyzstandard) was the agency responsible for developing, realizing and administering the Kyrgyz Republic’s policy on technical regulations, standards and certification requirements. The Cabinet of Ministers Resolution No. 260 of 28 April 1994, as amended by Resolution No. 146 of 5 April 1996, listed seven general product categories that require certification prior to sale, without regard to the origin of the concerned products. For health-related products, sanitary/hygiene test results were used as the basis for granting the certificate of compliance. Kyrgyzstandard was responsible for accrediting certification and testing bodies. As of 1 January 1998, there were 11 accredited certifying bodies and 19 accredited testing laboratories in the Kyrgyz Republic. In addition, the four regional branches of Kyrgyzstandard were also authorized to conduct certification procedures. In accordance with the Agreement On a Uniform Policy on Standardization, Metrology and Certification, which was executed by all CIS countries, Kyrgyzstandard accepted certificates issued by any accredited institution of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan.

He further added that it was possible for foreign companies to be accredited as certification bodies or testing laboratories by Kyrgyzstandard; however, no such companies had yet applied. The requirements for accreditation and the procedures to be followed were the same for both domestic and foreign certification bodies. In response to requests for further information, the representative of the Kyrgyz Republic stated that the Law “On Protection of Consumers’ Rights”, set mandatory requirements for products which posed a substantial potential threat to the environment or the safety, lives and/or health of citizens. Kyrgyzstandard would issue a certificate of compliance and a licence to mark the concerned goods with a “mark of compliance.” Sale or import of such goods in the Kyrgyz Republic without such prior certification and marking was prohibited. Goods imported for personal use did not require certification. Other requirements (indications) were voluntary. Goods subject to voluntary certification could be certified on the basis of an agreement between the applicant and Kyrgyzstandard. Voluntary certification could also be performed by any body authorized by Kyrgyzstandard to do so. The method of voluntary certification was chosen by the applicant from those accepted by Kyrgyzstandard. In response to requests for information on the process for obtaining a certificate and mark of compliance the representative of the Kyrgyz Republic stated that the issuance of a certificate and mark of compliance required: (i) the filing of an application with the responsible ministry or State body; (ii) a review of the application, including the choice of certification method; (iii) the identification and selection of samples and their testing; (iv) a review of the test results and a comparison with the applicable standards; and (v) the issuance of a certificate of compliance and a licence to use the mark of compliance. It was generally possible for the certifying body to accept the declaration of a manufacturer or producer, but the acceptance of a declaration was subject to the discretion of the Ministry.
or State body responsible for certifying the compliance of the goods. Pursuant to document KMS40.03-97 “System of Certification Kyrgyz Standard Procedure for Certification of Products”, the certifying body would accept manufacturers’ declarations of compliance.

89. In response to requests for information on the bringing of standards used in the Kyrgyz Republic into compliance generally accepted international standards, the representative of the Kyrgyz Republic stated that Kyrgyzstandard was currently a corresponding member of the International Standards Organization (ISO). The Kyrgyz Republic was in the process of moving from the use of GOST-standards to the use of international standards. The Kyrgyz Republic was a member of the CIS Inter-Governmental Council on Standardization, Metrology and Certification, which was recognized by ISO as a regional organization moving towards eventual implementation and usage of international standards. A timetable for the change-over had not been finalised. The Kyrgyz Republic had also adopted over 120 standards of the International Electrotechnical Commission (IEC). The acceptance of certificates issued by foreign certification bodies was generally dependent on the existence of a bilateral or multilateral agreement on the matter. The Government was currently in the process of negotiating bilateral agreements on standards with Austria, the People’s Republic of China, Germany, India, Iran and Turkey.

90. The representative of the Kyrgyz Republic further added that accreditation of a certification and testing organization was performed by Kyrgyzstandard and other State bodies authorized to conduct mandatory certification within their area of competence (for example, the Kyrgyz Ministry of Construction and Architecture was responsible for certifying the compliance of construction materials). An applicant must provide Kyrgyzstandard with its organizational documents, the desired scope of accreditation, a brief description of its legal status, as well as a description of its organizational structure. An organization applying for an accreditation must: (i) be independent and unbiased; and (ii) be sufficiently competent, i.e. possess sufficient means, qualified professionals, etc.

91. In response to requests for information on the fee structure for certificates, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had conducted a detailed assessment of all fees connected with issuance of certificates (including the certificate of compliance, certificate of origin, phytosanitary certificate, and veterinary certificate) to determine whether or not such fees were in conformity with the WTO requirements, especially Article VIII of the GATT 1994. He provided detailed analysis supporting the following report:

- **Phytosanitary Certificate**: the current costs of issuing a Phytosanitary Certificate (minimum fee som 70, maximum fee som 223) exceeded the fee currently charged (minimum fee som 36, maximum fee som 265) for such a certificate.
Accordingly, the Kyrgyz Republic considered that the current fee structure was in full conformity with Article VIII. In response to requests by some members of the Working Party, the Kyrgyz Republic provided the list of goods (using HS Code) subject to Phytosanitary Certificates along with the fees charged for each category. This certificate was issued by the Ministry of Agriculture;

- **Veterinary Certificate**: the current costs of issuing the Veterinary Certificate (minimum fee som 250, maximum som 3,272) exceeded the fee currently charged (minimum fee som 30, maximum fee som 500) for such a certificate. Accordingly, the Kyrgyz Republic considered that the current fee structure was in full conformity with Article VIII. In response to requests by members of the Working Party, the Kyrgyz Republic provided the list of goods (using HS Code) subject to Veterinary Certificates. This certificate was issued by the Ministry of Agriculture;

- **Certificate of Origin**: currently the following fees are charged for obtaining the certificate of origin: (a) CIS countries - som 100 for natural persons and som 300 for legal entities; and (b) non-CIS countries - som 200 for natural persons and som 400 for legal entities. The Kyrgyz Republic recognized that the fee structure was in violation of Article I and Article VIII of the GATT 1994. This certificate was issued by the Chamber of Commerce and Industry Regulations to bring this fee into conformity with the requirements of the WTO Agreement entered into force on June 20 1998 (No. 368 of 1998);

- **Certificate of Compliance**: the current cost for the Certificate of Compliance ranges from approximately US$50 to US$1,390 depending on the type of products and required tests. The representative of the Kyrgyz Republic provided detailed information of various schemes for testing and the cost of using different schemes. The Kyrgyz Republic considered that the current cost of issuing the Certificate of Compliance was in conformity with Article VIII of the GATT 1994 and reflected the cost of services rendered. In response to requests by some Working Party members, the Kyrgyz Republic provided a list (using HS Code) of all goods requiring a Certificate of Compliance).

91bis. The representative of the Kyrgyz Republic stated that, as of the date of accession the fee for issuing the certificate of origin would be som 400 (reflecting the approximate costs of issuing a certificate of origin) for all legal and natural persons...
in conformity with Articles I and VIII of the GATT 1994, and that any changes in the fee structure would be consistent with the provisions of WTO Agreements, in particular, Articles I and VIII of the GATT 1994. The Working Party took note of this commitment.

92. Some members of the Working Party asked whether any difficulties were foreseen in the application of the Agreement on Technical Barriers to Trade upon accession. In response, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic does not foresee difficulties in the application of the TBT Agreement. He noted that, at present, draft standards, technical regulations, and conformity assessment procedures were not published for public comment. There were at present no formal notice requirements, although within the CIS, regulations have been developed that operate like notice provisions. The Law on Standardization and the Law on Certification were being amended to meet the TBT requirements for publication of draft standards and technical regulations. Kyrgyzstandard published a quarterly periodical entitled the Information Bulletin of Kyrgyzstandard where such notices will be published. Under Resolution No. 12 of 6 January 1997 the Cabinet of Ministers of the Kyrgyz Republic officially established the Information Centre of the State Inspectorate on Standardization and Metrology (Kyrgyzstandard) as the Inquiry Point for standards and sanitary and phytosanitary measures in the Kyrgyz Republic. This Inquiry Point met WTO requirements, it contained all adopted and proposed standards and conformity assessment procedures and information concerning the membership and participation of the Kyrgyz Republic in regional and international standardizing bodies as well as in bilateral and multilateral arrangements. The Inquiry Point received questions and sent responses by telephone, mail, fax and e-mail. Kyrgyzstandard had hired employees, fluent in Russian and English, who would receive and transmit information in English. To the extent that resources allowed, Kyrgyzstandard would participate in international standards activities. The Kyrgyz Republic was a corresponding member of the ISO. It was also a member of the CIS Inter-Governmental Council on Standardization, Metrology and Certification. This body was recognized by the ISO as a regional organization moving towards the eventual implementation and usage of international standards.

93. The representative of the Kyrgyz Republic stated that the Law on Making Amendments and Supplements to Certain Legislative Acts which was fully consistent with the WTO Agreement on Technical Barriers to Trade had been adopted on 8 June 1998. The Law on Certification had been implemented on 17 June 1998.

94. The representative of the Kyrgyz Republic stated that his Government would apply the WTO Agreement on Technical Barriers to Trade from the date of accession without recourse to any transition period. He further confirmed that, in particular, the Kyrgyz Republic would apply the same controls, criteria, and rules regarding technical regulations, standards, certification, and labelling requirements to imported and domestic goods, and would not use such regulations to restrict
imports. The Kyrgyz Republic would ensure that its technical regulations, standards, certification and labelling requirements are not applied to imports in an arbitrary manner, in a way that discriminates between supplier countries where the same conditions apply or as a disguised restriction on international trade, and would also ensure that from the date of accession its criteria for granting licenses or securing required certification for imported products will be published and available to traders, and that its sanitary and other certification requirements are administered in a transparent and expeditious manner. The Kyrgyz Republic would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments.

Sanitary and phytosanitary measures

95. The representative of the Kyrgyz Republic stated that it was the policy of the Government to develop and maintain sanitary standards solely for the purpose of protecting the health of human, animal and plant life and not for the purpose of creating technical barriers to foreign products or for protecting domestic producers. Development of sanitary standards was the responsibility of several technical committees in cooperation with the Ministry of Health. The consent of the Ministry of Health was required before Kyrgyzstandard could issue any standard constituting a sanitary measure. He further explained that Cabinet of Ministers Resolution No. 260 of 28 April 1994, as amended by Resolution No. 146 of 5 April 1996, listed seven general product categories that require certification prior to sale, without regard to the origin of the concerned products. All covered products required certification of safety indicators, sanitary and environmental reasons. For health-related products, sanitary/hygiene test results were used as the basis for granting the certificate of compliance. Product categories subject to sanitary measures were included in this list. Any accredited certification body could certify a product as being in conformity with the applicable sanitary requirements if the required sanitary/hygiene tests had been performed by a competent testing laboratory and the required test results obtained. He provided the Working Party with a list of goods subject to phytosanitary and veterinary certificates together with corresponding fees in document WT/ACC/KGZ/16.

96. The representative of the Kyrgyz Republic further added that importers of goods subject to sanitary and/or phytosanitary measures were required to present a certificate at the border stating that the goods met the applicable requirements, along with the import declaration and other supporting documents. If the container or packaging was damaged, or was not accompanied by the required documentation, the product could not be cleared through customs.

97. Some members of the Working Party requested information on whether the Kyrgyz Republic’s procedures for adopting trade measures relating to concerns
with human, animal and plant health were in conformity with the requirements of the SPS Agreement. In response, the representative of the Kyrgyz Republic stated that the appropriate ministries and State bodies (particularly, the Ministry of Health, the Ministry of Agriculture and Food, the Ministry of Environmental Protection, and the Veterinary-Sanitary Supervisory Office) had reviewed the provisions of the SPS Agreement and had brought their respective procedures into conformity with the SPS Agreement. The amendments to the Law on Veterinary (implemented on 12 June 1998) and the Law on Plant Quarantine (implemented on 12 June 1998) necessary to implement the provisions of the SPS Agreement were provided to the Working Party.

98. Some members of the Working Party asked whether proposals for SPS measures were published in advance, and whether there was an opportunity for public comment by interested parties, both domestic and foreign. They also asked whether there was a requirement to conduct risk assessments prior to the adoption of SPS measures, including a requirement that such measures be based on scientific evidence. In response, the representative of the Kyrgyz Republic said that the Amendments to the Law on Plant Quarantine and the Law on Veterinary (both enacted on 2 June 1998) provided that notifications on draft developed phytosanitary measures significantly affecting trade, if not substantially the same as international standards, guidelines and recommendations, or if international standards, guidelines and recommendations do not exist, shall be published at an early stage in such a manner as to enable interested parties to make their comments and suggestions. He also stated that draft amendments to the Law on Plant Quarantine and the Law on Veterinary require that risk assessments be employed and that SPS measures be based on scientific evidence.

99. Some members of the Working Party asked whether the sanitary and phytosanitary standards in the Kyrgyz Republic were in conformity with international standards, in particular those developed by the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention. In response, the representative of the Kyrgyz Republic stated that the appropriate ministries and State bodies (particularly, the Ministry of Health, the Ministry of Agriculture and Food, the Ministry of Environmental Protection, and the Veterinary-Sanitary Supervisory Office) had been conducting comparisons of their standards with international standards through the Eurasian Organization on Standardization, and were engaged in the necessary work to ensure the harmonization of their standards in conformity with the SPS Agreement.

100. The representative of the Kyrgyz Republic said that the Government was currently considering draft Regulations “On measures for transition to international standards and improving the order of using technical regulations” which set out the program of work required to harmonize Kyrgyz sanitary and phytosanitary standards
with international standards in 1999. The Kyrgyz Republic would report annually on progress in the work on harmonization until their standards were in conformity with WTO requirements. The Working Party took note of this commitment.

101. Some members of the Working Party expressed concern that Cabinet of Ministers Resolution No. 260 required that safety certificates be obtained for imports of “agricultural and food industry products”. They requested details of the scientific evidence or risk assessments upon which Resolution No. 260 was based. In response, the representative of the Kyrgyz Republic stated that Resolution No. 260 was based on the evaluation of the possibility of entry of pests and diseases and potential biological consequences. Certification requirements for items listed in Resolution No. 260 were based on scientific studies and were imposed only to the extent necessary to protect human life and health and the environment.

102. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would apply the SPS Agreement in full upon accession. He noted that the Law On Amendments to the Law on Veterinary and the Amendments to the Law on Plant Quarantine were fully consistent with the SPS Agreement and were enacted on 2 June 1998.

103. The representative of the Kyrgyz Republic stated that from the date of accession to the WTO his Government would apply all its sanitary requirements consistently with the requirements of the WTO Agreements on Sanitary and Phytosanitary Measures and Import Licensing Procedures without recourse to any transitional arrangements. In particular, he stated that if a decision was taken to require notification of diseases other than those listed in OIE Classes A and B, any such decision would be taken in conformity with the requirements of the Agreement on Sanitary and Phytosanitary Measures. He added that the Kyrgyz Republic would not require additional certification or sanitary registration for products which have been certified as safe for human use and consumption by recognized foreign or international bodies, and the Kyrgyz Republic would ensure that from the date of accession its criteria for granting prior authorization or securing the required certification for imported products would be published and available to traders. He confirmed that sanitary and other certification requirements in the Kyrgyz Republic were administered in a transparent and expeditious manner, and that his Government would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments.

*Trade Related Investment Measures (TRIMs)*

104. Some members of the Working Party noted that bids to purchase State owned assets were scored according to a number of factors. Included among the factors considered was the commitment by the bidder “to maintain certain employment levels”. They asked whether this requirement was inconsistent with obligations
in the TRIMs Agreement. In response, the representative of the Kyrgyz Republic stated that giving weight to a bidder’s willingness to make a commitment to maintain a certain employment level did not contradict the TRIMs Agreement. There was no trade-related aspect imposed by the State on the buyer in connection with this commitment. The State was currently the major stock-holder in these entities, and in that role could require a potential purchaser to maintain certain employment levels. Furthermore, a requirement to maintain employment levels did not mean that a buyer was required to use only local labour. The requirement was imposed on the buyer for the purpose of avoiding de-stabilizing simultaneous mass lay-offs during an initial period of transition and mass privatization. This requirement was phased out within a limited time after the transaction. In his view nothing in the arrangements violated the TRIMs Agreement.

105. Following questions in relation to the compatibility of certain aspects of the Bishkek Free Economic Zone with the requirements of the TRIMs Agreement, the representative of the Kyrgyz Republic stated that the lease payment which required the employment of a certain number of people per year was not TRIMs inconsistent, because the TRIMs Agreement referred only to products. The lease payment conditioned on use of domestic raw materials and spare parts could be TRIMs inconsistent and would be eliminated upon accession to the WTO. The representative of the Kyrgyz Republic stated that the Amendments to the Regulations on Free Economic Zones which would be in conformity with the requirements of the TRIMs Agreement had been adopted on 19 June 1998 (No. 368). By the date of accession to the WTO the Kyrgyz Republic would ensure that the operation of the free economic zones would be WTO-consistent.

106. The representative of the Kyrgyz Republic stated that from the date of accession, the Kyrgyz Government would not maintain measures that were not in conformity with the Agreement on Trade-Related Investment Measures. The Working Party took note of this commitment.

State-trading practices

107. Some members of the Working Party noted that the Kyrgyz Republic had earlier described enterprises that enjoyed natural monopolies. They asked whether the trade activities of those enterprises were State-trading in terms Article XVII of the GATT 1994 of Article VIII of the GATS. In response, the representative of the Kyrgyz Republic stated that the Government of the Kyrgyz Republic had reviewed the operations, legal status and privileges of the listed natural monopolies to determine whether they should be notified as State-trading entities within the meaning of Article VIII of the GATS or Article XVII of the GATT. If the Government determined that an entity fell within the definition of a State-trading enterprise, that entity would be notified as such to the WTO. At present, the Government had examined the following enterprises:
- Management Department of Kyrgyzrailroad (intra-republic passenger and goods transportation);
- Ministry of Communication (telecommunication services rendered to public);
- Kyrgyz Energy Holding Company (electric power and thermal energy);
- "Kyrgyzgas" (natural and liquefied natural gas);
- "Kyrgyzjilkommunsojuz" (thermal energy, water-pipe water and sewage);
- "Kyrgyzalco" (alcohol and alcohol products, other than beer);
and
- "Kyrgyztamekesi" (tobacco fermentation, manufacture of tobacco products, sale of fermented tobacco).

He further added that Kyrgyzpharmacia had no role whatsoever in the issuance of licenses and, therefore, would not be notified as a State trading company. Later, the representative of the Kyrgyz Republic stated that further examination of the State trading sector had revealed that State trading monopolies currently existed in the alcohol, tobacco, and electrical energy sectors: Kyrgyzalco (de jure), Kyrgyztamekesi (de jure), and Kyrgyz Energy Holding (de facto). He added that those enterprises would be notified to the WTO as State trading enterprises. In response, some members of the Working Party stated that Kyrgyzaltyn should also be notified as a state trading enterprise, because since 1994, that fully State owned enterprise had been the only producer, importer, or exporter of antimony. In response, the representative of the Kyrgyz Republic stated that although Kyrgyzaltyn had been the only, de facto, producer, importer, and exporter of antimony, the Kyrgyz Republic did not believe that this company fell under the definition of Article XVII of the GATT 1994. Kyrgyzaltyn did not have any exclusive or special rights or privileges in conducting foreign trade. Any person could apply for and obtain a license to export antimony. Licenses were not required for the import of antimony.

108. Concerning the tobacco sector, Kyrgyztamekesi was the sole provider of licences for the production of tobacco products in the Kyrgyz Republic. Any person could obtain a licence to engage in the production of tobacco products. Imported tobacco products were marketed freely in the Kyrgyz Republic, licenses were not required for the domestic distribution or sale of tobacco products.

109. The representative of the Kyrgyz Republic stated that concerning the alcohol sector, Article 8 of the Law on Licensing of 3 March 1997 stated that foreign legal entities or individuals, as well as individuals without citizenship should receive licenses on the same conditions and in the same procedure as legal entities and individuals of the Kyrgyz Republic, unless otherwise stipulated by legislative acts.
Currently, no legislative acts stipulated otherwise for licenses issued by Kyrgyzalco. Article 18 of the same law permitted license applicants to have judicial appeal. Any MFN or national treatment (Article III) violations may be appealed to the court by license applicants. Policy decisions with respect to any quantitative restrictions and prohibitions are made by the Government and not by Kyrgyzalco. The Kyrgyz Republic commits to ensure that the operations of Kyrgyzalco in the issuance of import and export licenses for alcohol and alcoholic products are administered in a manner consistent with WTO requirements.

110. Concerning the energy sectors, there were no prohibitions by the government on the export of oil products, natural gas, and liquefied gas. Currently, there were no firms (including Kyrgyzgasmunaizat) engaged in the exportation of oil products, natural, and liquefied gas, due to high domestic demand and insufficient supply. There were five privately-owned companies engaged in the importation of oil products: Lukoil Kyrgyzstan, Tyan-Shan Oil, Sato Petroleum, Datka, and Ekooil. In addition to Kyrgyzgasmunaizat which imported approximately 50 per cent of the natural gas and liquefied gas to the Kyrgyz Republic, a number of State companies (e.g. Kadamjai Antimony Group, Maili Suu Lamp Plant) were currently importing natural gas to meet their own demand. These State companies had their own contracts with Uzbekistan for importing natural gas and had a commercial contracts with Kyrgyzgasmunaizat to transport gas from Uzbekistan to the Kyrgyz Republic.

111. Some members of the Working Party requested further information on trade in the electrical energy sector. These members welcomed the recognition that although there were no de jure barriers to trade in electrical energy in the Kyrgyz Republic, there was a de facto monopoly in the hands of the Kyrgyz Energy Holding Company. In response, the representative of the Kyrgyz Republic stated that the production and sale of the electrical energy was carried out by Kyrgyz Energy Holding. There were no regulatory barriers to entry. Any person could apply for a licence for the generation, transmission, distribution, and sale of electrical energy. The draft regulations outlining the procedures, criteria, and requirements for obtaining such licences were currently being developed in accordance with the Law on Licensing of 3 March 1997. He noted that no applications for such licences had been submitted to the Licensor (the “State Energy Agency under the Cabinet of Ministers”). He added that electrical power was equally available to all firms and individuals in the Kyrgyz Republic. In general, the rates for households were lower than the rates for legal persons. There was no difference in the rates charged to (1) a legal person (without foreign ownership), (2) a legal person (fully or partially foreign-owned), and (3) a representative or branch office. Export prices of bartered electrical energy established with Uzbekistan and Kazakhstan were negotiated on an annual basis and depended upon the traded volume and conditions of the inter-governmental agreement. The volume and the commercial value of bartered goods were considered during negotiation.
112. Some members of the Working Party requested that the Kyrgyz Republic undertake a commitment that, upon accession to the WTO, all State trading enterprises would be eliminated. In response, the representative of the Kyrgyz Republic stated that Article XVII of the GATT 1994 authorized State trading activities. The Kyrgyz Republic was not prepared to undertake a commitment that State trading would be abolished in the alcohol and tobacco sectors.

113. The representative of the Kyrgyz Republic confirmed that his Government would apply its laws and regulations governing the trading activities of State-owned enterprises and other enterprises with special or exclusive privileges, as noted in paragraph 107 of this Report, in conformity with the relevant provisions of the WTO Agreement, and would abide by the provisions for notification, non-discrimination, and the application of commercial considerations for trade transactions for any enterprise whose activities were subject to Article XVII of the GATT 1994, the WTO Understanding on that Article, and Article VIII of the GATS. He further confirmed that the Kyrgyz Republic would notify any enterprise falling within the scope of Article XVII at the time of accession. The Working Party took note of these commitments.

**Free zones**

114. In response to requests for information on free zones operating in the Kyrgyz Republic, the representative of the Kyrgyz Republic stated that existing legislation and the Customs Code authorized the establishment of free economic zones, which offered special customs, tax, labour relations and procedural benefits to enterprises located within such a zone. Each free economic zone was required to be established by an act of Parliament. Specific benefits included: (i) exemption from the imposition of customs duties and other payments on foreign-origin goods entered into such a zone and intended for reexport; (ii) simplified border clearances; (iii) abolition of non-tariff restrictions on import and export; (iv) exemption from all taxes and charges (however, entities were required to pay the General Directorate an annual fee of 0.1 - 2 per cent of the proceeds generated from the sale of goods and services); (v) collective labour agreement and individual contracts; (vi) free circulation and use of foreign currency, including payments between legal entities and natural persons in the zone; and (vii) simplified entrance, departure and salary transfer abroad for foreign citizens. Four economic zones had been created by law, but only the Bishkek zone was operational. In response to that information, some members of the Working Party asked whether or not any free or free economic zones established in the future would be fully consistent with all WTO obligations relating to free and free economic zones.

115. The representative of the Kyrgyz Republic stated that the free zones and special economic zones authorized by the legislation described in paragraph 114 above were fully subject to the coverage of the commitments of the Kyrgyz Republic.
in its Protocol of Accession to the WTO Agreement and that the Kyrgyz Republic would ensure enforcement of its WTO obligations in those zones. In this regard, he confirmed that the Regulations on the Amendments to Certain Decisions of the Government had been adopted and implemented from 23 June 1998 by the date of accession to the WTO. In addition, goods produced in these zones under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of the Kyrgyz Republic, including the application of tariffs and taxes. The Working Party took note of these commitments.

**Government procurement**

116. In response to requests for information, the representative of the Kyrgyz Republic stated that in the past there was no specific law regulating government procurement practices. Each branch, ministry, agency, or other governmental body was free to utilize whatever method it desired to acquire required goods and services. Open competitive bidding was not required. Details of Government purchasing in recent years were provided to the Working Party in Tables 1-29 and 1-30 of Annex 1 of document WT/ACC/KGZ/3. He further added that as part of the reform process, the Law on State Procurement was adopted by the Parliament of the Kyrgyz Republic on 15 April 1997, enacted on 13 May 1997, and came into force on 1 June 1997.

117. In response to requests for information on the purchasing process under the law on government procurement, the representative of the Kyrgyz Republic stated that the law was based on the UNCITRAL Model Law on Procurement and required that procedures and criteria for the evaluation of bids be set forth in the solicitation documents issued for each procurement. The law required procuring entities to act in strict accordance with the applicable solicitation documents. Price, subject to any margin of preference applied pursuant to the law, was the only criterion unless the solicitation documents stated that the award will be based on other objective and quantifiable criteria. Alternative criteria must be specified in advance in the solicitation documents. The State Procurement Agency under the Cabinet of Ministers was established according to Presidential Decree No. 31 of 29 January 1997. This new central agency would control the application of the legal system, supervise the decisions of all purchasing organizations, monitor infringements of public law and settle disputes. Disputes could be pursued in the economic Court system; however, judicial redress was generally available only after the exhaustion of administrative remedies. He noted, however, that the following matters were not subject to judicial review:

- the selection of the method of procurement;
- the choice of a selection procedure;
- the limitation of procurement proceedings on the basis of
nationality;
- a decision by the procuring entity to reject all tenders, proposals, offers, or quotations;
- a refusal by the procuring entity to respond to an expression of interest to participate in request-for-proposal proceedings; and
- an omission of reference to laws and regulations in the solicitation documents.

118. In response to questions concerning whether procurement proceedings could be limited to domestic suppliers, the representative of the Kyrgyz Republic stated that Article 3(1) of the Law on State Procurement of Goods, Construction and Services permitted the Procuring Entity to exclude foreign suppliers from participation in the tender process. If foreign suppliers were included in the tender process, the Procuring Entity could not discriminate between or exclude different foreign suppliers of goods, works and services on the basis of nationality. If foreign suppliers were included in the tender process, consideration of their bids was required to be undertaken on the same basis as domestic suppliers, as provided in Article 3(6) of the Law on State Procurement of Goods, Construction and Services.

119. Some members of the Working Party asked that as part of its protocol accession commitments, the Kyrgyz Republic accede to the Government Procurement Agreement (GPA) and submit a schedule of commitments to the GPA Committee to initiate negotiations no later than three months after the date of accession to the WTO.

120. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would initiate negotiations for membership in the Government Procurement Agreement upon accession by tabling an entity offer at that time. He also confirmed that, if the results of the negotiations were satisfactory to the Kyrgyz Republic and the signatories of the Agreement, the Kyrgyz Republic would complete negotiations for membership in the Agreement by 31 December 1999. The Working Party took note of this commitment.

Trade in civil aircraft

121. Some members of the Working Party sought a commitment from the Kyrgyz Republic that it adhere to the WTO Agreement on Trade in Civil Aircraft at the time of accession. In response, the representative of the Kyrgyz Republic stated that his Government would consider the issue of joining the Plurilateral Trade Agreement on Trade in Civil Aircraft from 1 January 1999.

122. The representative of the Kyrgyz Republic confirmed that his Government would become signatory to the Agreement on Trade in Civil Aircraft on terms and conditions acceptable to it and the other parties to that Agreement within a reasonable period of time, but in no case later than the date on which it accords duty

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free treatment on the products covered by the Agreement to another country which has also become signatory to the Agreement. The Working Party took note of this commitment.

**Transit**

123. The representative of the Kyrgyz Republic stated that under the Customs Code, goods in transit through the territory of the Kyrgyz Republic were required to be declared to the State Customs Inspectorate (“SCI”) at the point of entry. Upon release from the entry point, the goods could move freely through the customs territory of the Kyrgyz Republic. No payment of duties or taxes was required on goods in transit. Goods classified as “goods in transit,” were required to remain unchanged except for normal wear and tear and should not be used for any economic purpose. The goods were required to be transported to their customs destination according to the routes and directions established by the SCI. If the goods were not presented to the SCI at the point of exit within a reasonable time, the carrier was responsible for the payment of all duties and taxes due as if the goods had been released into free circulation (the carrier may also be assessed an administrative penalty), unless the goods can be proved to have been exported, destroyed, or lost as a consequence of an accident or force majeure event.

**Policies Affecting Trade in Agricultural Products**

*Imports - description of the types of border protection maintained*

124. In response to requests for information, the representative of the Kyrgyz Republic stated that agricultural products were not subject to import licensing, or other restrictions such as quotas. Certain categories of agricultural products, specified in the list approved by Cabinet of Ministers Resolution No. 260 of 28 April 1994 were subject to certification, the purpose of which was to protect the health of Kyrgyz citizens by restricting the importation of poor quality products and raw material. Imported agricultural products were subject to rates of duty not exceeding ten per cent.

*Exports*

125. He further added that no licence was required to export agricultural products. There were no export tariffs, quotas, restrictions or prohibitions on the export of agricultural products. No export credits, export credit guarantees, export credit insurance, or other financial support or assistance was available for agricultural exports.


Internal policies - i.e. description of domestic support measures and of the budgetary expenditure and any revenue foregone involved in each of the domestic support measures in place

126. In response to requests for information, the representative of the Kyrgyz Republic stated that one of the basic aims of the Kyrgyz Republic’s policy in agriculture was to ensure the stability and growth of the supply of agricultural products to the domestic market. The Kyrgyz Republic was therefore pursuing a process of de-collectivization, reorganization and privatization of agricultural enterprises. Agricultural prices had been liberalized. From the end of 1995, all direct State financial support payments to all agricultural enterprises, had ceased - with the exception of 6 special animal breeding and 26 seed producing farms. He further noted however, that due to a lack of funds, even those enterprises did not receive regular financial support from the State. In partial replacement of direct State financial support, funds loaned to the Government of the Kyrgyz Republic by various international organizations and institutions were being used by the Government to provide low-interest credit facilities to agricultural enterprises to enable them to make purchases of key inputs, e.g., seeds, fertilizer, equipment, etc. The loans had annual interest rates of between 7 per cent and 12 per cent. The follow-on loans to the agricultural enterprises had rates of between 1 per cent and 5 per cent. In this connection he noted that annual interest rates charged by private commercial lenders, currently ranged between 50 per cent and 60 per cent.

127. In response to this information, some members of the Working Party asked whether the average tariff rate for agricultural products under the new tariff regime would exceed the existing 10 per cent average rate. In response, the representative of the Kyrgyz Republic stated that the average tariff rate for agricultural products under the proposed tariff regime would remain at about 10 per cent.

128. Some members of the Working Party asked whether the Kyrgyz Republic would enter a commitment to not require licences for export of agricultural products and to not impose tariffs or quotas on the export of agricultural products. In response, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic would bind its existing policies of not requiring licences for export of agricultural products and not imposing tariffs or quotas on the export of agricultural products, except in accordance with WTO Agreements.

129. The representative of the Kyrgyz Republic provided information on domestic support and export subsidies in documents WT/ACC/SPEC/KGZ/1/Rev.1 and WT/ACC/SPEC/KGZ/14. He stated that the Kyrgyz Republic would bind export subsidies at zero for agricultural products.

130. Some members of the Working Party asked whether the direct State financial support payments to the special animal breeding and seed producing farms would be stopped in the future. In response, the representative of the Kyrgyz Republic
stated that due to a lack of financial resources, the State currently provided no support to the above-mentioned farms. Breeding farms engaged in raising pedigree horses had been able to cover their costs without State assistance, but farms for the production of seeds were supported by the European Commission on Technical Issues. The assistance rendered in 1995 was an estimated som 15-20 million. In 1997 assistance for such farms was provided for in a government programme for sheep breeding.

131. The Kyrgyz Republic’s commitments on agricultural tariffs, on domestic support and export subsidies for agricultural products are reproduced in Part I of the Schedule of Concessions and Commitments of the Annex to the Protocol of Accession of the Kyrgyz Republic to the WTO.

Textiles regime

132. In response to requests for information on textile products, the representative of the Kyrgyz Republic stated that imported textile products were subject to rates of duty ranging from 0 to 30 per cent, and that textile products for children must comply with the applicable safety standards. This certification requirement was established by Cabinet of Ministers Resolution No. 520 of 2 December 1995 and applied equally to locally produced children’s textiles. The export of textile products was only to an Agreement between the Kyrgyz Republic and the European Communities on Trade in Textile Products (the EC Textile Agreement) imposing a quota on Kyrgyz-origin textiles into the European Communities. The EC Textile Agreement provided that the quotas did not take effect until 1 January 1997. According to the EC Textile Agreement, the Kyrgyz Republic could export textiles to the European Communities according to the following quotas (established as percentages of the total imports of such goods into the European Communities during the previous year):

- 0.35 per cent for category I goods;
- 1.20 per cent for category II goods; and
- 4.00 per cent for category III, IV and V goods.

VI. TRADE-RELATED INTELLECTUAL PROPERTY REGIME (TRIPS)

1. GENERAL

(a) Intellectual property policy

133. The representative of the Kyrgyz Republic stated that the intellectual property system of the Kyrgyz Republic was still undergoing a transition from the system inherited from the former Soviet Union. It was the policy of the Government to put into place a system of intellectual property protection modelled on the

134. Some members of the Working Party said that the Kyrgyz Republic should enter a commitment to apply fully the TRIPS Agreement by the date of its accession to the WTO.

(b) Responsible agencies for policy formulation and implementation

135. In response to requests for further information, the representative of the Kyrgyz Republic stated that on 4 March 1996, the President issued a decree, which established a central intellectual property agency, the State agency for Intellectual Property (also known as Kyrgyzpatent). This agency was responsible for the registration of patents, trademarks, industrial designs, copyrights and associated rights and breeding achievements (i.e. new varieties of plants and new breeds of animals). The Anti-monopoly Department within the Ministry of Finance was responsible for the administration and enforcement of the Anti-monopoly Law, which, at section 5, prohibited “unscrupulous competition”, defined as including the unauthorized use of trademarks, trade dress and confidential/proprietary business information.

(c) Membership of international intellectual property conventions

136. The representative of the Kyrgyz Republic stated that as of 20 February 1998
the Kyrgyz Republic was a member of the following multilateral treaties, agreements and conventions:

- Convention Establishing the World Intellectual Property Organization (WIPO);
- Paris Convention for the Protection of Industrial Property, (signed by the Kyrgyz Republic Prime-Minister 6 January 1994, deposited with WIPO 14 February 1994);
- Madrid Agreement Concerning the International Registration of Marks, (signed by the Kyrgyz Republic Prime-Minister 6 January 1994, deposited with WIPO 14 February 1994);
- The Patent Cooperation Treaty, (signed by the Kyrgyz Republic Prime-Minister 6 January 1994, deposited with WIPO 14 February 1994);
- Eurasian Patent Convention (the translation is being adjusted to conform to the official version of 1994);

Moreover, the Kyrgyz Republic was in the process of acceding to:

- Berne Convention for the Protection of Literary and Artistic Works;
- WIPO Copyright Treaty;
- Locarno Agreement Establishing an International Classification for Industrial Designs (ratified by the Jogorku Kenesh (Upper House) 26 January 1998, and submitted to the Chamber of the People’s Representatives for ratification);
- Strasbourg Agreement Concerning the International Patent Classification (ratified by the Jogorku Kenesh (Upper House) 26 January 1998 and submitted to the Chamber of the People’s Representatives for ratification);
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (ratified by the Jogorku Kenesh (Upper House) 26 January 1998 and submitted to the Chamber of the People’s Representatives for ratification);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (ratified by the Jogorku Kenesh (Upper House) 26 January 1998, and submitted to the Chamber of People’s Representatives for ratification).

In addition to these multilateral treaties, the Kyrgyz Republic had entered into bilateral agreements concerning industrial property with the following countries:

The Kyrgyz Republic has yet to take the necessary steps to accede to the following conventions for reasons unrelated to the substance of the conventions themselves:

- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention);
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonogram (Geneva Convention);
- WIPO Performances and Phonograms Treaty;
- WIPO Performances and Phonograms Treaty;
- Treaty on Intellectual Property in Respect of Integrated Circuits (Washington Agreement);
- Universal Copyright Convention.

Nevertheless the Law on Integrated Circuits entered into force on 10 April 1998. This Law provided the protection listed in the Washington Agreement and comports to the requirements of the TRIPS Agreement. Moreover, Chapter 55 of the Civil Code covers neighbouring rights as did the Law on Copyright and Neighbouring Rights adopted on 16 December 1997. These laws protect the right of performers, producers of phonograms and broadcasting organizations for a term of fifty years and are consistent with requirements of TRIPS.

137. The rights of producers of phonograms were protected by the Law “On Copyright and Neighbouring Rights”, which included basic provisions protecting the rights of these producers in compliance with applicable WTO requirements. The representative of the Kyrgyz Republic said that the Kyrgyz Republic was in the process of acceding to the Berne Convention on Protection of Literary and Artistic Works and had ratified the WIPO Copyright Agreement (1996) on 30 June 1998.

(d) Application of national and MFN treatment to foreign nationals

138. The representative of the Kyrgyz Republic noted that the policy of the Kyrgyz Republic regarding application of its intellectual property laws to foreign nationals was to accord national treatment to foreign citizens, stateless persons and foreign legal entities, unless such treatment was contrary to the provisions contained in other international agreements to which the Kyrgyz Republic was a party. The exception to this “national treatment policy” was that Article 17 of the adopted Patent Law and Article 6 of the Law On Trademarks, Service Marks and Appellations of Origin of Goods provide that applications filed by foreign legal entities and natural
persons residing outside of the Kyrgyz Republic shall be through a patent agent registered with State Agency on Intellectual Property (Kyrgyzpatent). Furthermore, the representative of the Kyrgyz Republic stated that in order to ensure national treatment, the State Agency for Intellectual Property (Kyrgyzpatent) was now reviewing all laws and regulations to ensure national treatment of foreign persons, for example, a uniform fee structure had been adopted by the Resolution on Fees for Intellectual Property, No. 346 of 12 June 1998.

139. Some members of the Working Party asked how the Kyrgyz Republic intended to comply with article 4 of the TRIPS Agreement. The representative of the Kyrgyz Republic said that with respect to the MFN principle, the Kyrgyz Republic intended to follow the requirements of Article 4 of the TRIPS Agreement.

(e) Fees and taxes

140. He noted that fees were charged for the processing of trade mark and service mark registration applications, patent applications for inventions and industrial designs and applications for the certification of utility models. Levies would also be collected for the extension of the term of a patent for an industrial design, a utility model, and for an extension of the registration of a trademark, service mark and the use of an appellation of the place of origin of the good. He noted in this regard that section 18 of the Temporary Regulations set different methods for calculating the application/registration and other fees to be paid by Kyrgyz citizens and CIS nationals (fees set in varying shares of the “minimum salary”) and those to be paid by non-CIS nationals (fees set in varying amounts of US Dollars). Pursuant to the Patent Law and the Law On Trademarks, Service Marks and Appellations of Origin of Goods, regulations were being developed which would provide for a unified method to accrue levies. However, prior to the adoption of this regulation, the rules of the temporary regulation on levies applied for the patenting of inventions, utility models, industrial designs, registration of trademarks and service marks (1994).

141. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would provide national treatment in respect of all fees charged for the granting of intellectual property rights by the time of accession to the WTO. In this respect, Resolution No.346 on Intellectual Property Fees which provided national treatment had been adopted on 12 June 1998.

2. SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

142. The representative of the Kyrgyz Republic noted that the basic legal recognition of intellectual property rights was established under several articles of the Civil Code. Article 22 of the Civil Code listed the objects of civil rights, namely protected undisclosed information and other results of intellectual activity, trade
names, trademarks and other means of individualization of goods. Article 53 of the Civil Code stated that a citizen can have the right to intellectual property as well as personal non-economic property rights. Article 22 specifically dealt with brands, trademarks and other means of distinctively marking articles. Article 53 of the Civil Code provided, inter alia, that a person may have authorship rights in scientific works, works of art, literature, inventions and other results of intellectual activity. Article 32 provides that a person has the exclusive right in and to the resultant objective expression of their intellectual activity, including any means created and used for identifying a legal entity, or a product, work, or service produced or offered by a physical person or legal entity (e.g., firm’s name, product brand, trade mark, service mark, etc.). Article 32 also provided that a third person could use such an “objective expression” only with the consent of the person/entity holding the right thereto. These intellectual property provisions were contained in Part I of the Civil Code. The Anti-monopoly Law, which proscribed “unscrupulous competition,” included “the unauthorized use of a trademark, name or marking of goods; the unauthorized duplication of a form, package or appearance of goods” and “the unauthorized use or disclosure of confidential scientific, technical, engineering or commercial information”.

(a) Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organizations

143. The representative of the Kyrgyz Republic further added that Part I of the Civil Code provides generally for the protection of rights of authorship. Article 7 provides that intellectual property rights arise as a consequence of the creation of works of science, literature, arts, invention and other products of intellectual activity. Kyrgyzpatent’s Temporary Regulations on the Official Registration of Computer Programs, Databases and Integrated Circuit Topologies extend copyright protection to computer programs - other than computer programming languages - and to databases, which were treated as compilations. These Temporary Regulations had provided the owner of such a program, data base or topology with the option of formally registering his copyright therein. The Temporary Regulations had been replaced by the Law on Copyright and Neighbouring Rights, effective 23 January 1998, which regulated relations resulting from the creation of works of science, literature and art (copyright), phonograms, performances, productions and broadcasts by cable and broadcast organizations (neighbouring rights).

144. The representative of the Kyrgyz Republic stated that the Law on Copyright and Neighbouring Rights which had entered into effect on 23 January 1998 was in full conformity with the requirements of TRIPS Agreement.

(b) Trademarks, including service marks

145. The representative of the Kyrgyz Republic said that the Law on Trademarks,
Service Marks and Appellations of Origin of Goods provided for the registration of a trademark, which was valid for ten years from the date a conforming application is filed with the State Agency on Intellectual Property (Kyrgyzpatent). Article 20 of this law provided for the nullification of the registration of a trademark if it had not been used for three years. Pursuant to Article 6bis of the Paris Convention on Protection of Industrial Property, Article 5 of the Kyrgyz Republic Trademark Law provided that trademarks which are similar to the extent likely to cause confusion with well-known trademarks within the territory of the Kyrgyz Republic may not be registered. Article 41 of the Trade Mark Law provides liability for the illegal use of a trademark. Seizure and destruction of goods in respect of which a trademark had been illegally used were listed among legal remedies. Article 5 of the law provided for the rejection of an application to register a trademark, which reproduced a trade name (in full or in part) owned by others who have been granted an earlier ownership right.

146. The representative of the Kyrgyz Republic stated that the Law of the Kyrgyz Republic on Trademarks, Service Marks and Appellations of Origin of Goods, passed by the Legislative Assembly of the Parliament of the Kyrgyz Republic on 16 December 1997, signed by the President of the Kyrgyz Republic on 14 January 1998, which had entered into effect on 28 January 1998, was in compliance with the requirements of the TRIPS Agreement.

(c) Geographical indications, including appellations of origin

147. The representative of the Kyrgyz Republic said that the newly adopted Law of the Kyrgyz Republic on Trademarks, Service Marks and Appellations of Origin of Goods enacted in December 1997 which had entered into force on 28 January 1998 governed relations involving the registration, legal protection and use of trademarks, service marks and appellations of origin of goods. For example, Articles 27-38 of this law contained provisions on appellations of origin of goods.

148. The representative of the Kyrgyz Republic stated that the Law on Trade Marks, Service Marks and Appellation of Origin of Goods had brought the regime on appellations of origin of goods in the Kyrgyz Republic into full conformity with the requirements of the TRIPS Agreement.

(d) Industrial designs

149. The representative of the Kyrgyz Republic said that the recently adopted Patent Law of the Kyrgyz Republic provided for the protection of industrial designs for ten years from the priority date. Article 21 of the law provided an opportunity to establish a priority date from the date an application was filed in a member state of the Paris Convention on Protection of Industrial Property (conventional priority), if the application was filed with the State Agency on Intellectual Property (Kyrgyzpatent) within 6 months from the indicated date. A limited grace period
was provided for disclosures by the author or person who obtained the disclosed information from the author. Excluded from protection were architectural structures and works contradicting the public interest or the principles of humanity. In response to requests for clarification of the concepts of contradiction of “principles of humanity”, the representative of the Kyrgyz Republic stated that the definitions were not based on official normative documents and could only be accompanied by references to sources which had a statement of humane ideas and moral-ethical standards formed in the society, in conformity with the international standards set forth in the applicable international agreements.

(e)  
150. The representative of the Kyrgyz Republic noted that the Patent Law of the Kyrgyz Republic provided that the term of a patent was 20 years from the priority date. An invention was patentable if it was new, has an inventive level and was industrially applicable. Applications were to be filed with Kyrgyzpatent and were examined on request of the applicant. A grace period was established for disclosures made by the inventor or a person who obtained the disclosed information from the inventor. Integrated Circuits were protected in a separate Act currently pending before Parliament. Similarly, patent protection was excluded for works contradicting the public interest or the principles of humanity. Importation satisfied the working requirement.

151. The representative of the Kyrgyz Republic stated that the Patent Law of the Kyrgyz Republic passed by the Legislative Assembly of the Parliament of the Kyrgyz Republic on 16 December 1997, signed by the President of the Kyrgyz Republic on 14 January 1998 which had become effective on 4 February 1998 had brought the patent regime of the Kyrgyz Republic into full conformity with the requirements of the Agreement on Trade Related Aspects of Intellectual Property Rights.

(f)  
152. The representative of the Kyrgyz Republic said that plant varieties were not patentable pursuant to the Patent Law of the Kyrgyz Republic. However, the legal protection for plant varieties and animal breeds was provided by the temporary regulation of breeding achievements. The Law of the Kyrgyz Republic on Legal Protection of Selection Breeding Achievements had entered into force on 1 July 1998.

(g)  
153. The representative of the Kyrgyz Republic stated that layout designs of integrated circuits were the subject matter of a specific law that incorporates the requirements of TRIPS. The law had been adopted by Parliament and enacted in
March 1998.

154. The representative of the Kyrgyz Republic stated that the Law On Topologies of Integrated Circuits had been adopted on 31 March 1998 and had brought the regime on protection of layout designs of integrated circuits into full conformity with the requirements of the TRIPS Agreement.

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

155. The representative of the Kyrgyz Republic stated that pursuant to Articles 22 and 34 of the Civil Code, protected undisclosed information, which is a trade secret, was also listed among the objects of civil rights. Such information must have actual or potential commercial value due to its secrecy to third parties, it cannot be accessed on any legal basis and its holder must undertake measures to keep it confidential. Commercial secrets were the subject of separate legislation which was enacted on 30 March 1998. Damages were available for misappropriation of such information by persons who had obtained it illegally or who had divulged it in violation of a contractual obligation. Article 202 of the Civil Code obliged a commercial representative to keep confidential all information learned about sales transactions, even after the completion of his or her employment. The Criminal Code also provided penalties for copying information from computers.

156. The representative of the Kyrgyz Republic stated that the Law on Commercial Secrets enacted on 30 March 1998 had brought the regime on protection of commercial secrets into full conformity with the requirements of the TRIPS Agreement.

(i) Any other categories of intellectual property

157. The representative of the Kyrgyz Republic stated that under Kyrgyzpatent’s Temporary Regulations on the Procedure for the Registration of Licensing Agreements of 24 July 1995, relationships on “know-how” were protected. Trade names were protected under Article 89 of the Civil Code which provides that a legal entity, whose firm name has been registered, has an exclusive right to its use. Article 89 provided that a legal entity which had first registered a particular business name had the exclusive right to use that name. A person who unlawfully uses another firm’s registered name was obliged to stop using the name upon demand and to indemnify the registered owner for any damage caused by such use. Kyrgyzpatent had submitted for approval the draft regulation on firm names which would be in force until the adoption of the appropriate law.

3. MEASURES TO CONTROL ABUSE OF INTELLECTUAL PROPERTY RIGHTS

158. The representative of the Kyrgyz Republic stated that Article 12 of the
Patent Law provided that in cases where an invention, utility model or industrial design was not used or used insufficiently within three years from the date the patent is granted, any entity willing or prepared to use the protected object (if the patent holder refuses to enter into a licensing agreement with the entity) shall have the right to resort to court and file a petition requesting the grant of a compulsory license. Such license shall be granted if the patent holder fails to prove that insufficient use or non-use of the object is caused by justifiable reasons. He reaffirmed however that since Article 40 of the Patent Law provides that international agreements take precedence over conflicting domestic provisions, all of the conditions of Article 31 of the TRIPS Agreement, including the provisions of subparagraphs c), e) and g) must be met in any action by the Kyrgyz Republic to grant a compulsory licence related to patented technology. The Kyrgyz Republic would, prior to accession, clarify this in its domestic regulations.

4. **ENFORCEMENT**

(a) **Civil judicial procedures and remedies**

The representative of the Kyrgyz Republic stated that Article 10 of the Civil Code provided that a plaintiff could obtain relief from the Court to enforce obligations recognized by civil rights. Accordingly, the Civil Code provided that the Court could order (i) specific performance of an obligation, (ii) compensation of losses, (iii) exaction of penalties and other penalties. Article 14 permitted the recovery of losses; including both direct and consequential damages, including lost profits, as well as the profits made by the violator from the violation of the right. Compensation for moral rights was available under Article 16. The protection of honour, dignity and business reputation was provided under Article 18, where remedies included both the right of refutation and compensation for losses and/or moral harm.

(b) **Provisional measures**

The representative of the Kyrgyz Republic said that Article 35 of the Patent Law provided that courts, within the limits of their authority, had jurisdiction to hear the following disputes: actions involving copyright to industrial property, disputes involving the issuance of protection documents, determinations as to who holds the patent, issues involving compulsory licenses, actions for breach of the exclusive rights to the object of industrial property, as well as disputes concerning other economic rights of the patent owner.

(c) **Any administrative procedures and remedies**

The representative of the Kyrgyz Republic stated that Article 10 of the Civil Code provided that administrative enforcement of rights could be exercised
only in cases stipulated by law and such decisions were appealable in Court. The Patent Law and the Law on Trademarks, Service Marks and Appellations of Origin of Goods provides for Appellate Council review of disputes involving: inventions, utility models, industrial designs, trademarks and service marks, as well as appellations of origin of goods. The Appellate Council was the first body of review for these disputes. The consumer protection agency had administrative authority to address various forms of unscrupulous business activity, including passing off, the sale of items not fit for ordinary use (including mislabelled items of food and drink) and trade mark counterfeiting. Under Article 20 of the Anti-Monopoly Law, the Anti-Monopoly Department had the power to levy and collect fines for engaging in unscrupulous business activity, including acts of passing off, trade mark misappropriation and unauthorized use/disclosure of proprietary information. In addition to fines, Article 22.1 provided that, upon successful application by the Anti-Monopoly Department to a commercial Court, a violator may be required to surrender all profits made from the concerned activity. Finally, Article 22.2 permitted the damaged person or legal entity to recover losses in an action filed in an appropriate Court.

(d) Any special border measures

162. The representative of the Kyrgyz Republic stated that Articles 28 to 31 of the Customs Code, enacted on 29 July 1997, and effective on 1 October 1997, provided for border measures related to intellectual property. These measures include the suspension of the release of goods where there is an indication the goods violate intellectual property rights.

e) Criminal procedures

163. The representative of the Kyrgyz Republic stated that the new Criminal Code, passed 18 September 1997, had entered into force on 1 January 1998. Articles 150 and 191 detailed the offences for violation of copyright, neighbouring rights and the rights of a patent holder, as well as for illegal use of trademarks, service marks and appellations of origin of goods.

164. The representative of the Kyrgyz Republic confirmed that his Government would fully apply the provisions of the TRIPS Agreement by the date of its accession to the WTO without recourse to a transitional period. The Working Party took note of this commitment.

VII. POLICIES AFFECTING TRADE IN SERVICES

165. The Government of the Kyrgyz Republic entered into bilateral negotiations on market access in Services, on the basis of the offer circulated to Working Party members in document WT/ACC/SPC/KGZ/3. The results of those negotiations are reproduced in the Schedule of Specific Commitments contained in Part II of the
Annex to the Protocol of Accession of the Kyrgyz Republic.

166. In response to requests for information, the representative of the Kyrgyz Republic stated that since independence, the type, quality and number of service providers had been expanding rapidly. Private companies and individual suppliers now dominated the sector. As of 1 January 1998, the service sector accounted for approximately 40 per cent of total employment. The service sector accounted for approximately 30 per cent of GDP in 1996 and approximately 32 per cent in 1997. He provided the Working Party with a detailed description of selected service industries and the legal regime governing each. He noted that the primary goals of State regulation of the services sector were: protection of the life, health and economic interests of consumers, protection of the environment and suppression of unfair competition. The Kyrgyz Republic pursued these goals through a system of regulation intended to impose a minimum of burdens on service suppliers. The regulatory system, with a relatively few minor exceptions, was imposed equally on both foreign and domestic suppliers (including foreign-owned domestic suppliers). Therefore, foreign suppliers generally enjoyed national treatment. In addition, the Kyrgyz Republic did not discriminate among foreign suppliers of services on any basis.

VIII. TRANSPARENCY

167. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that there was no legal requirement to publish all legislation and administrative acts on WTO related issues. However, in practice, all laws, decrees, and resolutions were published in national newspapers. In response, some members of the Working Party stated that the Kyrgyz Republic appeared to lack a legislative basis for the implementation of Article X of the GATT 1994 and other publication requirements of WTO Agreements, e.g., the requirement that standards be published for prior review and comment before finalization and implementation. These members stated that the Kyrgyz Republic should make efforts to institute appropriate legislation on these points. In response to those requests, the representative of the Kyrgyz Republic stated that amendments to the Law on Normative Acts and Amendments to the Law on Publication of Laws, prepared to ensure the transparency of trade laws and regulations, and to ensure conformity with Article X of the GATT 1994 and other publication requirements of WTO Agreements had entered into force on 15 July 1998.

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

IX. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

169. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic had signed some 27 bilateral agreements relating to foreign trade in goods and/or services. He provided the Working Party with a list of those agreements and a summary of the terms of the agreements. The agreements had been signed with 21 foreign countries (six of which were CIS countries). All of the agreements were currently in force and were generally concerned with the granting of mutually advantageous terms and conditions for trade and economic cooperation. The Kyrgyz Republic had free trade areas or customs unions with the following countries: CIS countries according to the CIS Free Trade Area Agreement; Kazakhstan and Uzbekistan according to the Central Asia Economic Area Agreement (20 April 1994); Kazakhstan, Belarus and the Russian Federation (according to the Agreement on Joining to the Customs Union, 28 March 1996); Bilateral Agreement with Armenia (4 July 1994); Bilateral Agreement with Kazakhstan (22 June 1995); Bilateral Agreement with Moldova (26 May 1995); Bilateral Agreement with the Russian Federation (8 October 1992); Bilateral Agreement with Ukraine (26 May 1995).

170. Some members of the Working Party recalled that Article I of the GATT 1994 required application of the MFN principle, whilst Article XXIV permitted exceptions to Article I in the case of regional integration initiatives provided that the conditions of Article XXIV and the Understanding were complied with and requested further information on whether the Parliament expected to ratify the Customs Union with Russia, Kazakhstan and Belarus by the Kyrgyz Republic. The representative of the Kyrgyz Republic stated that the agreement on joining the Customs Union was ratified by the Legislative Assembly; however, internal procedures on its enforcement had not been adopted. Currently, within the Customs Union, expert consultations were being held on this issue.

171. Some members of the Working Party asked how the Government of the Kyrgyz Republic planned to meeting the requirement contained in the Customs Union Agreement that the Kyrgyz Republic harmonise its customs and trade legislation with that of the other parties to the Customs Union. In response, the representative of the Kyrgyz Republic stated that the harmonisation of the Kyrgyz Republic’s legislation connected with foreign trade with the Customs Union’s requirements were currently being studied at the level of ministries and State agencies of the Kyrgyz Republic.

172. The representative of the Kyrgyz Republic stated that his Government would observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its participation in trade agreements, and would ensure that the provisions of these WTO Agreements for notification, consultation
and other requirements concerning free trade areas and customs unions of which the Kyrgyz Republic was a member were met from the date of accession. He confirmed that the Kyrgyz Republic would, upon accession, submit notifications and copies of its Free Trade Area and Customs Union Agreements to the Committee on Regional Trade Agreements (CRTA). He further confirmed that any legislation or regulations required to be altered under its Trade Agreements would remain consistent with the provisions of the WTO and would, in any case, be notified to the CRTA during its examination of the same. The Working Party took note of these commitments.

X. CONCLUSIONS

173. The Working Party took note of the explanations and statements of the Kyrgyz Republic concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by the Kyrgyz Republic in relation to certain specific matters which are reproduced in paragraphs 14, 21, 26, 28, 30, 34, 37, 44, 48, 53, 60, 63, 66, 67, 70, 79, 83, 84, 91bis, 94, 100, 103, 106, 113, 115, 120, 122, 164, 168 and 172 of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of the Kyrgyz Republic to the WTO.

174. Having carried out the examination of the foreign trade regime of the Kyrgyz Republic and in light of the explanations, commitments and concessions made by the representative of the Kyrgyz Republic, the Working Party reached the conclusion that the Kyrgyz Republic be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this Report, and takes note of the Kyrgyz Republic’s Schedule of Concessions and Commitments on Goods (document WT/ACC/KGZ/26/Add.1) and its Schedule of Specific Commitments on Services (document WT/ACC/KGZ/26/Add.2) that are annexed to the Protocol. It is proposed that these texts be adopted by the General Council when it adopts the Report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by the Kyrgyz Republic which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of the Kyrgyz Republic to the Marrakesh Agreement Establishing the WTO.

1 Not reproduced.
(WT/ACC/KGZ/28)

The General Council,

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

Decides, in accordance with Article XII of the Marrakesh Agreement Establishing the World Trade Organization, that the Republic of the Kyrgyz Republic may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.\(^2\)

\(^2\) See under section “Legal Instruments”. 
ACCESSION OF LATVIA

Report of the Working Party
Adopted by the General Council on 14 October 1998
(WT/ACC/LVA/32)

Introduction

1. The Government of Latvia’s request for accession to the General Agreement on Tariffs and Trade (GATT 1947) was circulated to Contracting Parties in November 1993. At its meeting on 17 December 1993, the GATT 1947 Council of Representatives established a Working Party to examine the application of the Government of Latvia to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession. Membership of the Working Party was open to all Contracting Parties indicating their wish to serve on it. In pursuance of the Ministerial Decision of 14 April 1994 on Acceptance of and Accession to the Marrakesh Agreement Establishing the World Trade Organization (WTO) and to the Decision of 31 May 1994 of the Preparatory Committee for the WTO, the Working Party examined the application of Latvia for membership in the WTO and agreed to pursue the market access negotiations for goods, including an agricultural country schedule, and for services. In pursuance of the Decision adopted by the WTO General Council on 31 January 1995, the existing GATT 1947 Accession Working Party was transformed into a WTO Accession Working Party. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/LVA/6/Rev.2.


Documentation

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade regime of Latvia (L/7526 with Addenda 1, 2 and 3) and the questions submitted by Members on the foreign trade regime of Latvia, together with the replies thereto (WT/L/49 and Corrigendum 1 and Addendum 1; WT/ACC/LVA/3, WT/ACC/LVA/4, WT/ACC/LVA/8 and Corrigendum 1; WT/ACC/LVA/12, WT/ACC/LVA/16) and other information provided by the Latvian authorities (WT/ACC/LVA/5, WT/ACC/LVA/20, WT/ACC/LVA/27, WT/ACC/LVA/28, WT/ACC/LVA/29, WT/Spec(95)6; WT/SPEC/26). The Government of Latvia made available to the Working Party the following documentation:

Decisions and Reports

- Law on Customs Duty with Annexes I (Import duty tariffs) and II (Export duty tariffs);
- Latvia’s National Tariff Schedule;
- Law on the Bank of Latvia;
- Law on Credit Institutions;
- Law “On Competition” of 18 June 1997;
- Draft Law “On Trademarks and Indications of Geographical Origin”;
- Law on Trademarks;
- Law on Industrial Design Protection;
- Patent Law;
- Draft Regulations of the Cabinet of Ministers “Regulation Regarding Customs Control Measures on Protection of Intellectual Property”;
- Draft “Personal Data Protection Law”;
- Excerpt of the Criminal Code of 6 October 1955 regarding Part III Section 5 of the TRIPS Agreement (criminal procedures);
- Resolution and Law on Bookkeeping;
- Draft Commercial Law;
- Decree and Law on Joint Stock Companies;
- Resolution and Law on Income Tax;
- Resolution and Law on Limited Liability Companies;
- Resolution and Law on Foreign Investment in the Republic of Latvia;
- Resolution and Law on Excise Tax;
- Law on Excise Tax on Mineral Oils;
- Resolution and Law on Turnover Tax;
- Law on Value-Added Tax of 9 March 1995 with amendments of 13 November 1997 (consolidated text);
- Law “On Enterprise Register” of 20 November 1990 with amendments;
- Resolution and Law of the Republic of Latvia on Entrepreneurial Activity;
- Regulation of the Cabinet of Ministers No. 348 of 7 October 1997 “On Licensing of Separate Forms of Entrepreneurial Activity”;
- Regulation of the Cabinet of Ministers No. 351 “Regulations of Circulation of Tobacco and Tobacco Products” of 7 October 1997;
- Regulation on Food;
- Regulations of the Cabinet of Ministers No. 208 of 1 November 1994 on the Order of Establishment and Administration of Import and Export Tariff Quotas;
- Regulations of the Cabinet of Ministers No. 24 of 17 January 1995 On Order By Which the Special Authorizations (Licences) Shall Be Issued in Accordance With the Quotas of Customs Tariffs;
- Regulations of the Cabinet of Ministers No. 20 of 17 January 1995 Regulations to Protect the Domestic Market for Food Stuff Produced in Latvia;
- Customs Law of 11 June 1997;
- Section G of the Customs Law on Provisions of the Application of Customs Duties;
- An evaluation of the compliance of this legislation with provisions in the Agreement on the Implementation of Article VII of the GATT 1994 and legislation of the European Communities;
- Regulations of the Cabinet of Ministers No. 27 of 31 January 1995 On Determining the Customs Value of Import and Export Goods or Other Items;
- Regulation of the Cabinet of Ministers No. 428 of 17 December 1997 Procedure for Calculating the Customs Value of Goods;
- Regulations of the Cabinet of Ministers No. 87 of 12 April 1994 On the Mandatory Certification of Foodstuff, Perfumery and Toys;
- Programme of Reforms for the National Economy of Latvia “Latvia 2000”;
- Regulations of the Cabinet of Ministers No. 37 of 25 January 1994 On State Monopoly of Alcohol and Alcoholic Beverages;
- Regulations of the Cabinet of Ministers No. 248 of 20 June 1996 On State Monopoly of Alcohol and Alcoholic Beverages;
- Regulation by the Bank of Latvia On Granting Licences (Permissions) to Perform Activities of Credit Institutions;
- Regulation by the Bank of Latvia On Regulation on Amending the Charter, Changing Shareholders, the Initial Capital, the Management, the Chief Accountant, the Legal Address, the Name of a Credit Institution, and Undertaking Merger or
Decisions and Reports

- Split-up of Credit Institutions;
- Regulations of the Cabinet of Ministers No.185 of 23 August 1994 On Formation of Prices and Tariffs of Goods and Services;
- Law on Foreign Investment in the Republic of Latvia;
- the Official List of Quarantinable Pests;
- Founding Law of the Latvian Food Centre;
- Statutes of Information, Consultation and Training Centre of Goods and Services;
- Law on Safety on Products, Services and Liability of Producer, Supplier of 26 September 1996;
- Law on Uniformity of Measurements of 11 March 1997;
- Law on Conformity Assessment of 20 August 1996;
- Law of the Republic of Latvia On Government and Municipal Procurement, effective 1 January 1997;
- Law on Pharmaceutical Operations of 27 April 1993;
- Law “On Pharmaceutical Activities” of 24 April 1997;
- Law on Veterinary Medicine of 6 March 1995;
- Law “On Supervision of Food Circulation” of 19 February 1998;
- Regulations of the Cabinet of Ministers No.349 “On Labelling of Foodstuffs” of 7 October 1997;
- Regulations of the Cabinet of Ministers No. 170 ”On Standing Order for Food Additives” of 6 May 1997;
- Law on the Protection of Consumer Rights of 28 October 1992;
- Law on Plant Protection of 20 October 1994;
- Regulation On the Indication of Durability Date of Pre-packaged Foodstuffs (25 June 1996);
- Regulation On Procedure of Recognition in the Republic of Latvia of Conformity Assurances and Approvals Issued Abroad in Mandatory Area (24 December 1996);
- Regulations of the Cabinet of Ministers No. 295 “On Procedure of Conformity Attestation of Building Materials and Construction Products in Mandatory Area” of 5 August 1997;
- Regulations of the Cabinet of Ministers No.140 “On the
- Electrical Safety of Equipment” of 21 April 1998;
- Regulations of the Cabinet of Ministers No.161 “On the Electromagnetic Compatibility of Apparatus” of 5 May 1998;
- Regulation of the Cabinet of Ministers No. 399 “On the Conformity Assessment of Foodstuffs, Cosmetics and Toys” of 2 December 1997;
- Draft Regulations of the Cabinet of Ministers “On Labelling of Textiles”;
- Regulation of the Cabinet of Ministers No. 106 of 25 March 1997 On Regulations of Quotas of Customs Tariffs;
- Law on Agriculture;
- Conception on Use of Agricultural Subsidies and the Program Rationales for 1998-2002;
- Latvia’s Import Totals under each Harmonized System 8-digit category (f.o.b. values); and
- Latvia’s Import Data for 1994.

Introductory statements

4. The representative of Latvia stated that Latvia had achieved considerable results in transforming a centrally-planned economy to a market-based economy since restoration of independence in 1991. Latvia had drafted several new trade laws and regulations modelled on WTO principles to establish a uniform and predictable trading environment for importers, exporters and investors. The fifteen countries of the European Communities had, counted as one entity, become Latvia’s principal trading partner. External trade relations were emphasized by Latvia’s geographical position between East and West; several bilateral trade agreements based on the most-favoured-nation principle had been concluded and more were in progress. Latvia had also concluded free trade agreements with the European Communities and other countries in Europe. However, bilateral and regional arrangements alone could not provide the necessary stability for external trade relations. Latvia had therefore made a strong commitment to become a Member of the WTO. The WTO principles of national and MFN treatment had been incorporated in national legislation with particular attention to transparency in the publication of all laws and regulations and a tariff-based trade regime. Minimal tariffs were imposed on imported raw materials, spare parts and capital goods, the basic average MFN
import tariff was 15 per cent, and export tariffs were imposed only on some raw materials. Non-discrimination between imported and domestically produced items applied in the imposition of excise taxes and the turnover tax, the latter had been replaced by a value-added tax. Any person or enterprise registered in Latvia could perform any legal import operation. Exports of spirits, ferrous and non-ferrous metals were subject to licensing with no underlying quotas. Finally, he pointed out that Latvia’s effort to become a Member of the WTO was supported by all the major political institutions and that a broad national consensus existed regarding the importance of WTO membership and the pursuit of liberal trade policies.

5. Many members of the Working Party welcomed Latvia’s request for accession to the WTO and expressed their readiness to work with Latvia in elaborating terms of accession that would support the programme of transition to a market-based economy and Latvia’s integration into the multilateral trading system. Some members welcomed the documentation provided and the statement made by the representative of Latvia. They also said that they looked forward to a detailed examination of Latvia’s policies and of the reasons for the adoption of certain measures, e.g. licensing requirements. Some members of the Working Party noted that Latvia had raised tariffs and introduced new trade restrictions after the request for accession had been submitted and that further restrictions appeared to be under consideration. This was a disturbing trend, as applicant countries were expected not to implement any measures during accession negotiations that could be considered inconsistent with the WTO or that alter the basis for negotiations. Latvia was accordingly requested to remove these measures and notify the Working Party of proposed new restrictions and to supply all new relevant laws and regulations to its members.

6. The Working Party then proceeded to review the economic policies and foreign trade regime of Latvia and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party are summarized below in paragraphs 7 to 130.

**ECONOMIC POLICIES**

*Foreign Exchange and Payments*

7. The representative of Latvia said that his country had established one of the most liberal foreign exchange regimes in the world. Latvia had been a member of the International Monetary Fund (IMF) since 1992. The national currency - the Lats - was freely convertible, backed by the currency reserves of the Bank of Latvia. Foreign exchange and local currency could be brought into or taken out of Latvia in unlimited amounts. Foreign entrepreneurs were free to repatriate profits in any currency having paid the applicable taxes. Corporate income tax amounted to 25 per cent, incomes of natural persons were taxed at 25 or 35 per cent and a
10 per cent withholding tax was levied on dividend payments to non-residents. Some members welcomed the fact that the Lats was freely convertible and stressed the importance of continuing current policies.

8. The representative of Latvia stated that Latvia had notified the International Monetary Fund that it had accepted the obligations of Article VIII, sections 2, 3 and 4 of the IMF Articles of Agreement with effect from 10 June 1994. By accepting the obligations of Article VIII, Latvia gave confidence to the international community that it would pursue sound economic policies that would obviate the need to restrict payments and transfers for current international transactions, and thereby contribute to a multilateral payments system free of restrictions.

**Investment Regime**

9. Some members of the Working Party asked Latvia to describe the basic provisions of legislation regulating investment and in particular identify any restrictions or registration measures affecting foreign investment.

10. The representative of Latvia referred to the Law “On Entrepreneurial Activity” which provided for licensing of several types of business activities (see “Trading Rights”, paragraphs 31 to 40). Such licences were issued for enterprises registered in Latvia on a non-discriminatory basis, irrespective of nationality, to any applicant meeting the specific requirements. All issues pertinent to foreign investment - registration, investment protection, taxation, repatriation, dispute settlement, restrictions on investment, safeguards and the applicability of international treaties - were regulated through the Law “On Foreign Investment in the Republic of Latvia”.

11. The representative of Latvia added that the Law on Foreign Investment in the Republic of Latvia stated that foreign investors were granted the rights and duties provided for by the national laws. The Law on Foreign Investment contained no restrictions on foreign investment in any sector of the national economy. The Government had amended the Law on Foreign Investment in April 1996, deleting its Articles 3, 5 and 6 and thus terminating virtually all restrictions on foreign investment. On 4 September 1996, Parliament had approved this amendment and requested the Government to prepare adjustments to certain other laws to bring them in line with the new Law on Foreign Investment. As a result of this review, the limit on foreign ownership in radio and television companies in the Law on Radio and Television had been raised from 20 per cent to 49 per cent. Foreign ownership of wood cutting (logging) companies and gambling business was also limited to 49 per cent in accordance with the Law on Forestry and the Law on Lotteries and Gambling, respectively. Laws on land ownership allowed wholly-owned foreign companies to own land if the owners of the company were from countries with which Latvia had signed investment promotion and protection agreements (31 countries at present). Legal or private persons from other countries could own land...
if at least 51 per cent of the shares in the company registered in Latvia belonged to Latvian citizens or to foreigners from countries with which investment protection agreements had been signed. On 5 December 1996, the Saeima had passed amendments to the Law on Land Privatization in Rural Regions and on 8 May 1997 amendments to the Law on Land Reform in the Republic of Latvia. The amendments liberalized the land market in Latvia to a considerable extent. According to the new rules, statutory companies registered in the Enterprise Register could obtain land in rural areas and land under State or municipal ownership in cities without restriction even when more than half their share capital was owned by foreign persons. Legal entities could obtain land ownership with only few restrictions.

**State Ownership and Privatization**

12. Some members of the Working Party requested details concerning the pace of privatization in Latvia, noting an initial statement that privatization of agriculture had been completed by 1995 and that 75 per cent of State-owned enterprises were privatized by 1996. Latvia was also asked to enumerate sectors or enterprises where State ownership would be retained for a long period or permanently. Questions were also raised concerning the participation of foreign investors. Some members requested a report from Latvia on progress achieved to date in its privatization programme. In addition, Latvia should be prepared to provide information on a periodic basis on its privatization efforts, economic reforms, and implementation of any transitional arrangements negotiated in the Protocol of Accession.

13. The representative of Latvia said that no particular sector would be excluded from privatization. The main considerations were to improve company performance and to avoid the creation of private monopolies. A “List of Currently Non-Privatizable State Specialized Agricultural Enterprises” was linked to restitution of property to former owners. Enterprises operating in industry, agriculture, trade and construction services would be privatized first, while sectors such as medical care, social welfare services, medicine wholesale and certain agricultural sub-sectors would be privatized over a longer time period. The Government had also decided that a sell-off of infrastructure (roads, railway, public transport, postal services, etc.) would not be reasonable during the first years of privatization. Latvia provided a document (WT/L/49/Add.1) on privatization of agriculture. In July 1996, from a total of 613 agricultural statutory associations created at the first stage of privatization of former collective and State farms by allocating shares according to initial contributions of capital and labour, 207 had been fully privatized, 275 had chosen the voluntary decision for self liquidation and 131 were still operating. Privatization of farms used for training and research would be considered on an individual basis. Foreign firms could participate in privatization; Latvia had held four international tenders. Foreign natural and legal persons could buy privatization certificates only after having won the tender for a company undergoing privatization. This restriction did not apply to joint ventures or branches of foreign companies.
14. Regarding privatization of industry, the representative of Latvia said that since 1 May 1994, when the Latvian Privatization Agency was established, until 1 May 1998, 855 State enterprises (asset units) had been assigned for privatization, 75 State enterprises assigned for liquidation, State-owned equity holdings of 164 enterprises assigned for privatization, and 48 real estates and 89 plots of land assigned for sale by the Cabinet of Ministers. The Privatization Agency was involved in valuation of 323 restitution cases of property. Privatization regulations had been approved for 879 State enterprises (asset units) or their parts, 111 State-owned equity holdings, and 29 real estates. Sales agreements had been concluded for 821 State enterprises (asset units) or their parts, 66 State-owned equity holdings, 43 enterprises to be liquidated and for 21 real estates. The privatization process was generally completed by the end of 1997, excluding large State-owned companies, which do not operate as State-trading enterprises within the definition of Article XVII and where privatization would be completed in 1999. Completion of privatization implied mass privatization, i.e. involving all inhabitants of Latvia and including 95 per cent of all State-owned enterprises.

15. The representative of Latvia added that privatization would be completed by the end of 1998 with exception of 4 large State owned joint stock companies “Latvenergo” (Latvian Energy), “Ventspils nafta” (Ventspils Oil), “Latvijas Kugniecība” (Latvian Shipping Company) and the limited liability company “Lattelekom”. The State joint stock company “Latvenergo” dealt with energy generation and had a monopoly in energy transmission and distribution. These three operations had been separated through a restructuring of the company. The Government intended to announce an action plan on the restructuring and privatization of “Latvenergo” and to establish a competitive and well-regulated electricity sector by mid-1998. The Latvian Privatization Agency would sell a minority share of the thermo-generation system to strategic investors by the beginning of 1999 and the remaining State share would be sold to general public in 1999. The State joint company “Ventspils nafta” (Ventspils Oil) was the largest oil and petroleum product terminal on the coast of the Baltic Sea. It also offered transit services such as handling and storage of oil and petroleum products, and importation of petrol. The intention was to merge “Ventspils nafta” with the company “LaSaM”, the owner of the oil pipeline. In Autumn 1997, a minority stake of the State shares had been sold to the general public against privatization certificates. In 1998, the share portfolio would be placed on the international capital market. The State Joint stock company “Latvijas kugniecība” (Latvian Shipping Company) ranked among the world’s twenty largest shipping companies in terms of number of vessels owned. It operated fleets in the tanker, reefer and dry cargo markets with a large number of subsidiary firms and investments. As a first phase in the privatization, up to 35 per cent - mostly new shares issued by the company - would be offered to strategic investors. A closed list of registered strategic and financial investors existed (14 in total).
Having conducted several rounds of negotiations with each of these registrants, the Latvian Privatization Agency had shortlisted two strategic investors who were allowed to perform due diligence of the company with the intention to receive final bids from the investors by mid-1998. The limited liability company “Lattelekom”, part-owned (51 per cent) by the State, provided local and long distance fixed public telecommunication services with a monopoly status until 2003. The management of the State shares had been transferred to the Latvian Privatization Agency in order to prepare the company for privatization. The company would be transformed into a joint stock company, and up to 25 per cent of its shares would be sold against privatization certificates and cash by 2000.

16. According to Article 4 of the Law on the Privatization of State and Municipal Property, any person or legal entity eligible to purchase liquid and/or fixed assets in Latvia could be a privatization subject. The term “privatization subject” was defined according to the Law on Privatization of State and Municipal Asset Units as any specific person or legal entity eligible to obtain State or municipal property during the privatization process. The Latvian State or a municipality, a State or municipal enterprise, a State or municipal company, or a company in which private funds did not exceed 25 per cent of the equity capital, could not be privatization subjects. The representative of Latvia confirmed that national treatment applied for the participation of foreigners in privatization programmes. There were no restrictions on the acquisition of privatized State and municipal property.

17. As of 1 May 1998, 1,157 State enterprises in total had been assigned for privatization (96.3 per cent of all State enterprises). Among them, 302 had been privatized in 1992-1994, while the remainder (855) had been assigned for privatization in 1994-1997. The representative of Latvia provided further up-dated information on progress in privatization of these assigned enterprises in Table 1. In total, 66 per cent of all Latvian employees were working in the private sector by the end of 1997. In order to attract foreign investments, the Privatization Agency had organized four international tenders, offering 153 medium and large enterprises. A special Public Offering Programme had been created to encourage participation of Latvia’s population. During several rounds of the Public Offering Programme 63 large enterprises had been offered to the public as at 1 January 1998.
Table 1: Information on the Progress of the Privatization Process of State Enterprises: 1 May 1994 - 1 May 1998

<table>
<thead>
<tr>
<th>Activity</th>
<th>Total</th>
<th>Small objects (less than 50 employees)</th>
<th>Medium-sized objects (50-500 empl.)</th>
<th>Large objects (More than 500 empl.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprises assigned for privatization</td>
<td>855</td>
<td>561</td>
<td>257</td>
<td>37</td>
</tr>
<tr>
<td>Enterprises transferred from the Ministry of Agriculture</td>
<td>40</td>
<td>39</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Enterprises transferred for liquidation</td>
<td>75</td>
<td>75</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Repeated privatization</td>
<td>15</td>
<td>13</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Privatization objects after split of enterprises</td>
<td>1,577</td>
<td>1,257</td>
<td>283</td>
<td>37</td>
</tr>
<tr>
<td>Privatization cancelled or enterprises merged with other companies</td>
<td>188</td>
<td>182</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Privatization temporarily stopped</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Restitution process initiated</td>
<td>58</td>
<td>53</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Liquidation or insolvency procedure initiated</td>
<td>187</td>
<td>140</td>
<td>41</td>
<td>6</td>
</tr>
<tr>
<td>Privatization Regulations approved</td>
<td>879</td>
<td>661</td>
<td>194</td>
<td>24</td>
</tr>
<tr>
<td>Transactions concluded:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- purchase agreements signed</td>
<td>813</td>
<td>600</td>
<td>192</td>
<td>21</td>
</tr>
<tr>
<td>- invested into private companies</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>- privatized without majority owner</td>
<td>4</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>- privatized by the Ministry of Agriculture</td>
<td>36</td>
<td>36</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Proceeds of sale in LVL million:</td>
<td>46.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- cash</td>
<td>46.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- privatization vouchers</td>
<td>60.6</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

18. The representative of Latvia confirmed the readiness of Latvia to ensure the transparency of its ongoing privatization programme and to keep WTO Members informed of its progress in the reform of its transforming economic and trade regime. He stated that his Government would provide annual reports to WTO Members on developments in its programme of privatization as long as the privatization programme would be in existence along the lines of that provided to the Working Party. He also stated that his Government would provide annual reports on other issues related to its economic reforms as relevant to its obligations under the WTO until 1 January 2003. The Working Party took note of these commitments.
Pricing Policies

19. Noting that Latvia had relaxed price controls on many goods and services, some members of the Working Party requested Latvia to provide details on remaining restrictions, including minimum and maximum prices, particularly for sectors not considered natural monopolies. Latvia was asked to list the imported products subject to price controls by Harmonized System (HS) tariff line. A member noted that Latvia exercised price controls in a number of sectors, including some which were not traditionally considered natural monopolies, but intended to reduce its price controls to the extent possible. This member stated that price controls should be listed in an Annex. Moreover, Latvia should exercise its authority in this area in a manner that did not damage imports or otherwise act to inhibit trade. This member also sought a commitment from Latvia that current and future price controls be applied in a WTO-consistent fashion and would be published in the official journal and that Latvia would take account of the interests of exporting WTO Members as provided for in Article III.9 of the GATT 1994.

20. The representative of Latvia replied that price control and regulation was carried out according to separate laws and affected products related to energy; the forestry sector (the price of stumpage); publishing of school books financed from the State budget; pharmaceuticals; postal services; port services; airport services; archives; and housing rents, power-supply and residential services. Minimum and maximum prices were stipulated for the following domestic and imported services: transit services for oil and oil products by pipeline; reloading of oil and oil products in ports; transit shipment of oil and oil products by railway transport; long-distance transportation of passengers and luggage by motor transport; transportation of passengers and luggage by motor transport in international lines; international transportation of cargo and passengers by railway transport according to international agreements; transportation of cargo and passengers by domestic railway; ship services in ports; and rents (maximum level). The State did not control the prices of imported goods. However, the profit margin was regulated with respect to pharmaceutical products. The final sales price could not exceed - by more than 20 per cent - the ex-factory sales price for domestic goods and, in respect of imports, the duty paid and tax-inclusive value of goods at the time of importation. Latvia planned to deregulate controls on the profit margin with respect to pharmaceuticals not covered by the health insurance system by Autumn 1998. All the goods and services currently subject to State price controls in Latvia are listed in Table 2. The representative of Latvia stated that the prices of goods and services in every sector of Latvia were determined freely by market forces with the exception of those noted in Table 2 and that price control and regulation was carried out according to particular laws, all of which were published in the official journal of the Republic of Latvia “Latvijas Vēstnesis”. Price controls were carried out in accordance with separate laws passed by Latvia’s Parliament (Saeima) and price levels were determined by the respective bodies authorized by law. Further price
controls could be introduced in order to protect consumers.

**Table 2: Goods and Services Subject to State Price Controls**

<table>
<thead>
<tr>
<th>Classification (Harmonized System or Common Products Classification)</th>
<th>Product or Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>HS 2711 11</td>
<td>Natural gas (to the population);</td>
</tr>
<tr>
<td>HS 2716 00</td>
<td>Electrical power;</td>
</tr>
<tr>
<td>HS 2716 00</td>
<td>Heating energy;</td>
</tr>
<tr>
<td>CPC ex 91131</td>
<td>The forestry sector (stumpage fees);</td>
</tr>
<tr>
<td>CPC ex 88442</td>
<td>Publishing of school books financed from the State budget;</td>
</tr>
<tr>
<td>HS 3002; 3004; 3005; 3006</td>
<td>Pharmaceuticals;</td>
</tr>
<tr>
<td>CPC 7511</td>
<td>Postal services;</td>
</tr>
<tr>
<td>CPC 74510; 74520; 74530; 74540</td>
<td>Port services;</td>
</tr>
<tr>
<td>CPC 74610; 74620</td>
<td>Airport services;</td>
</tr>
<tr>
<td>CPC 96312</td>
<td>Archives;</td>
</tr>
<tr>
<td>CPC 82101; 82102</td>
<td>Housing rents and residential services;</td>
</tr>
<tr>
<td></td>
<td>Minimum and maximum prices are stipulated for the following domestic and imported services:</td>
</tr>
<tr>
<td>CPC 71310</td>
<td>Transit services for oil and oil products by pipeline;</td>
</tr>
<tr>
<td>CPC 74190</td>
<td>Reloading of oil and oil products in ports;</td>
</tr>
<tr>
<td>CPC 71122</td>
<td>Transit shipment of oil and oil products by railway transport;</td>
</tr>
<tr>
<td>CPC ex 71211</td>
<td>Long-distance transportation of passengers and luggage by motor transport;</td>
</tr>
<tr>
<td>CPC ex 71211</td>
<td>Transportation of passengers and luggage by motor transport in international lines;</td>
</tr>
<tr>
<td>CPC 7111; 7112</td>
<td>International transportation of cargo and passengers by railway transport according to international agreements;</td>
</tr>
<tr>
<td>CPC 7111; 7112</td>
<td>Transportation of cargo and passengers by domestic railway;</td>
</tr>
<tr>
<td>CPC 72140; 72130</td>
<td>Ship services in ports and rents (maximum level).</td>
</tr>
</tbody>
</table>

21. The representative of Latvia stated that in the application of price controls now or in the future, Latvia would apply such measures in a WTO-consistent fashion, and take account of the interests of exporting WTO Members as provided for in Article III.9 of the GATT 1994. Latvia would publish the list of goods and services subject to State controls and any that are introduced or re-introduced in the future in its Official Journal. The Working Party took note of these commitments.
Competition Policy

22. Some members of the Working Party noted that Latvia intended to harmonize its legislation on competition with that of the European Communities over a four-year period. Latvia was asked to provide information on the present status of draft legislation, outline existing provisions regarding mergers and to provide a list of sectors considered “natural monopolies”.

23. The representative of Latvia replied that the Law “On Competition and Restriction of Monopoly” of 1991 had been revised. In June 1997, the Saeima (Parliament) had adopted a new Competition Law which entered into effect on 1 January 1998. The new Law prohibited restrictive arrangements and abuse of dominant position and contained provisions on merger control and prohibition of unfair competition. The Law provided for the Cabinet of Ministers to establish a Competition Council to supervise implementation of the Law. The Competition Council was empowered to ascertain violations of the Competition Law and enterprises were bound by its decisions. The Council was also authorized to set penalties. An enterprise gaining control of more than 25 per cent of the Latvian market for groups of goods or services as a result of a merger or the formation of a partnership would need to notify the Institution for the Control of Monopoly Action and Development of Competition. The new Competition Law stipulated that notifications would need to be made if the combined turnover of the entity resulting from the merger amounted to at least 25 million Lats in the financial year preceding the merger, and at least one of the merger participants held a dominant position in the relevant market prior to the merger. Natural monopolies existed in energy, communication services, transport, water supply and sewerage. Monopoly enterprises included the State stock companies “Latvijas gāze” (Latvian Gas), “Latvenergo” and “Latvijas dzelzceļs” (Latvian Railways); “Lattelekom” - a limited liability company; suppliers of heating; and self-government enterprises in water-supply and sewerage. However, competition (including foreign participation) was present in the supply of natural gas and in energy and telecommunication sub-sectors.

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

24. A member asked that Latvia indicate which bodies were responsible for the administration of trade policies and indicate that sub-central governments did not make policies affecting international trade.

25. The representative of Latvia replied that the legislative body of the Republic of Latvia was the Saeima (Parliament), the constitutional basis of which was provided in section 2 of the Satversme (Constitution). The regulation of internal proceedings of the Saeima was contained in the Rules of Procedure. The Satversme stated that the Saeima was the highest legislative body and it possessed the discretionary power. The Saeima was the highest body of State power, and, according to section 5 of the Satversme, it possessed the right to adopt laws and
priority for statements with the highest legal force after the Satversme. This prerogative included adoption of laws related to trade and monopolies and guidelines for the trade policy of the Republic of Latvia. In this field, the powers of the Saeima were not limited to the extent that they were compatible with the Satversme.

26. Executive power in Latvia was given to the Cabinet of Ministers. The general principles of the functioning of the Cabinet were contained in section 4 of the Satversme. The Cabinet would discuss all draft laws drawn up by Ministries and all questions concerning the competence of various Ministries, the number and the functions of which were stated according to special rules. The functioning of the Cabinet of Ministers was regulated by the Law “On the Composition of the Cabinet of Ministers” of 15 July 1993 (as amended on 23 May 1996), Regulation No. 5 of the Cabinet of Ministers and by special by-laws or governing regulations of each Ministry, always approved by a relevant Regulation of the Cabinet of Ministers. The Cabinet of Ministers was formed by a person entrusted to that task by the President of State. In order to fulfil their duties, the Prime Minister and the Ministers had to receive a vote of confidence by the Saeima. The Saeima expressed a vote of confidence by means of special resolution after the report of the Prime Minister on the composition and the planned activities of the Cabinet in case of approval. The important point was that, according to Regulation No. 160 “On the Internal Order and the Functioning of the Cabinet of Ministers” of 1 June 1996, every draft regulation or statement submitted to the State Chancellery for approval by the Cabinet of Ministers would receive legal opinions from interested Ministries and other institutions to ensure that draft legislation would be compatible with the laws in force and international treaties and conventions signed and ratified by the Republic of Latvia. The task of the State Chancellery was to verify whether a draft was compatible with the Declaration of the relevant Cabinet of Ministers where the principal guidelines of its activities were mentioned. The Declaration was binding on the Cabinet.

27. Cabinet decisions were presented in the form of regulations, instructions, orders or recommendations. The Cabinet could issue regulations when: (i) a law specifically authorized the Cabinet to issue regulations. Such authorization would need to provide details of the main rules and outline the content of the regulations; (ii) a relevant issue was not regulated by a law; and (iii) in accordance with the Article 81 of the Satversme, if there was an urgent necessity between sessions of the Saeima, the Cabinet was entitled to issue regulations having the force of law. However, Article 81 stated that such regulations could not modify laws concerning elections to the Saeima, the procedure and the judicial issues and the Constitution, the budget and budget rights, and laws already passed by the Saeima in power. Moreover, such regulations should not apply to amnesty, issuance of Treasury notes, State taxes, customs, railway tariffs and State loans and should become null and void if not presented to the Saeima within three days of the opening of the session of the Saeima.
28. The rights of the judiciary power were stated by the Law “On the Judicial Power”, by the Codes of Civil and Criminal Procedure, by the Civil Code and by special laws on various judicial institutions “On the Bar”, “On the Public Prosecutor Service”, etc. International trade and monopoly issues were qualified by the judicial institutions as other similar cases. The judiciary institutions had the right to settle disputes arising from questions of international trade and monopoly in accordance with the laws and regulations in force in the Republic of Latvia. The system of Courts of Justice had three levels. The first instance was the District Court or City Court, the instance of appeal was the Regional Court, and the instance for causation was the Supreme Court. The very important point was that, specially concerning questions of international commercial relations, settlement of disputes could be reached by means of the arbitral court.

29. The Ministry of Economy was the competent institution for the administration of trade policies according to Article 2.3 of Regulation No. 304 of the Cabinet of Ministers “The Governing Regulations of the Ministry of Economy” (of 19 August 1997). The Ministry of Economy, in co-operation with the Ministry of Foreign Affairs and other relevant Ministries, formulated and implemented the general principles of the domestic and foreign trade policy of the State. Trade-related powers of local and municipal governments were defined in Articles 14, 15 and 21 of the Law “On Local Governments” and concerned the introduction of local taxes and issuance of activity licences when such activities were subject to licensing by local and municipal governments under the respective Laws. The Law “On Taxes and Duties” (Article 12) provided a list of duties which could be determined by local governments, and the Law “On Entrepreneurial Activity” and Regulation No. 434 of 19 November 1996 stipulated that local and municipal governments issued activity licences for pre-school educational institutions, shooting galleries, cremation activities and local transportation of passengers.

30. The representative of Latvia confirmed that sub-central administrative authorities, e.g. local administrative bodies, have no jurisdiction or authority to establish regulations or taxes on goods and services in Latvia independent of the central authorities and that application of these measures are exclusively the responsibilities of the executive and legislative branches of the central government. Central authorities will eliminate or nullify measures taken by sub-central authorities in Latvia that are inconsistent with WTO provisions from the date of accession. The Working Party took note of this commitment.

POLICIES AFFECTING TRADE IN GOODS

Trading Rights

31. Some members of the Working Party noted that laws and regulations relating to the right to trade in goods (also sometimes referred to as “registration requirements” or “activity licensing”) should not restrict imports of goods in
violation of the general prohibition on quantitative restrictions in GATT Article XI:1, nor should they discriminate against imported goods in violation of the non-discrimination provisions of GATT Article III:4. Furthermore, fees and charges levied on the right to import should be limited to the approximate cost of services rendered (Article VIII:1(a)) and taxes and charges on the right to trade in imported goods should not lead to discrimination in favour of like domestic products (Article III:2).

32. The representative of Latvia replied that in accordance with the Law “On Entrepreneurial Activity”, enterprises and entrepreneurial activity should be registered in Enterprise Register of the Republic of Latvia. The requirement to register concerned entrepreneurial associations and enterprises, including branches and representation offices performing entrepreneurial activity on the territory of the Republic of Latvia. All registered entrepreneurs, i.e. enterprises and entrepreneurial associations, carried out their activities under equal rights. Any activity of unregistered entrepreneurial associations and enterprises was prohibited. The registration procedure and the information to be submitted was regulated by the Law “On Enterprise Register”. Foreigners could also carry out entrepreneurship in accordance with the Law “On Foreign Investment in Republic of Latvia”. In accordance with the Law “On Entrepreneurial Activity” and the Rules of the Cabinet of Ministers “On Restrictions of Entrepreneurship”, only State enterprises had the right to produce and press securities, banknotes, coins, stamps and cards of gambling games. For other kinds of entrepreneurship restrictions were prescribed by the issuing of business activity licence or certificate. The kinds of entrepreneurship requiring certificate or business activity licence were listed in the above-mentioned Rules of the Cabinet of Ministers.

33. Some members of the Working Party asked Latvia to specify the business activities subject to licensing. The representative of Latvia said that certain forms of entrepreneurial activity required a special permit (licence). Limitations on entrepreneurial activity applied when such limitations were set forth in international treaties, conventions or any other norms of international law which were binding to Latvia, or when deemed necessary by Latvia for the protection of the interests of society, i.e. the protection of public morals, human, animal and plant life, and health or public security. The following restrictions on entrepreneurial activity had been determined in accordance with Article 32 of the Law “On Entrepreneurial Activity”:

(i) restrictions laid down by the State Government or local government law or regulations issued by the Cabinet of Ministers aiming at protecting essential State security interests;

(ii) restrictions effected within the competence determined by local government law;

(iii) restrictions on individuals carrying out any form of
entrepreneurial activity or intellectual work requiring special qualifications concerning special knowledge and testing of it, as determined by special laws or regulations issued by the Cabinet of Ministers; and

(iv) restrictions determined by the Bank of Latvia concerning financial and credit operations and banking activity.

The restrictions on entrepreneurial activity were enforced through special permits (licences) or certificates of professional qualification issued by the Cabinet of Ministers, Ministries or State institutions subordinate to and supervised by Ministries in accordance with statutory Acts; the authorized representative of the Strategic Importance Export and Import Control Board; local governments (municipal authorities of cities, towns, pagasts and city districts); professional associations; or the Bank of Latvia. The maximum validity of a special permit (licence) was five years, the minimum validity one year. The special permit (licence) could also be issued for an individual transaction. Licence fees payable to the State were determined by the law or regulations issued by the Cabinet of Ministers. Permission (licence) or certificate fees would be established by the issuing authority in accordance with rules laid down by the Cabinet of Ministers. The State reserved the right to make certain types of entrepreneurial activity connected with security of the State and its citizens subject to State monopoly.

34. The representative of Latvia said that any disputes arising from the application of restrictions on entrepreneurial activity, such as refusals to issue a special permit (licence) or cancellations, would be settled by a higher institution or a Court of Justice. A decision to reject an application to perform an entrepreneurial activity would need to be issued within 10 days (a time-limit of 30 days had applied until 1 January 1998) upon receipt by the responsible authority. An issuing authority was entitled to cancel a special permit (licence) issued on the basis of false information, or if the recipient violated any normative acts or conditions specified in the special permit (licence). The recipient of a special permit (licence) was responsible for its proper use and was not entitled to assign it to any other person.

35. The representative of Latvia said that the scope of the licensing system had been reduced gradually; in 1996 it had covered 47 goods-related business activities. Latvia continued to reduce the number of business activities licensed according to Regulations of the Cabinet of Ministers No.348 “On Licensing of Separate Forms of Entrepreneurial Activity”. The Government had reviewed the licensing system and elaborated special regulations on import licensing in accordance with the WTO Agreement on Import Licensing Procedures. The new regulations were adopted on 7 October 1997 and came into effect on 1 January 1998. These regulations provided for automatic licensing with no limitation on the number of licences granted. Import licences were not used to restrict trade and requirements were applied in a non-discriminatory manner. An import licence should be issued within 10 days,
application forms should be as simple as possible, and the licence fee constituted the cost of services rendered.

36. The representative of Latvia noted that the Alcohol Monopoly Department of the Ministry of Finance kept a list of officially approved importers of alcoholic beverages and intended to begin regular publication of the list. The number of licensed importers and traders was not controlled or limited by any other administrative means. The licensing system was maintained for reasons of health and social policy (to reduce illegal production and importation); these objectives could not be attained by other measures. Imported and domestic products were subject to the same requirements. The representative of Latvia provided additional information on the licensing regime in a Questionnaire on Import Licensing of Alcoholic Beverages and Tobacco (document WT/ACC/LVA/27). As per 1 May 1998, 92 enterprises had been licensed for wholesale trade, 27 enterprises for importation and 22 enterprises for the production of alcoholic beverages.

37. A member understood that Latvia had made tobacco products subject to activity licensing to control the internal market and import licensing to enforce the collection of excise taxes. This member was concerned that controls on the internal market operated as a barrier to trade and the use of licensing to assure collection of excise taxes was an unnecessary border aberration. The representative of Latvia replied that the licensing served statistical purposes only; the collection of excise taxes on tobacco products and other items was regulated by the Law “On the Excise Tax”. Entrepreneurial activity related to tobacco goods was licensed, in accordance with Regulations No. 351 “On Circulation of Tobacco Products” of 7 October 1997, to protect the legal domestic market against illegal production and protect consumers’ interests against low-quality or dangerous products. He added that licensing of entrepreneurial activities was not a mechanism for direct market control, but that the legal domestic market required regulation to ensure that uniform conditions applied in production, importation, exportation, sale, storage and transportation, and for the State to obtain the necessary statistical basis to maintain proper order. He stressed that the distribution of imported tobacco products was not restricted. As per 1 May 1998, 119 enterprises had been licensed for wholesale trade, 13 enterprises for importing and 4 enterprises for the production of tobacco products.

38. The representative of Latvia said that procedures governing production, manufacture and distribution of pharmaceutical products contained in the Drugs Register or Veterinary Drugs Register of the Republic of Latvia, including licensing provisions for specific pharmaceutical activities, were outlined in the Law “On Pharmaceutical Activities”. The Law required entrepreneurial activity licences to operate a pharmacy, a pharmaceutical or veterinary wholesale company, or to manufacture medical and veterinary medical products. The requirements for obtaining these licences were based on criteria to ensure consumer protection and
product quality.

39. The representative of Latvia confirmed that the former State monopoly in foreign trade had been abolished and that no restrictions existed on the right of individuals and enterprises to import and export goods into Latvia’s customs territory, except as provided in WTO Agreements. He confirmed that individuals and firms were not restricted in their ability to import or export based on their registered scope of business and the criteria for enrolment in the Register of Enterprises in Latvia were generally applicable and published in the official journal of the Republic of Latvia “Latvijas Vēstnesis”.

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

IMPORT REGULATION

Customs tariff

41. A member of the Working Party noted that the collection of customs duties appeared to have been inefficient in Latvia and wondered what plans Latvia might have for improving its customs system as part of the accession to the WTO. The representative of Latvia replied that organizational improvements had been discussed with the World Customs Organization and included the revision of legislation, the review of the structure and functions of the customs administration, further training of customs staff and additional technical equipment. The organizational improvements of the customs system had been finalized by 1 July 1997 with the entry into force of the new Customs Law. He added that the Law “On Customs Duties (Tariffs)” had been in force since 1 December 1994.

42. The representative of Latvia announced his Government’s readiness to enter into bilateral tariff negotiations in March 1995 (document WT/L/57). The tariff concessions resulting from these negotiations are included in its Schedule of Concessions and Commitments on Goods annexed to the draft Protocol of Accession of Latvia which is reproduced in the Appendix to this Report (see paragraph 132 below).

Other duties and charges

43. The representative of Latvia confirmed that Latvia levied no duties and charges on imports other than ordinary customs duties. Any such charges applied
to imports after accession would be in accordance with WTO provisions. He further confirmed that Latvia would not list any other charges in its Goods Market Accession Schedule under Article II:1(b) of the GATT 1994, binding such charges at “zero”.

**Tariff rate quotas, tariff exemptions**

44. Some members of the Working Party noted that Latvian legislation authorized the opening of tariff quotas to facilitate importation of goods in temporary short supply and requested further details. A member urged Latvia to bring this system into conformity with WTO provisions and to consider using tariff protection only and allow market forces to determine trade.

45. The representative of Latvia said that the legal basis for the opening of tariff quotas on any item was the Law “On Customs Duties (Tariffs)” and Regulations No. 208 “Establishment and Administration of Import and Export Tariff Quotas” and No. 24 “Authorizations for Licences”. Exceptionally, the Cabinet of Ministers had approved a tariff quota for imports of high-quality seeds in 1995, 1996 and 1997 due to a shortage of domestic supply. The State Cereals Bureau could open tariff quotas with an in-quota tariff of 0.5 per cent when its annual forecasts indicated a shortfall in Latvian production of certain types of grain. The Cabinet of Ministers had issued Regulation No. 85 “On Customs Tariff Quotas for Grains” stipulating that 20,000 tonnes of rye and 50,000 tonnes of feed grain could be imported at 0.5 per cent tariff until 1 June 1997. The tariff quotas had been distributed by public tender organized by the State Cereals Bureau with import licences issued by the Ministry of Agriculture.

46. The representative of Latvia agreed that the tariff quota regime for grain imports was not consistent with WTO requirements and Latvia was revising its legislation to ensure conformity with the Agreement on Import Licensing Procedures. Regulations Nos. 208 and 24 had been revoked and replaced by Regulation No. 106 “On Customs Tariff Quotas”, effective 25 March 1997, and issued in accordance with the Law “On International Agreements of the Republic of Latvia”. The representative of Latvia said that in June 1997 the Saeima (Parliament) had adopted amendments to the Law “On Latvia’s Grain Market and State Grain Reserves” according to which quantitative restrictions on grain were abolished and the licensing system replaced by automatic import licensing. The Saeima had also adopted amendments to the Law “On Customs Duties (Tariffs)” in June 1997, abolishing the order enabling the Cabinet of Ministers to establish tariff quotas. Regulation No. 106 “On Customs Tariff Quotas” of 25 March 1997 determined the procedure for implementing tariff quotas, established in accordance with international treaties, on the territory of the Republic of Latvia as well as the procedure for issuing special permits (licences) ensuring the administration of tariff quotas. Tariff quotas established in accordance with international treaties provided for limited amounts of goods imported under
reduced or zero tariff rate. The fulfilment or non-fulfilment of preferential tariff quotas did not restrict imports from MFN trading partners at the MFN tariff rate. The representative of Latvia confirmed that in the event that Latvia would use MFN tariff quotas in the future, imports under preferential tariff rate quotas would not be counted against MFN tariff rate quotas.

Fees and charges for services rendered

47. A member of the Working Party asked Latvia to clarify what fees and charges, if any, were applied for services rendered related to importation or exportation. The representative of Latvia confirmed that Latvia levied no fees or charges for services rendered related to importation or exportation, except fees for issuing certain activity licences and charges such as port charges and warehousing charges. None of these fees or charges were levied on imports or exports on an ad valorem basis.

48. The representative of Latvia confirmed that from the date of accession Latvia would impose any fees or charges for services rendered related to importation or exportation only in conformity with Article VIII of the GATT 1994. Information regarding the application and level of any such fees, revenues collected and their use would be provided to WTO Members upon request. The Working Party took note of these commitments.

Application of internal taxes

49. Some members of the Working Party asked for details on the excise tax system in Latvia and its application on imports and domestic goods. Latvia was requested to indicate, by HS tariff line, the levels and points of sale at which taxes were applied to imports and describe the components of the taxable base.

50. In reply, the representative of Latvia said that excise taxes were levied on alcohol, tobacco, motor vehicles, petroleum products and jewellery. The excise tax rates (Annex 1) were identical for imported and domestically produced items. The tax base for Latvian products was the sales price in domestic currency, taxes on imports were levied on a tariff-inclusive basis. Only tobacco products and alcohol carrying tax labels could be sold in Latvia. Enterprises licensed to import or manufacture tobacco products for sale ordered labels from the State Revenue Service. The requested quantity of labels would be supplied within 14 days against payment of excise tax and VAT. The labels themselves were not subject to any separate charge as the cost of issuing tax labels was included in the rate of excise tax. Exports, re-exports and goods in transit were exempt from excise tax in accordance with Article 4 of the Law “On Excise Tax”. Exemptions from excise taxes had also been established for a number of products, enumerated in Table 3.

1 Not reproduced.
### Table 3: Exemptions from Excise Tax

<table>
<thead>
<tr>
<th>Excise tax shall not be levied on the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Precious metals, precious stones and products from said metals and stones imported and purchased for the needs of the Precious Metal Fund of the Republic of Latvia;</td>
</tr>
<tr>
<td>Goods used for production (technological needs) of goods listed in Article 3;</td>
</tr>
<tr>
<td>Rectified alcohol:</td>
</tr>
<tr>
<td>(i) for the purposes of medicine and veterinary medicine;</td>
</tr>
<tr>
<td>(ii) for the needs of research and development;</td>
</tr>
<tr>
<td>(iii) for pharmaceutical industry.</td>
</tr>
<tr>
<td>Tobacco dust and tobacco products used for production of insecticides;</td>
</tr>
<tr>
<td>Precious metals for making dentures;</td>
</tr>
<tr>
<td>Goods for export;</td>
</tr>
<tr>
<td>Cars with spark-ignition internal combustion reciprocating engine, working volume of engine cylinders of which does not exceed 1,600 cm³;</td>
</tr>
<tr>
<td>Cars with compression ignition internal combustion reciprocating engine (diesels or semi-diesels), working volume of engine cylinders of which does not exceed 1900 cm³;</td>
</tr>
<tr>
<td>Cars older than 7 years from the date of industrial production;</td>
</tr>
<tr>
<td>Cars with electrical engine (electrocars).</td>
</tr>
<tr>
<td>The Cabinet may determine the maximum amount of goods that are excise tax-exempt when imported for consumption into the customs territory of the Republic of Latvia.</td>
</tr>
<tr>
<td>Excise tax shall not be levied on transit cargo shipping and reexport.</td>
</tr>
<tr>
<td>Excise tax shall not be levied on natural persons importing alcoholic drinks up to one litre or one unit in original packaging that does not exceed 3 litres in total amount, as well as cigarettes - up to 200 cigarettes per person.</td>
</tr>
<tr>
<td>Excise tax shall not be levied on natural and legal persons selling cars if excise tax for the respective car has already been paid once.</td>
</tr>
<tr>
<td>If an enterprise (entrepreneurial company) exports self-produced or unused goods for which raw material tax has been paid, the excise tax transferred into the budget shall be reimbursed from the State budget.</td>
</tr>
<tr>
<td>The excise tax paid for cars exported from the Republic of Latvia within three months after their import shall be reimbursed from the State budget.</td>
</tr>
</tbody>
</table>

51. Noting that a Value Added Tax (VAT) had replaced the turnover tax in Latvia, some members of the Working Party requested information on the application of the VAT, including product- or user-specific exemptions. The representative of Latvia
replied that VAT had replaced the turnover tax on 1 May 1995. VAT was levied at the rate of 18 per cent. VAT was levied on a tariff-inclusive basis and excise taxes were added to the tax base of imported and domestic products. Exemptions from VAT were determined in accordance with Articles 6 and 7 of the Law “On the Value Added Tax”. In all, 26 types of goods and services were exempt from VAT while nine services related to exporting and international transport were zero-rated (Annex 2). The latest amendments to the Law “On Value Added Tax” had entered into force on 1 January 1998.

52. In response to specific questions by some members of the Working Party in pursuance of Article III of the GATT 1994 regarding VAT exemptions for books and mass-media goods published or (in the case of mass media goods) registered in Latvia, he assured the Working Party that the exemption was also applicable to imported films. The representative of Latvia stated that the VAT exemptions offered on publications and mass media goods had been revoked, and that national treatment had been applied both for domestic and foreign publications and mass media goods since 1 January 1998.

53. The representative of Latvia stated that, from the date of accession, Latvia will apply its domestic taxes, including those on products listed in paragraphs 50 to 52 and Tables 3 and Annex 1 in strict compliance with Article III of the GATT 1994, in a non-discriminatory manner to imports regardless of country of origin and to domestically-produced goods. The Working Party took note of this commitment.

Quantitative import restrictions, including prohibitions, quotas and licensing systems

54. Latvia was requested to supply information in accordance with the questionnaire on import licensing and specifically asked to provide a comprehensive list, by HS tariff line, of products subject to non-tariff measures, citing the measure applied (prior import approval requirements, mandatory import licences, import quotas, prohibitions, etc.), its legal basis, and its justification under WTO provisions. Further questions addressed specific issues such as quantitative restrictions on imports of sugar and import arrangements affecting grain, ethyl alcohol and spirits, and tobacco. Concerned about potential barriers to trade, some members asked Latvia to elaborate on how its licensing system - which restricted imports of certain goods - worked and sought a clear commitment from Latvia that all measures applied to enforce quantitative restrictions would be eliminated as of the date of accession.

55. The representative of Latvia provided the information on non-tariff measures affecting imports and the legal basis for these measures, which is summarized in Table 4. He confirmed that an import ban on white sugar had been in
force since May 1993, but the prohibition did not apply to raw sugar. Import licences were issued on a non-discriminatory basis regarding the country of origin; sugar had been imported from Denmark, Estonia, Germany, Lithuania, Ukraine and the United Kingdom. He stated that import restrictions on sugar had been maintained to protect local manufacturers while the industry was restructured. He agreed that the existing regime did not correspond to the WTO Agriculture Agreement and Latvia was ready to prepare adoption of the necessary legal amendments to bring the sugar regime in line with WTO requirements.

**Table 4: Business Activity Licensing on Importation of Certain Products**

<table>
<thead>
<tr>
<th>HS tariff line</th>
<th>Description</th>
<th>Legal basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 10</td>
<td>Cereals</td>
<td>Law “On the Latvian grain market and State grain reserves” (Article 4)</td>
</tr>
<tr>
<td>Chapter 11</td>
<td>Products of the milling industry</td>
<td>Law “On the Latvian grain market and State grain reserves” (Article 4)</td>
</tr>
<tr>
<td>Chapter 12</td>
<td>Oil based plane seeds and oleaginous fruit, various grain, seeds and fruit, straw and fodder.</td>
<td>Law “On the Latvian grain market and State grain reserves” (Article 4)</td>
</tr>
<tr>
<td>Chapter 1701</td>
<td>Cane or beet sugar and chemically pure sucrose</td>
<td>Law “On Entrepreneurial Activity” (Article 32), Law “On Sugar”, Regulation No. 348 of 7 October 1997, and Regulation No. 69 of 30 March 1998</td>
</tr>
<tr>
<td>Chapter 22</td>
<td>Alcoholic beverages, spirits and vinegar</td>
<td>Law “On Entrepreneurial Activity” and Regulation No. 348 of 7 October 1997</td>
</tr>
<tr>
<td>Chapter 23</td>
<td>Residues and waste from the food industries; prepared animal fodders</td>
<td>Law “On the Latvian Grain Market and State Grain Reserves” (Article 4)</td>
</tr>
<tr>
<td>Chapter 24</td>
<td>Tobacco products</td>
<td>Law “On Entrepreneurial Activity” (Article 32), Regulation No. 86 of 14 April 1994, and Regulation No. 351 of 7 October 1997</td>
</tr>
</tbody>
</table>

56. The representative of Latvia said that quantitative restrictions on grain had been abolished by the amendments to the Law “On Latvia’s Grain Market and State Grain Reserves” adopted by the Saeima (Parliament) in June 1997. Quantitative restrictions on sugar were abolished by amendments to the Law “On Sugar” (adopted by the Saeima in November 1996) and Regulations No. 61, adopted by the Cabinet of Ministers in March 1997. Licensing for all products would be automatic according to the WTO Agreement on Import Licensing.

57. Some members of the Working Party requested that Latvia undertake to
eliminate all measures applied to enforce quantitative restrictions, including the non-automatic import licensing for grains and the ban on sugar imports, as of the date of accession and commit not to introduce, re-introduce or apply quantitative restrictions on imports or non-tariff measures such as licensing, quotas, bans and other restrictions having equivalent effect that can not be justified under the provisions of the WTO Agreements on Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Import Licensing Procedures and Agriculture. Additionally, Latvia was asked to confirm that import licensing on other commodities, especially wheat flour, cereal flour, cereal groats, cereal grains otherwise worked, sugar and animal feed, alcoholic beverages and tobacco products, were issued for statistical purposes only and administered in conformity with Article XI of the GATT 1994 and the Agreement on Import Licensing Procedures.

58. The representative of Latvia confirmed that as from 1 July 1997 Latvia maintained no quantitative import restrictions on any products.

59. The representative of Latvia confirmed that Latvia would, from the date of accession, eliminate and shall not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreement. This will include the current licensing restrictions on certain products in Chapters 10, 11 and 12 and the import ban on sugar products in section 1701 of Latvia’s tariff schedule. He added that the special import permits required for the importation of alcoholic beverages and tobacco are granted automatically to all who request them and would not restrict the right to import these products into Latvia or in any way discriminate against imported products. He further confirmed that the legal authority of the Government of Latvia to suspend imports and exports or to apply licensing requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade will be applied from the date of accession in conformity with the requirements of the WTO, in particular Articles XI, XII, XIII, XVIII, XIX, XX and XXI of the GATT 1994, and the Multilateral Trade Agreements on Agriculture, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade. The Working Party took note of these commitments.

Customs valuation

60. Some members of the Working Party asked Latvia to provide additional information on its customs valuation methods, noting in particular that terminology such as “approximate valuation” and valuation “according to the goods of the same type” had no counterpart in the WTO Agreement on Implementation of Article VII of the GATT 1994 (the Customs Valuation Agreement). Such valuation practices were specifically prohibited in Article 7.2 of the Customs Valuation Agreement and the
Agreement authorized no delay in the implementation of this provision. A member sought Latvia’s commitment to apply fully the WTO provisions concerning customs valuation from the date of accession, including, in addition to the Agreement on the Implementation of Article VII of the GATT 1994, the provisions for the Valuation of Carrier Media Bearing Software for Data Processing Equipment and the provisions on the Treatment of Interest Charges in Customs Value of Imported Goods.

61. The representative of Latvia said that valuation practices had been based on the Law “On Customs Duty (Tariffs)” and Regulation No. 27 “On Estimations of Customs Valuation Relating to Imported and Exported Goods and Other Subjects” which, inter alia, allowed the use of reference prices. Latvia had acknowledged the disparity between its legislation and the WTO Agreement on Implementation of Article VII. Amendments to existing rules had accordingly been drafted and submitted for ratification by Parliament. Amendments to the Law “On Customs Duty (Tariffs)” had entered into force on 1 July 1997 and the Articles related to the determination of customs value, including the use of reference prices, had been deleted. The new Customs Law (Customs Code) had been adopted by Parliament and entered into force on 1 July 1997. The valuation methods in the new law were based on transaction value; the value of identical goods; the value of similar goods; the unit price method and the computed value method. A copy of the law was provided to the Working Party. Secondary legislation to implement the Customs Law (Regulations of the Cabinet of Ministers No. 428 “On Procedure for Calculating the Customs Value of Goods”, adopted on 17 December 1997) came into effect on 1 January 1998. The Customs Law provided the methods for determining customs value in accordance with the requirements of Article VII of the GATT 1994 and the Agreement on Implementation of Article VII of the GATT 1994. He confirmed that the use of reference prices for the determination of customs value had been eliminated by the introduction of the new legislation.

62. The representative of Latvia confirmed that Latvia would fully apply the WTO provisions concerning customs valuation from the date of accession without recourse to a transition period, including the Agreement on the Implementation of Article VII of the GATT 1994 including its provisions on methods of appraisement and Annex I (Interpretative Notes) and Article 13 of the Agreement, as well as the provisions for the Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1). The Working Party took note of these commitments.

Other customs formalities

63. The representative of Latvia said that Latvia was a member of the World Customs Organization. A draft law on accession to the Kyoto Convention had been approved by the Cabinet of Ministers and submitted to the Saeima. Norms incorporated in the Kyoto Convention had been taken into account in the development of the new Customs Law.
Anti-dumping, countervailing duties and safeguard regimes

64. Some members of the Working Party referred to the provisions regarding anti-dumping and countervailing duties in Chapter II of the Law “On Customs Duties (Tariffs)” and requested information on Latvia’s intentions concerning the establishment of new, broader legislation in this area. The representative of Latvia said that at present no draft legislation existed related to this issue. Latvia was at the stage of examining possibilities for the introduction of anti-dumping and countervailing duty legislation, taking into account its specific situation as a small country and the resources available in the State budget for the purpose of eventual investigations. According to the existing timetable, a draft Anti-Dumping Law could be presented to the Cabinet of Ministers by the end of 1998.

65. Some members of the Working Party asked Latvia to describe its safeguards regime and questioned whether existing legislation would be consistent with GATT Article XIX and the WTO Agreement on Safeguards. The representative of Latvia replied that the current safeguards regime was based on Regulation No. 20 “Regulations to Protect the Domestic Market for Foods Stuff Produced in Latvia”. The regulation addressed only agricultural products - in particular live animals, grain, milk, meat, fish, potatoes and products made thereof - and had been introduced as the recent economic transition had disrupted sectors which normally would supply competitive products. However, the regulations had yet to be applied. The existing regime was temporary and would be replaced by new legislation.

66. The representative of Latvia said that Latvia would not apply any anti-dumping, countervailing or safeguard measure until it had implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI, on Subsidies and Countervailing Measures, and on Safeguards. In the elaboration of any legislation concerning anti-dumping duties, countervailing duties and safeguards, Latvia would ensure their full conformity with the relevant WTO provisions, including Article VI and XIX of the GATT 1994 and the Agreement on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. After such legislation was implemented, Latvia would only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions. The Working Party took note of these commitments.

EXPORT REGULATION

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

67. Some members of the Working Party requested details on export tax rates and plans to phase out such taxes.
68. In response, the representative of Latvia said that all goods were zero-rated with the exception of certain wood products, metal waste and scrap, and antiquities. Export duties on certain mineral products falling within HS Chapter 25 were eliminated with effect from 17 July 1996. Latvia would abolish export duties by year 2000, with the exception of duties on specific antiques. Amendments to the Law “On Customs Duties (Tariffs)” had entered into force on 1 July 1997. According to these amendments, Parliament had established a timetable for the elimination of export tariffs on items falling within HS Chapters 44 and 72. The list of products subject to export taxes, by HS tariff line, and the respective tariff rates are reproduced in Annex.3

69. The representative of Latvia confirmed that present export tariff rates related only to the goods listed in Annex 3 Export Duty Tariffs. All customs tariff changes were published in the official journal of the Republic of Latvia - the newspaper “Latvijas Vēstnesis”. Latvia would abolish all export duties listed in Annex 3 by 1 January 2000 with the exception of the duty on antiques. The timetable for elimination of export duties would be similar for regional trade agreement partners and partners to which MFN treatment was applied as indicated in Annex 3. The Working Party took note of these commitments.

Export restrictions

70. Some members of the Working Party requested details on the licensing regime on exports, notably with regard to trade in metals and pyrotechnical materials. The representative of Latvia replied that business licences were issued to registered enterprises for domestic purchasing and exports of metal scrap in accordance with the Law “On Entrepreneurial Activity”. Licensing of trade in strategic goods, products, services and technologies had been established for reasons of internal security and to fulfill international obligations on non-proliferation. Latvia had established an Export Control System covering munitions and exports of dual use goods based on international guidelines, incorporating the former COCOM Munitions List and Council Regulation (EC) No. 3381/94. The representative of Latvia confirmed that the licensing of exported metals was used for statistical purposes only and that the number of export licences issued was not limited.

Export subsidies

71. A member of the Working Party asked Latvia to describe its duty drawback system. The representative of Latvia replied that duty drawback was available for temporary importation of goods for processing, improvement, repair or replacement due to spoilage and re-exports in accordance with Chapter VII of the Law “On Customs Duties (Tariffs)” with Regulation No. 87 “Import of Commodities and Other Items for Processing” providing more specific procedures. Additional

3 Not reproduced.
documentation was required to certify that goods would not be sold in the domestic market and to indicate the foregone amount of import taxes and VAT. The rebate of import charges in the duty drawback programme did not exceed the value of the taxes and tariffs incorporated in the exported product. He confirmed that Latvia maintained no quantitative restrictions related to the duty drawback scheme.

72. The representative of Latvia said that his Government intended to support an expansion of the activities of the “Latvian Export Credit”, a State Joint-Stock Company. This company had been established on 20 January 1995 according to Order No.519-r of the Cabinet of Ministers of the Republic of Latvia “On the State Joint Stock Company ‘Latvian Export Credit’”. The main aim of the company was to promote exports of manufactured goods, services and technology offered by Latvian entrepreneurs to other countries and to enable Latvian entrepreneurs to manage export and import transactions, providing them with the corresponding insurance and guarantee system. Latvian Export Credit (LEC) offered export guarantees - export payment guarantees, export finance guarantees, buyer credit guarantees and letter of credit guarantees - and import guarantees, i.e. import payment guarantees and import finance guarantees. LEC had thus far not provided “classical” export credits, i.e. credits extended by the export credit agency of the exporting State or by the exporter directly to buyers of goods and services abroad, but rather made short-term credits available to producer-exporters to help stabilize their cash flow while they were awaiting receipt of due payments from their customers abroad. These credits were extended on the basis of commercial principles and on conditions similar to those offered by commercial banks. He stated that these credit services did not distort competition as the State did not subsidize export crediting activities and LEC operated with a profit. LEC was planning to start providing “classical” export credits on conditions (interest rate, duration, etc.) which would comply with the OECD Arrangement on Guidelines for Officially Supported Export Credits.

INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

Industrial policy, including subsidies

73. A member of the Working Party noted that the Latvian Government had signalled plans for extensive investments in infrastructure and wondered what the likely effect would be on Latvia’s exporting sectors. He requested that industrial support programmes be notified in accordance with the Agreement on Subsidies and Countervailing Measures. The representative of Latvia replied that the Government aimed at improving infrastructure generally and would not target any particular industry or enterprise.

74. The representative of Latvia added that the structural policy of his Government aimed at successful transition to a competitive market economy operated by viable industrial enterprises. The Ministry of Economy had drafted a
“Concept of Government Strategy in Industry and National Programme of Small and Medium Enterprise Development” which discussed issues such as investment promotion, industrial cooperation, industry restructuring and job creation. The development of small and medium-sized enterprises was considered particularly important and the Government encouraged and supported entrepreneurship through training and network programmes. Business Advisory Service Centres, enterprise fora and educational “workbooks” had been established to facilitate management training and business networks. Higher education institutions also offered special training courses for entrepreneurs. The Government had also elaborated a regional development policy under which grants and loans would be provided for the establishment and expansion of small and medium-sized enterprises and the development of energy-saving technology. Risk financing would be provided through a new institution, the Regional Development Fund. Another important element of Latvia’s industry policies was the restructuring and privatization of State enterprises with emphasis on the participation of foreign investors.

75. The representative of Latvia stated that with regard to non-agricultural subsidies, Latvia was preparing draft notifications under Article 25 of the Agreement on Subsidies and Countervailing Measures. However, apart from very minor subsidy programs related to energy and fish conservation and public transportation, the most significant forms of subsidies in the Republic of Latvia were tax deferrals to assist the privatization of State enterprises; special capital injections to troubled banks during a period of heavy economic transition; and loan guarantee programs. Small and medium sized enterprises benefited from reduced rate of corporate income tax.

76. The representative of Latvia confirmed that Latvia did not maintain subsidies including export subsidies which met the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures and that it would not introduce such prohibited subsidies in the future.

77. The representative of Latvia confirmed that any subsidy programmes would be administered in line with the Agreement on Subsidies and Countervailing Measures and that all necessary information on programmes to be notified, if such exist, would be provided to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon entry into force of Latvia’s Protocol of Accession. The Working Party took note of this commitment.

Technical barriers to trade, sanitary and phytosanitary measures

78. Regarding technical barriers to trade, some members of the Working Party asked about the system of standards and product certification in Latvia, including participation in international standards organizations, plans to adopt and implement the Code of Good Practice (Annex 3 of the WTO Agreement on Technical Barriers to Trade), the acceptance of certificates issued by foreign bodies and accreditation of private certification bodies.
79. The representative of Latvia provided information on technical barriers to trade in document WT/ACC/LVA/4, Annex 5. He added that in order to fulfill the obligations laid down by the Agreement on Technical Barriers to Trade (the TBT Agreement), notably its Article 2 “Technical Regulations and Standards”, Latvia had developed a National Standardization System approved by the Cabinet of Ministers on 8 August 1995. The Latvian National Centre of Standardization and Metrology had been established to perform all activities related to the adoption of standards. The Centre was an affiliated member of the European Standardization Committee (CEN) and a corresponding member of the ISO. The Centre applied ISO Guide 21 which outlined the principles regarding adoption of international standards. In all, 21 technical committees had been established under the auspices of the Centre and their main tasks were to implement and harmonize the Latvian standardization system with international standards. Membership in the technical committees reflected all interested parties concerned, i.e. representatives of relevant Ministries, producers and other experts. Latvia was preparing mass implementation of international standards using the “cover sheet” method, allowing the adoption of approximately 500 standards per year. Specific Latvian standards were implemented only in very narrow areas of purely national interest. In view of Article 4 of the TBT Agreement, Latvia was observing and implementing the Code of Good Practice for the Preparation, Adoption and Application of Standards. The Latvian National Centre of Standardization and Metrology was the responsible body for implementing the Code of Good Practice. A new Law “On Standardization” was in preparation with the objective to define the tasks of standardization, governing principles and the organization of standardization work.

80. Concerning Article 5 of the TBT Agreement, Parliament had adopted laws “On Conformity Assessments”, “On Safety of Products, Services and Liability of Producer and Supplier” during 1996 and a Law “On Uniformity of Measurements” in 1997. Latvia had adopted as national standards EN 45000, ISO 9000 and ISO Guides 21, 22, 25 and 58 to ensure harmonized conformity assessment procedures (for products) and quality systems (for manufacturers). Conformity assessment in the mandatory area, i.e. related to the protection of human health, safety and the environment, was carried out by competent testing and calibration laboratories and certification and inspection bodies authorized by the Cabinet of Ministers. The competence of testing and calibration laboratories and certification and inspection bodies was assured by means of accreditation or equivalent procedures in accordance with ISO/IEC Guides 25 and 58. Latvia operated a unified accreditation system in accordance with international principles and relevant ISO provisions. Accreditation was accorded by the Latvian National Accreditation Office (LATAK), an independent body under the supervision of the Ministry of Economy. LATAK assured the determination of competence of the conformity assessment bodies. Currently, LATAK had accredited 72 testing laboratories and 4 certification bodies. As of 16 August 1997, LATAK was an affiliated member in the European Co-operation
81. The representative of Latvia said that conformity assessment of goods was prescribed in the Law “On the Protection of Consumer Rights”, “On the Safety of Products, Services and Liability of Producer and Supplier”, “On Conformity Assessment” and the Law “On Uniformity of Measurements”. Three third-party certification centres had so far been nominated by the Cabinet of Ministers: the Latvian National Certification Centre for food, cosmetics and toys; the Latvian National Standardisation Centre for household electric equipment; and the Baltic Machinery Experimental Station for agricultural and wood equipment. These Centres were under accreditation procedures. Conformity assessment in the mandatory area, i.e. related to the protection of human health, safety and the environment, was carried out by competent testing and calibration laboratories and certification and inspection bodies authorized by the Cabinet of Ministers. The National Accreditation Office intended to join ISO CASCO. Certificates issued by foreign institutions were recognized in accordance with bilateral agreements and corresponding regulations on unilateral recognition. Safety standards and requirements were identical for imported and domestic products. Draft standards were disseminated among all interested parties and were available for any discussion and comments.

82. Referring to Article 10 of the TBT Agreement, the representative of Latvia said that Latvia had ensured the existence of an enquiry point to handle all reasonable enquiries from or to other WTO Member States and interested parties starting from 1 January 1998. The enquiry point established in the Ministry of Economy was also responsible for providing relevant documents regarding technical regulations, standards and conformity assessment procedures in Latvia. The Resolution of the Cabinet of Ministers No.12”On Order, How the Ministry of Economy Coordinates the Exchange of Information in the Area of Technical Barriers to Trade and Sanitary and Phytosanitary Measures” of 28 October 1997 established an obligation for Ministries and other relevant organizations to submit information on TBT and sanitary and phytosanitary measures to the Ministry of Economy at the earliest possible stage. The Regulations provided the possibility for other countries to comment on draft technical regulations, proposed conformity assessment procedures, and SPS measures. The practical work had started to create the relevant data bases and collect information to be notified. Currently, transparency of the adopted technical regulations and sanitary and phytosanitary measures was ensured by their publication in the official newspaper “Latvijas Vestnesis”.

83. Some members of the Working Party asked Latvia to describe its regime of sanitary and phytosanitary measures in the light of WTO requirements and outline how the provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) would be implemented after accession.
A member was particularly concerned about transparency, as it appeared that new regulations were not always published prior to implementation.

84. The representative of Latvia said Latvia participated in the activities of the Codex Alimentarius Commission, the IOE (Office International des Epizooties) and the European and Mediterranean Plant Protection Convention and hoped to join the International Plant Protection Organization. Latvia based its sanitary and phytosanitary measures on recommendations of these organizations and on regulations in force in the Nordic countries. Latvia reported monthly to international organizations (FAO, WHO and IOE) on progress in implementing international norms. A completed questionnaire on sanitary and phytosanitary measures was provided to the Working Party (WT/ACC/LVA/12, Annex 2).

85. The representative of Latvia added that the Law “On Plant Protection” provided the framework for administering phytosanitary measures. Sanitary measures were covered in the Law “On Veterinary Medicine”, the “Pharmaceutical Law” and the 1995 “Food Law”. Imported products were accompanied by certificates issued by the veterinary authorities of the exporting country in accordance with Latvian quality requirements. Latvia would accept exporters’ certificates for processed food products conforming to Latvia’s regulations. The official list of quarantinable pests (plant) and diseases (animals) was provided to the Working Party. The sanitary and phytosanitary measures applied by Latvia and the corresponding product coverage is presented in Table 5.

Table 5: Products Subject to Sanitary and Phytosanitary Measures

<table>
<thead>
<tr>
<th>HS tariff line</th>
<th>Product description</th>
<th>Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>0100</td>
<td>Live animals; animal products</td>
<td>Veterinary regulations</td>
</tr>
<tr>
<td>0200</td>
<td>Meat and edible meat offal</td>
<td>Veterinary regulations</td>
</tr>
<tr>
<td>0300</td>
<td>Fish and crustaceans, molluscs and other aquatic invertebrates</td>
<td>Veterinary regulations</td>
</tr>
<tr>
<td>0400</td>
<td>Dairy produce; bird’s eggs; natural honey; edible products of animal origins, not elsewhere specified or included</td>
<td>Veterinary regulations; Environment Health regulations</td>
</tr>
<tr>
<td>0500</td>
<td>Products of animal origin, not elsewhere specified or included</td>
<td>Veterinary regulations</td>
</tr>
<tr>
<td>0601</td>
<td>Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant in growth or in flower; chicory plants and roots other than roots of heading No 12.12</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>0602</td>
<td>Other live plants (including their roots), cuttings and slips, mushroom spawn</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>HS tariff line</td>
<td>Product description</td>
<td>Measure</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------------------------------------------------------------------------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>0603</td>
<td>Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>0700</td>
<td>Edible vegetables and certain root and tubers</td>
<td>Plant protection regulations; Food control regulations</td>
</tr>
<tr>
<td>0800</td>
<td>Edible fruit and nuts; peel of citrus fruit or melons</td>
<td>Environment Health regulations; Plant protection regulations</td>
</tr>
<tr>
<td>0900</td>
<td>Coffee, tea, mate and spices</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>1000</td>
<td>Cereals</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>1100</td>
<td>Products of milling industry; malt; starches; inulin</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>1200</td>
<td>Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder</td>
<td>Veterinary regulations; Plant protection regulations</td>
</tr>
<tr>
<td>1201</td>
<td>Soya beans, whether or not broken</td>
<td>Environment Health regulations</td>
</tr>
<tr>
<td>1202</td>
<td>Ground - nuts, not roasted or otherwise cooked, whether or not shelled or broken</td>
<td>Environment Health regulations</td>
</tr>
<tr>
<td>1300</td>
<td>Lac; gums; resins and other vegetable saps and extracts</td>
<td>Plant protection regulations; Food control regulations</td>
</tr>
<tr>
<td>1400</td>
<td>Vegetable plaiting materials; vegetable products not elsewhere specified or included</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>1500</td>
<td>Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes</td>
<td>Veterinary regulations; Plant protection regulations; Food control regulations</td>
</tr>
<tr>
<td>1600</td>
<td>Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates</td>
<td>Veterinary regulations; Plant protection regulations; Food control regulations</td>
</tr>
<tr>
<td>1700</td>
<td>Sugar and sugar confectionery</td>
<td>Environment Health regulations; Food control regulations</td>
</tr>
<tr>
<td>1800</td>
<td>Cocoa and cocoa preparations</td>
<td>Environment Health regulations; Food control regulations</td>
</tr>
<tr>
<td>1801</td>
<td>Cocoa beans, whole or broken, raw or roasted</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>1802</td>
<td>Cocoa shells, husks, skins and other cocoa waste</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>1900</td>
<td>Preparations of cereals, flour, starch or milk; pastrycooks’ products</td>
<td>Environment Health regulations; Food control regulations</td>
</tr>
<tr>
<td>2000</td>
<td>Preparations of vegetables, fruit, nuts or other parts of plants</td>
<td>Plant protection regulations; Food control regulations</td>
</tr>
<tr>
<td>2100</td>
<td>Miscellaneous edible preparations</td>
<td>Food control regulations; Veterinary regulations</td>
</tr>
<tr>
<td>2200</td>
<td>Beverages, spirits and vinegar</td>
<td>Environment Health regulations</td>
</tr>
<tr>
<td>HS tariff line</td>
<td>Product description</td>
<td>Measure</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------------------------------------------------------------------------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>2300</td>
<td>Residues and waste from the food industries; prepared animal fodder</td>
<td>Veterinary regulations; Plant protection regulations</td>
</tr>
<tr>
<td>2401</td>
<td>Unmanufactured tobacco; tobacco refuse</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>2402</td>
<td>Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes</td>
<td>Environment Health regulations</td>
</tr>
<tr>
<td>2403</td>
<td>Other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences</td>
<td>Environment Health regulations</td>
</tr>
<tr>
<td>2703</td>
<td>Peat (including peat litter), whether or not agglomerated</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>3002</td>
<td>Human blood; animal blood prepared for therapeutic; prophylactic or diagnostic uses</td>
<td>Veterinary regulations; Environment Health regulations</td>
</tr>
<tr>
<td>3102</td>
<td>Animal or vegetable fertilizers, whether or not mixed together or chemically treated; fertilizer produced by the mixing or chemical treatment of animal or vegetable products</td>
<td>Plant protection regulations; Veterinary regulations</td>
</tr>
<tr>
<td>3808</td>
<td>Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packing for retail sale</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>4403</td>
<td>Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>4407</td>
<td>Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger jointed, of a thickness exceeding 6 mm</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>4415</td>
<td>Packing cases, boxes, crates, drums and similar packing, of wood, cable drums of wood; pallets, box pallets and other load boards of wood</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>4501</td>
<td>Natural cork, raw or simply prepared; waste cork; crushed, granulated or ground cork</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>4600</td>
<td>Manufactures of straw, of esparto or to other materials; basketeware and wickerwork</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5001</td>
<td>Silk - worm cocoons suitable for reeling</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5003</td>
<td>Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock)</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5101</td>
<td>Wool, not carded or combed</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5103</td>
<td>Waste of wool or of fine or of coarse animal hair, including yarn waste but excluding garnetted stock</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5201</td>
<td>Cotton, not carded or combed</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5202</td>
<td>Cotton waste (including yarn waste and garnetted stock)</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>HS tariff line</td>
<td>Product description</td>
<td>Measure</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>5301</td>
<td>Flax, raw or processed but not spun; flax tow and waste (including yarn waste and garnetted stock)</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5302</td>
<td>True hemp, raw or processed but not spun, tow and waste of true hemp</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5303</td>
<td>Jute and other bast, raw or processed but not spun, tow and waste of these fibres</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5304</td>
<td>Sisal and other textile fibres of the genus Agave, raw or processed but not spun</td>
<td>Plant protection regulations</td>
</tr>
<tr>
<td>5305</td>
<td>Coconut, abaca, ramie and other vegetable textile fibres, not elsewhere specified or included, raw or processed but not spun</td>
<td>Plant protection regulations</td>
</tr>
</tbody>
</table>

86. Summarizing Latvia’s efforts thus far to implement the Agreement on the Application of Sanitary and Phytosanitary Measures, the representative of Latvia said that five laws - the Law on Protection of Consumer Rights, the Law on Veterinary Medicine, the Law on Pharmaceutical Activities, the Law on Supervision of Food Circulation and the Law on Plant Protection - had been adopted since 1992. These laws and their amendments constituted the basis for Latvia’s compliance with the SPS Agreement. The new Law on Supervision of Food Circulation was prepared taking into account recommendations made by a group of experts in relation to the FAO project on food quality improvement in Latvia and a project on Latvia’s food legislation sponsored by Denmark and was in accordance with the requirements of the SPS Agreement. Laws would be revised to clarify authorities’ areas of competence and responsibility in the elaboration and harmonization of regulations and requirements as well as in market surveillance to avoid duplication and ensure more effective food control. The veterinary and phytosanitary border control administration was reorganized at the beginning of 1997 to improve coordination and meet international standards. As a result of the process to harmonize food legislation, in 1997 Latvia had adopted a new regulation “On Maximum Residue Level of Veterinary Drugs in Food” and regulation “On Standing Order for Food Additives”. Both regulations were in full compliance with international rules. Latvia observed the principle of transparency as it required all adopted regulations related to sanitary and phytosanitary measures to be published in the official newspaper of the Republic of Latvia “Latvijas Vēstnesis”. The authority to adopt legislative acts for implementing the SPS Agreement rested with the Cabinet of Ministers. Prior to their adoption, all draft regulations were discussed by the Advisory Board of the State Veterinary Service and published in the media of the veterinary profession to encourage wide discussion. Also prior to their adoption, legislative acts on food safety and quality were to be reviewed by the Food Council (a consulting body composed of ministerial officials, representatives of producers, traders, distributors.
and other involved institutions), which had recently begun acting as an expert panel for drafting legislative acts and amendments. The legislative acts on implementation of particular sectors covered by the SPS Agreement were submitted to the Ministry of Economy, which was responsible for fulfilling the notification requirement. The Enquiry point, as provided for by Article 10 of the TBT Agreement and Article 7 of the SPS Agreement, operated under auspices of the Ministry of Economy. Latvia had also developed a training system for veterinary inspectors in order to improve the standards of control, inspection and approval procedures according to the SPS Agreement.

87. The representative of Latvia stated that its sanitary and phytosanitary measures reflected international standards, guidelines and recommendations. The SPS enforcement issues were being solved through intensive training programmes and accumulation of practical skills. Latvia’s TBT and SPS standards were currently in a process of rapid evolution to a new system reflecting international requirements provided for in a specific governmental programme. As a general point, the representative of Latvia noted that, each law pertaining to technical barriers to trade and sanitary and phytosanitary measures included a general clause stating that the provisions of an international agreement prevailed over national legislation in cases of contradiction. The provisions of the TBT and SPS Agreements would thus prevail over domestic law on Latvia’s accession to the WTO in cases of contradiction. He also stated that all the laws and regulations pertaining to the application of technical requirements and sanitary and phytosanitary measures to trade and any necessary amendments to current legislation to bring them into conformity with provisions of the WTO Agreements on Technical Barriers to Trade and Sanitary and Phytosanitary Measures would enter into force prior to Latvia’s accession.

88. The representative of Latvia stated that Latvia would apply the Agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade from the date of accession without recourse to any transition period. The Working Party took note of this commitment.

Trade-Related Investment Measures (TRIMs)

89. Some members of the Working Party enquired about Latvia’s intentions regarding notification and elimination of measures not in conformity with the provisions of the WTO Agreement on Trade-Related Investment Measures (TRIMs).

90. The representative of Latvia said that Latvia would not maintain any measures inconsistent with the TRIMs Agreement and would apply the TRIMs Agreement from the date of accession without recourse to any transitional period. The Working Party took note of this commitment.
State trading entities

91. Noting that more than 500 State-owned enterprises were involved in foreign trade in 1994, some members of the Working Party asked Latvia to provide a list of all firms wholly or partly owned or managed by the State, specifying any exclusive or special rights accorded to these enterprises. Latvia was requested to complete the questionnaire on State-trading. A member felt that the State Cereal Bureau could meet the criteria of a State-trading enterprise under Article XVII of the GATT 1994 and that the definition might also cover other enterprises engaged in agricultural production and distribution, including trade in sugar; metals; alcoholic beverages; and the natural monopolies managed by the State. Latvia was also asked to provide details on the trading firms Interlatvija and Latvijas Labiba.

92. The representative of Latvia provided a notification on State-trading to the Working Party in document WT/ACC/LVA/12 (Annex 3) describing the functioning of the State Cereal Bureau. The State Cereal Bureau was an institution not engaged in regular grain trade; on occasion, grain had been bought to replenish reserves held for food security reasons. Domestic grain was favoured in procurement for the State reserve. Institutions such as the State Alcohol Monopoly Board and the Tobacco Department did not engage in trade, but issued business licences to other operators in their respective areas. Other State-owned enterprises only held the same rights to trade as the private sector. The trading companies Interlatvija and Latvijas Labiba were fully privatized in 1991 and the Government had no role in their activities. The representative of Latvia stated that no enterprises, other than the State Cereal Bureau, operated under special or exclusive rights in Latvia. Latvia had established an Excise Tax Board dealing with licensing and excise marking of alcohol, tobacco and licensing of other goods subject to excise tax. The State Alcohol Monopoly Board and the Tobacco Department were incorporated into the Excise Tax Board and had ceased to exist as separate institutions.

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

Free zones, special economic areas

94. The representative of Latvia said that four special economic regimes had been established in Latvia by October 1997 according to the laws “On Riga Commercial Free Port” (passed on 6 November 1996), “On Ventspils Free Port” (19 December 1996), “On Liepaja Special Economic Zone” (17 February 1997) and “On Rezeknes Special Economic Zone” (1 October 1997). The free zones
in Riga Commercial Port and Ventspils Port were traditional free customs zones, established according to special laws and in consistence with the new Customs Law. The special economic zone in Liepaja, a former Soviet Navy base area, had been established by special law to promote development and recovery in a destroyed region. The Rezeknes Special Economic Zone had been established in order to promote development of the assisted region. The policy of Latvia’s Government was not to extend the development of special economic zones and not to establish new free economic zones in Latvia, but to gain experience from existing zones and develop more detailed regulations regarding the functioning of these zones. He added that there were neither export performance, trade balancing nor domestic content requirements associated with establishment of companies in the zone and purchases of goods produced in the zone by the rest of Latvia would bear normal taxes and tariff requirements. Further information on the free economic zones is provided in Table 6.

**Table 6: Free Economic Zones**

<table>
<thead>
<tr>
<th>Territory</th>
<th>Riga Commercial Free Port</th>
<th>Liepaja Special Economic Zone</th>
<th>Ventspils Free Port</th>
<th>Rezeknes Special Economic Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area</td>
<td>approx. 664 ha</td>
<td>approx. 3,000 ha</td>
<td>approx. 2,026 ha</td>
<td>approx. 1,220 ha</td>
</tr>
</tbody>
</table>
95. The representative of Latvia stated that the free ports and special economic zones authorized by the legislation described in paragraph 94 were fully subject to the coverage of Latvia’s commitments in its Protocol of Accession to the WTO Agreement and that Latvia would ensure enforcement of its WTO obligations in those zones. In addition, goods produced in these areas under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes will be subject to normal customs formalities when entering the rest of Latvia, including the application of tariffs and taxes. The Working Party took note of these commitments.

Government procurement

96. Some members of the Working Party asked about the status and content of Latvian legislation on public procurement including clarification of the exceptions concerning the case of “exclusive rights” and “urgent necessity” and Latvia’s position regarding possible membership of the Plurilateral Trade Agreement on Government Procurement. In their view, Latvia should commit itself to a specific date by which to join the Agreement on Government Procurement if the outcome of the negotiations on an entity list was satisfactory to all.
97. The representative of Latvia said that Latvia had adopted a new law on Government and Municipal Procurement based on the Agreement on Government Procurement and the UNCITRAL Model Law on Procurement. The Law allowed the award of supply contracts without bid or competition in cases associated with the creation of State reserves or national security and defence in accordance with specific decisions by the Cabinet of Ministers, or in cases of procurement of less than Lats 5,000. Single tendering could take place when certain suppliers held exclusive rights on goods and services; in circumstances of urgent necessity; when past purchases required the same source for additional supplies; and for the conclusion of research and development contracts.

98. The Law on Government and Municipal Procurement was passed by Parliament on 24 October 1996. An English version of the Law was submitted to the WTO Secretariat. The new Law on Government and Municipal Procurement, entering into force on 1 January 1997, stated that tendering with participation of foreign competitors was mandatory if the expected value of construction works exceeded Lats 4 million (SDR 5 million) or the expected value of other works or supplies exceeded Lats 104,000 (SDR 130,000). National treatment applied in the field of government procurement.

99. The representative of Latvia recalled that Latvia was granted observer status in the Committee on Government Procurement on 4 June 1996 (document GPA/W/16). Latvia intended to commence negotiations on accession to the Agreement on Government Procurement in the second half of 1998 and had begun preparation of the accession documents. However, additional consultations would be required with WTO experts before negotiations could start.

100. The representative of Latvia confirmed that Latvia will initiate negotiations for membership in the Agreement on Government Procurement upon accession by tabling an entity offer at that time. He also confirmed that, if the results of the negotiations are satisfactory to Latvia and the other members of the Agreement, Latvia will complete negotiations for membership in the Agreement by 1 January 2000. The Working Party took note of this commitment.

Transit

101. Some members of the Working Party asked Latvia to describe the regime relating to goods in transit. The representative of Latvia said that goods carried in transit were checked at the border. Customs offices kept a copy of the cargo dispatch notes and collected information for statistical purposes. The same procedures were followed for all goods, including metals. Latvia charged no transit fee at present, however, a convoy fee - paid by the transporter - was levied on dangerous goods, tobacco, food products or perfume transported through Latvia. Certain non-dangerous goods were subject to a security deposit equal to the amount of taxes due on importation of such goods in Latvia. The security deposit would be refunded...
within two months provided the transit regulations were adhered to.

102. The representative of Latvia confirmed that his Government would apply its laws and regulations governing transit operations and would act in full conformity with the provisions of the WTO Agreement, in particular Article V of the GATT 1994. The Working Party took note of this commitment.

**AGRICULTURAL POLICIES**

103. Some members of the Working Party asked Latvia to elaborate on its agriculture regime, including tariff protection, budgetary support, concessional credits, export subsidies and the procurement of grain. Some members noted tariff increases on some products and new support measures of recent date. Some members observed that Latvia had recently introduced export subsidy measures and sought a commitment that Latvia would eliminate export subsidies.

104. The representative of Latvia explained that the agricultural sector was going through a major reform process that included land restitution, decollectivisation and privatization of the food industry in order to establish a market-based competitive economic environment. He also noted that the reform process was a balanced shift from various tax exemptions in the farming sector to more transparent ways of direct support to agriculture. Over the last few years, the farming sector experienced a deterioration of the quality of agricultural land because of lack of proper drainage and other soil treatment as well as low level of investment in machinery and equipment. As a result, total agricultural output and income declined significantly and expectations were that it might take several years to fully recover. The representative of Latvia indicated that his Government was determined to pursue vigorously the process of reform and viewed its accession to the WTO as an important element in this regard.

105. Some members sought a commitment that Latvia would eliminate price controls on grain products. The representative of Latvia said that the Government had guaranteed the price of food grain for the State reserve. In 1995, the price guarantee covered 32,000 tons but only 5,700 tons were actually purchased and the State Grain Reserve had imported 14,000 tons. Domestic grain prices had recently been lower than the world market prices. The representative of Latvia said that amendments to the Law “On Latvia Grain Market and State Grain Reserves”, which eliminated the system of guaranteed grain prices, had come into effect on 1 July 1997.

106. Regarding domestic support, the representative of Latvia submitted detailed information in document WT/ACC/SPEC/LVA/2 based on the classification suggested by WT/ACC/4 and the methodology of the Agreement on Agriculture, which showed the average product specific support during the base period 1994-1996 for cereals, cattle, sheep, sugar beet, seed materials and flax and non-product specific
support. Information was also provided on a number of programmes regarding the financing of agricultural research, pest and disease control, advisory services and infrastructure which Latvia considered “green box” measures.

107. Regarding export subsidies, the representative of Latvia said that export subsidies had been provided for milk powder, canned milk, cheese, butter and rye in 1994, 1995 and 1996. He also made clear that Latvia’s intention was increasingly to direct its investment in agriculture towards programmes designed to improve the efficiency and competitiveness of Latvian agriculture and ensure its alignment with world market requirements. In this context, Latvia would be prepared to eliminate export subsidies as reflected in its schedule of commitments annexed to Latvia’s Protocol of Accession.

108. Latvia’s commitments on agricultural tariffs, on domestic support and export subsidies for agricultural products are in the schedule of concessions and commitments attached to Latvia’s Protocol of Accession to the WTO.

109. The representative of Latvia said that during a transition period to expire on 1 January 2003, Latvia would forego the 5 per cent de minimis exemption for product-specific domestic support and for non-product specific domestic support in calculating its Current Total AMS as provided for in paragraph 4 (a) of Article 6 of the Agreement on Agriculture, provided that the sum of product-specific and non-product-specific domestic support does not exceed SDR 24 million (representing approximately 8 per cent of the average value of final agricultural production during the period 1994-1996) and that SDR 24 million instead constitutes Latvia’s de minimis exemption under Article 6.4 (a) during each year of the said transition period. Accordingly, during the transition period, Latvia would not be required to include product-specific domestic support or non-product specific domestic support in calculating its Current Total AMS pursuant to paragraph 4 (a) of Article 6 of the Agreement on Agriculture, and would not be required to reduce such domestic support in accordance with paragraph 1 of Article 6 of the Agreement on Agriculture, where the sum of product-specific and non-product specific support does not exceed SDR 24 million during the relevant year. The Working Party took note of these commitments.

Trade in civil aircraft

110. The representative of Latvia said that Latvia would implement the Agreement on Trade in Civil Aircraft without exceptions or transitional period at the time of accession. The representative of Latvia confirmed that Latvia would become a signatory to the Agreement on Trade in Civil Aircraft upon accession to the WTO. The Working Party took note of this commitment.
Trade-Related Intellectual Property Rights (TRIPS)

111. Some members of the Working Party asked Latvia to compare its existing regime with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Specific questions addressed the time schedule for the full implementation of the TRIPS Agreement, the enforcement of intellectual property rights, the protection of copyright and the acceptance of the Berne Convention (1971) and the Rome Convention.

112. The representative of Latvia said that Latvia had been working to install a new legal system in the area of intellectual property protection since 1991. The number of national experts on the subject was limited and Latvia also lacked experience with certain aspects of intellectual property such as geographical indications, undisclosed information, and provisional and border measures. He noted that existing legislation was in conformity with the WTO Agreement on TRIPS with the exception of the protection of geographical indications and Part III, section 4 of the TRIPS Agreement (border measures). The new legislation regarding the protection of geographical indications had been accepted by the Government and submitted for adoption to the Saeima, and the new legislation regarding border measures (Part III, section 4 of the TRIPS Agreement) had been submitted to the Government for approval in July 1998. An overview of Latvia’s intellectual property legislation and an ongoing revision programme was provided to the Working Party, and is reproduced in Table 7.

Table 7: Status of Legislation On Intellectual Property in Latvia (August 1998)

<table>
<thead>
<tr>
<th>TRIPS Agreement</th>
<th>Laws and other legal provisions addressing and covering the subject matters</th>
<th>Effective and draft legislation relating to requirements of the TRIPS Agreement</th>
</tr>
</thead>
</table>
| Part II, Section 1 | - Copyright Law of 11 May 1993  
- Law on Amendments of the Latvian Criminal Code of 6 October 1955  
- Cabinet of Ministers Regulation on Distribution (Reproduction) and Public Performance of Cinematographic Works (1996) | Effective - full compliance with WTO TRIPS requirements ensured |
| Part II, Section 2 | Trademark Law of 9 March 1993 | Effective - full compliance with WTO TRIPS requirements ensured  
<table>
<thead>
<tr>
<th>TRIPS Agreement</th>
<th>Laws and other legal provisions addressing and covering the subject matters</th>
<th>Effective and draft legislation relating to requirements of the TRIPS Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part II, Section 3</td>
<td>Draft Law on Amendments to the Law on Competition, Section V Unfair Competition. A new draft Law on Trademarks and Geographical Indications including provisions on protection of geographical indications adopted by the Government in August 1998 and submitted to the Saeima (expected adoption by the Saeima in October 1998)</td>
<td></td>
</tr>
<tr>
<td>Part II, Section 4</td>
<td>Law on Industrial Design Protection of 4 May 1993 Effective - full compliance with WTO TRIPS requirements ensured</td>
<td></td>
</tr>
<tr>
<td>Part II, Section 5</td>
<td>Patent Law of 2 March 1993 as amended on 30 March 1995 Effective - full compliance with WTO TRIPS requirements ensured</td>
<td></td>
</tr>
<tr>
<td>Part II, Section 6</td>
<td>Law on Protection of Topographies of Semiconductor Products of 31 March 1998 Effective - full compliance with WTO TRIPS requirements ensured</td>
<td></td>
</tr>
<tr>
<td>Part II, Section 8</td>
<td>Provisions of the Patent Law, Trademark Law, Law on Industrial Design Protection Effective - full compliance with WTO TRIPS requirements ensured</td>
<td></td>
</tr>
<tr>
<td>Part III, Section 3 (provisional measures)</td>
<td>Law on Competition of 18 June 1997, Section V ‘Unfair Competition’, Art. 24; Civil Procedural Law Effective - compliance with WTO TRIPS requirements ensured</td>
<td></td>
</tr>
<tr>
<td>Part III, Section 5 (criminal procedures)</td>
<td>Criminal Code Effective - full compliance with WTO TRIPS requirements ensured</td>
<td></td>
</tr>
</tbody>
</table>
113. Regarding the status of intellectual property legislation in specific areas, the representative of Latvia added that, on copyright and related rights, Latvia adopted a Copyright Law in May 1993 which included provisions on computer programmes and protection of databases. However, the basic principles regarding rental rights for computer programmes would be refined to ensure better implementation. In August 1998, a new draft law On Copyright and Neighbouring Rights had been adopted by the Government, and by the end of 1998 it was to be accepted by the Saeima. The Criminal Code was amended in October 1995 in regard to violation of copyright and neighbouring rights, and in July 1998 the new Criminal Code had been passed in the Saeima, incorporating and refining provisions of criminal responsibility for infringement of copyright and illegal use of copyrighted work and neighbouring rights. Latvia had acceded to the Berne Convention in August 1995 and a Law on the accession to the Rome Convention (1961) for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations had been adopted by the Saeima in 1997 and would come into effect on 1 January 1999. On 8 April 1997, the Saeima had adopted the Law on accession to the Geneva Convention (1971) for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms. Latvia would join the WIPO Copyright Treaty and Performance and Phonograms Treaty before the end of 1998. In August 1998, a new draft Law on Trademarks and Geographical Indications had been adopted by the Government and submitted for adoption to the Saeima. The draft refined some definitions of the current law and included new provisions concerning international registration of marks and protection of geographical indications. Concerning the protection of layout-designs of integrated circuits (Part II, section 6 of the TRIPS Agreement), he said that on 31 March 1998 Latvia had adopted the Law on Protection of Topographies of Semiconductor Products, based on Council Directive (87/54/EEC) of the European Communities on the legal protection of topographies of semiconductor products of 16 December 1986. In August 1998, draft laws on accession to the Madrid Agreement Concerning International Registration of Trademarks and the Protocol to the Madrid Agreement had been adopted by the Government and submitted for consideration to the Saeima. Protection of undisclosed information in accordance with the requirements of Part II, section 7 of the TRIPS Agreement would be covered in the following new draft laws on personal data protection, which had been elaborated in order to ensure rights of any person to protect her rights and freedoms processing personal data manually or electronically, and the draft law on publicity of State and local government’s information. Both laws had been approved by the Government and submitted for adoption to the Saeima. Currently, the protection of undisclosed information was generally provided for by the Civil Code.

114. Referring to Part III of the TRIPS Agreement - Enforcement of Intellectual Property Rights - the representative of Latvia said that the new Law on Competition of 18 June 1997 included provisions on provisional measures (Part III, section
3), and the new Customs Law (Code) of 11 June 1997 provided for adoption of secondary legislation relating to border measures (Part III, section 4), which had been submitted for adoption to the Cabinet of Ministers in July 1998 and would refine the provisions on provisional measures contained in the amended Latvian Civil Procedural Code. Provisions in existing legislation relating to enforcement of intellectual property rights included:

- Part 4, Articles 54 to 57 of the Copyright Law which specified the notion of infringement of copyright and related rights as well as civil procedures provided for under this law and relating to enforcement of the said rights, and (Article 57) administrative and civil liability and criminal responsibility in case of infringement of copyright or related rights;

- Chapter 9 (Articles 40 and 41) of the Patent Law on patent infringement and responsibility thereof, Chapter 10 (Articles 42 to 45) on protection of rights derived from a patent, and Chapter 11 (Articles 46 to 49) on review of disputes in court;

- Articles 16, 18, 21 and 24 of the new Competition Law on responsibility for violation of restrictions on monopolies and illegal competition;

- similar provisions provided for by the Trademark Law and the Law on Design Protection; and

- provisions in the said Laws referring to procedures and measures provided for by civil or criminal law.

In addition to amending the Latvian Civil Procedural Code in 1995 to provide for provisional measures, Latvia had also amended the Criminal Code of 6 October 1955 and a new Criminal Code had been passed in August 1998 to provide for more severe measures in case of infringement of intellectual property rights and, in particular, copyright and neighbouring rights. Amendments to the Administrative Offences Code on illegal distribution of neighbouring rights to a work and the use of copyrighted work without licence had been submitted for adoption to the Saeima. Latvia had begun to reform its court system to strengthen its capability to enforce intellectual property rights. The former judiciary law, education and practice had given Latvia no experience in reviewing intellectual property disputes and Latvia considered as one of its most important tasks to educate a new generation of experts in the area of intellectual property protection and enforcement and to train its practitioners (judges, advocates, patent attorneys and trademark agents).

115. As a general point, the representative of Latvia noted that each law pertaining to intellectual property included a general clause stating that the provisions of an international agreement prevailed over national legislation in cases of contradiction. The provisions of the TRIPS Agreement would thus prevail over domestic law on Latvia’s accession to the WTO. Also as a general point, the representative of
Latvia stated that all the draft laws pertaining to intellectual property and necessary amendments to current legislation to bring them into conformity with the TRIPS Agreement would enter into force prior to Latvia’s accession.

116. The representative of Latvia confirmed that his Government would fully apply the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) by the date of its accession to the WTO without recourse to a transitional period. The Working Party took note of this commitment.

Policies affecting trade in services

117. The representative of Latvia provided a description of Latvia’s services regime in document WT/L/63 (L/7526/Add.3). Specific questions by members of the Working Party focused on regulations in the financial sector and clarification of laws with important provisions regarding investment in services sectors.

118. With regard to the financial sector, the representative of Latvia stated that licensing requirements were the same for domestic and foreign entities. However, procedurally, an application from a foreign bank to establish a branch or representative office was considered by the Board of Governors of the Bank of Latvia while other applications were considered by the Executive Board of the Bank of Latvia.

119. The representative of Latvia said that Parliament had adopted a new Law “On Credit Institutions” in October 1995. Under the Law “On Insurance” foreign investors could perform insurance activities in Latvia through the establishment of companies or partnerships with Latvians, i.e. joint-stock companies in which the participation of foreign investors was not restricted. He confirmed that licences were issued exclusively for one type of insurance activity; insurers involved in life insurance were prohibited from offering non-life insurance and vice versa. An insurer could not conduct life and non-life insurance operations simultaneously, without establishing a new company. However, this restriction did not refer to accident and health insurance operations concluded by an insurer with a licence to perform life insurance. A direct life insurer was allowed to reinsure life, accident and health insurance operations. A direct non-life insurer was prohibited from reinsuring life insurance operations. He stated that the criteria for registration of credit institutions or enrolment of broker companies were not inconsistent with Article XVI of the General Agreement on Trade in Services.

120. The representative of Latvia said that on 7 October 1997, the Cabinet of Ministers had adopted Regulations No. 348 “On Licensing of Certain Forms of Entrepreneurial Activities”, which would replace the former Regulations No. 434. The main changes under the new regulations were that the number of activities subject to regulation had been reduced from 118 to 67 and that professional certification had been transferred to accredited professional associations, municipalities and the Bank...
of Latvia with respect to financial activities and supervision, as appropriate. The new regulations came into effect on 1 January 1998 and responsible governmental institutions such as Ministry of Education and Science, Ministry of Welfare and Ministry of Transportation had been required to submit the amendments to the legislation on regulated professions, standards of professional qualifications and conformity assessment procedures. Certification had been introduced in order to ensure a professional level of service and the protection of consumers. Foreigners were granted national treatment in the issuance of certificates for supply of individual professional services. He confirmed that Latvia had no legislation on safeguard measures related to trade in services and that no restrictions were applied on domestic or international transfers and current payments for services.

121. The representative of Latvia said that the State enterprise “Latvijas Pasts” (Latvian Post) held monopoly rights on postal services. “Lattelekom”, a joint venture between Tilts Communications (British and Finnish ownership) and the Latvian Government, had been granted an exclusive right until 1 January 2003 to provide telecommunication services.

122. Latvia’s Schedule of Specific Commitments on Services is annexed to its draft Protocol of Accession reproduced in the Appendix to this Report (see paragraph 132 below). This Schedule of Specific Commitments on Services contains the legally binding market access commitments of Latvia in respect of services.

TRANSPARENCY

Publication of Information on Trade

123. The representative of Latvia stated that, at the latest from the date of accession, all laws and other normative acts related to trade would be published in the Official Journal promptly and no law, rule, etc. related to international trade would become effective prior to such publication. He further stated that Latvia would fully implement Article X of the GATT 1994 and the other transparency requirements in WTO Agreements requiring notification and publication.

Notification

124. The representative of Latvia said that at the latest upon entry into force of the Protocol of Accession, Latvia would submit all initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Latvia which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of this commitment.
Trade Agreements

125. Some members of the Working Party inquired about Latvia’s preferential trade agreements. Some members were concerned about the consistency with Article XXIV of the GATT 1994 of these free trade agreements.

126. The representative of Latvia said that agreements for the avoidance of double taxation and prevention of fiscal evasion had been signed (21 countries at present) and entered into force with Belarus, the Czech Republic, China, Canada, Denmark, Estonia, Finland, Iceland, Lithuania, the Netherlands, Norway, Poland, Sweden, Ukraine and the United Kingdom. Latvia had entered into intergovernmental agreements on trade and economic cooperation, providing for MFN status, with Armenia, Australia, Azerbaijan, Belarus, Canada, China, Cuba, Cyprus, Hungary, India, Kazakhstan, Kyrgyz Republic, Moldova, Romania, Russian Federation, Tajikistan, Turkmenistan, the United States of America and Uzbekistan.

127. Latvia had concluded free trade agreements with the European Communities, the EFTA States, the Czech Republic, the Slovak Republic, Poland, Slovenia, Ukraine, Estonia and Lithuania in order to develop an intra-regional trade. These trading partners accounted for nearly 70 per cent of Latvia’s foreign trade in 1997. The scope of these agreements covered HS Chapters 1 to 97. Latvia’s Association (Europe) Agreement with the European Communities, signed on 12 June 1995, entered into force on 1 February 1998 and incorporated provisions of the free trade agreement between the European Communities and Latvia. The Free Trade Agreements with Norway and Switzerland were replaced by the Free Trade Agreement between Latvia and the EFTA States which entered into force on 1 June 1996. The Free Trade Agreements with the Czech Republic and the Slovak Republic had entered into force on 1 July 1996, with Slovenia - on 1 August 1996. These agreements were notified to the WTO under the procedures of Article XXIV of the GATT 1994. The Free Trade Agreement with Poland had entered into force on 1 April 1998. A Trilateral Free Trade Agreement on trade in industrial goods between Latvia, Estonia and Lithuania had entered into force on 1 April 1994, and a Trilateral Free Trade Agreement on trade in agricultural goods between Latvia, Estonia and Lithuania had entered into force on 1 January 1997. Finally, a Trilateral Agreement on Abolition of Non-tariff Barriers to Trade between Latvia, Estonia and Lithuania had been signed on 20 November 1997 and entered into force on 1 June 1998. The agreement provided for elimination of all customs tariffs and quantitative restrictions in trade between the Baltic States.

128. The representative of Latvia said that the free trade agreement with the European Communities had been notified to the WTO (document WT/REG7/N/1) and circulated in July 1995 in document WT/REG7/1. Latvia was committed to reduce tariffs on agricultural imports from the European Communities in equal annual steps between 1995 and 2000. Reductions were granted through tariff quotas; Annex XI of the Agreement enumerated the products concerned and the...
Respective quotas, while the tariff rates were listed in Annex X. For processed agricultural products the relevant parts of the Agreement were Annexes 3 and 4 of Protocol 2. Latvia had established tariff quotas for meat and meat products, yoghurt, flowers, cabbage, cauliflower and margarine while the tariff reductions applied for unlimited quantities of various fruit and fruit juices, pet food, hair and some processed products. The main Latvian products subject to concessions in the European Communities were meat and meat products, dairy products, chocolate and sweets. The representative of Latvia confirmed that the Free Trade Agreement between Latvia and the European Communities included clauses on further liberalization of trade. The preferential tariff-rate quotas used in the Free Trade Agreements between Latvia and the European Communities, the EFTA States, the Czech Republic, Poland, the Slovak Republic and Slovenia had been established to facilitate further liberalization of trade in products for which the parties considered that some transitional period was required to achieve free trade. All importers were free to import goods at the MFN tariff rate at any time, irrespective of whether any tariff-rate quotas had been exhausted or not.

129. The representative of Latvia noted that Latvia’s free trade agreements had traditionally not covered trade in services. However, Latvia’s Association (Europe) Agreement with the European Communities included trade in services and establishment issues. Latvia had signed agreements on employment of foreign labour with Germany and Sweden. He confirmed that Latvia was not a party to any agreement concerning mutual recognition of professional qualifications.

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

CONCLUSIONS

131. The Working Party took note of the explanations and statements of Latvia concerning its foreign trade regime, as reflected in this summary. The Working Party took note of the commitments given by Latvia in relation to certain specific matters which are reproduced in paragraphs 18, 21, 30, 40, 48, 53, 59, 62, 66, 69, 77, 88, 90, 93, 95, 100, 102, 109, 110, 116, 124 and 130 of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of Latvia to the WTO.

132. Having carried out the examination of the foreign trade regime of Latvia and in the light of the explanations, commitments and concessions made by the representative of Latvia, the Working Party reached the conclusion that Latvia be invited to accede to the Marrakesh Agreement Establishing the WTO under the
provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this Report, and takes note of Latvia’s Schedule of Specific Commitments on Services (document WT/ACC/LVA/32/Add.2) and its Schedule of Concessions and Commitments on Goods (document WT/ACC/LVA/32/Add.1) that are annexed to the Protocol. It is proposed that these texts be adopted by the General Council when it adopts the Report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Latvia which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Latvia to the Marrakesh Agreement Establishing the WTO.

**Decision of the General Council on 14 October 1998**

*WT/ACC/LVA/34*

_The General Council,_

_Having regard_ to the results of the negotiations directed towards the establishment of the terms of accession of the Republic of Latvia to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol for the Accession of Latvia,

_Decides_, in accordance with Article XII of the Marrakesh Agreement Establishing the World Trade Organization, that the Republic of Latvia may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.¹

**RECTIFICATION OF SCHEDULE CXLIII**

*Communication from Latvia*

*(WT/ACC/LVA/33)*

The following communication, addressed to the Chairman of the Working Party, has been received from Latvia.

Reference is made to Latvia’s WTO tariff Schedule on Goods, Schedule CXLIII – Republic of Latvia, which is circulated in document WT/ACC/LVA/32/Add.1 on 30 September 1998 and which will be annexed to the Protocol of Accession of Latvia. It is agreed that this Schedule will undergo technical work by Latvia before 31 December 1998 in order to conform all tariff lines to the 6-digit (at a minimum) Harmonized System level. It is understood that the concessions contained therein would not change, rather the work would be a technical transposition. The

¹ Not reproduced.

¹ See under section “Legal Instruments.”
revised Schedule will then be circulated and follow the procedures for rectification and modification of Schedules as contained in the “Procedures for Modification and Rectification of Schedules of Tariff Concessions” (BISD 27S/25). Thus, Members would have three months to examine the Schedule, and assuming there are no objections, the Schedule would be appended to the Protocol of Accession of Latvia.
GENERAL COUNCIL

WORK PROGRAMME ON ELECTRONIC COMMERCE
Adopted by the General Council on 25 September 1998
(WT/L/274)

1.1 The Declaration on Global Electronic Commerce adopted by Ministers at the second session of the Ministerial Conference urged the General Council to establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce, taking into account the economic, financial, and development needs of developing countries, and to report on the progress of the work programme, with any recommendations for action, to the Third Session. The General Council therefore establishes the programme for the relevant WTO bodies as set out in paragraphs 2 to 5. Further issues may be taken up at the request of Members by any of these bodies. Other WTO bodies shall also inform the General Council of their activities relevant to electronic commerce.

1.2 The General Council shall play a central role in the whole process and keep the work programme under continuous review through a standing item on its agenda. In addition, the General Council shall take up consideration of any trade-related issue of a cross-cutting nature. All aspects of the work programme concerning the imposition of customs duties on electronic transmission shall be examined in the General Council. The General Council will conduct an interim review of progress in the implementation of the work programme by 31 March, 1999. The bodies referred to in paragraphs 2 to 5 shall report or provide information to the General Council by 30 July 1999.

1.3 Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term “electronic commerce” is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. The work programme will also include consideration of issues relating to the development of the infrastructure for electronic commerce.

1.4 In undertaking their work, these bodies should take into account the work of other intergovernmental organizations. Consideration should be given to possible ways of obtaining information from relevant non-governmental organizations.

Council for Trade in Services

2.1 The Council for Trade in Services shall examine and report on the treatment of electronic commerce in the GATS legal framework. The issues to be examined shall include:

- scope (including modes of supply) (Article I);
- MFN (Article II);
Decisions and Reports

- transparency (Article III);
- increasing participation of developing countries (Article IV);
- domestic regulation, standards, and recognition (Articles VI and VII);
- competition (Articles VIII and IX);
- protection of privacy and public morals and the prevention of fraud (Article XIV);
- market-access commitments on electronic supply of services (including commitments on basic and value added telecommunications services and on distribution services) (Article XVI);
- national treatment (Article XVII);
- access to and use of public telecommunications transport networks and services (Annex on Telecommunications);
- customs duties;
- classification issues.

Council for Trade in Goods

3.1 The Council for Trade in Goods shall examine and report on aspects of electronic commerce relevant to the provisions of GATT 1994, the multilateral trade agreements covered under Annex 1A of the WTO Agreement, and the approved work programme. The issues to be examined shall include:

- market access for and access to products related to electronic commerce;
- valuation issues arising from the application of the Agreement on Implementation of Article VII of the GATT 1994;
- issues arising from the application of the Agreement on Import Licensing Procedures;
- customs duties and other duties and charges as defined under Article II of GATT 1994;
- standards in relation to electronic commerce;
- rules of origin issues;
- classification issues.

Council for TRIPS

4.1 The Council for TRIPS shall examine and report on the intellectual property issues arising in connection with electronic commerce. The issues to be examined shall include:
Committee for Trade and Development

5.1 The Committee on Trade and Development shall examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries. The issues to be examined shall include:

- effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of maximizing possible benefits accruing to them;
- challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products: role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
- use of information technology in the integration of developing countries in the multilateral trading system;
- implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods;
- financial implications of electronic commerce for developing countries.

EXTENSION OF THE DEADLINE FOR THE REVIEW OF THE DISPUTE SETTLEMENT UNDERSTANDING

Action taken by the General Council on 18 December 1998
(Abstract from WT/GC/M/32)

At the General Council meeting on 18 December 1998, the Chairman of the Dispute Settlement Body reported that at its meeting on 8 December 1998, the DSB had agreed to the following:

“In the light of the requirement that a full review of the dispute settlement rules and procedures take place within four years after the entry into force of the Agreement Establishing the World Trade Organization, the Dispute Settlement Body has conducted extensive discussions in informal meetings. However, as the
discussions have not been completed and there remain a number of suggestions by Members that have yet to be considered, there is a consensus to continue discussions beyond the end of this year. The DSB therefore has agreed to propose to the General Council that it decide to continue and to complete the review process including the preparation of the report by the end of July 1999.”

Subsequently, the Chairman of the General Council proposed the following action:

“Concerning the continuing review of the Dispute Settlement Understanding, the General Council decides to continue and to complete the review process including the preparation of the report by the end of July 1999.”

The General Council so decided.

**WORK OF THE WORKING GROUP ON THE RELATIONSHIP BETWEEN TRADE AND INVESTMENT**

*Action taken by the General Council on 18 December 1998 (Abstract from WT/GC/M/32)*

On 18 December 1998, the General Council took note of the Report (1998) of the Working Group on the Relationship between Trade and Investment (WT/WGTr/2) and made the following decision:

“The General Council decides that the Working group on the relationship between Trade and Investment shall continue the educational work that it has been undertaking on the basis of the mandate contained in paragraph 20 of the Singapore Ministerial Declaration. The work of the Working Group, which shall be reviewed by the General Council, shall continue to be based on issues raised by Members with respect to the subjects identified in the Checklist of Issues Suggested for Study. It is understood that this decision is without prejudice to any future decision that might be taken by the General Council, including in the context of its existing work programme.”

**WORK OF THE WORKING GROUP ON THE INTERACTION BETWEEN TRADE AND COMPETITION POLICY**

*Action taken by the General Council on 18 December 1998 (Abstract from WT/GC/M/32)*

On 18 December 1998, the General Council took note of the Report (1998) of the Working Group on the relationship between Trade and Competition Policy (WT/WGTCp/2) and made the following decision:
“The General Council decides that the Working Group on the Interaction between Trade and Competition Policy shall continue the educative work that it has been undertaking pursuant to paragraph 20 of the Singapore Ministerial Declaration. In the light of the limited number of meetings that the Group will be able to hold in 1999, the Working Group, while continuing at each meeting to base its work on the study of issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, would benefit from a focused discussion on: (i) the relevance of fundamental WTO principles of national treatment, transparency, and most-favoured-nation treatment to competition policy and vice versa; (ii) approaches to promoting cooperation and communication among Members, including in the field of technical cooperation; and (iii) the contribution of competition policy to achieving the objectives of the WTO, including the promotion of international trade. The Working Group will continue to ensure that the development dimension and the relationship with investment are fully taken into account. It is understood that this decision is without prejudice to any future decision that might be taken by the General Council, including in the context of its existing work programme.”

TERMINATION OF THE DECISION OF THE CONTRACTING PARTIES TO THE GATT 1947 RELATING TO IMPORT LICENSING PROCEDURES

Decision adopted by the General Council on 19 February 1998 (WT/L/261)

The General Council,

Noting that the Council for Trade in Goods, at its meeting on 15 October 1996 (G/C/M/14), had agreed to request the General Council to take the necessary steps to eliminate the notification obligations in the Decisions of the CONTRACTING PARTIES relating to import licensing procedures (L/3756 and SR.28/6);

Decides as follows:

The notification obligations resulting from the Decision of the CONTRACTING PARTIES to the GATT 1947 taken at their twenty-eighth Session in November 1972 (SR.28/6, item 3) to adopt the report of the Committee on Trade in Industrial Products, including the Committee’s proposal regarding notification obligations on licensing systems (L/3756, paragraph 76\(^1\)), are hereby eliminated.

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\(^1\) The paragraph reads as follows: “In addition, it (the Committee on Trade in Industrial Products) proposes to the Council that contracting parties should notify changes of licensing systems at the same time as notifications are made on import restrictions, i.e. 30 September of each year.”
CONDITIONS OF SERVICE APPLICABLE TO THE STAFF OF THE
WTO SECRETARIAT

Decision adopted by the General Council and the ICITO Executive Committee on 24 April 1998
(WT/L/269)

The WTO General Council and ICITO Executive Committee,

Recalling their Decision adopted on 1 July 1997 (WT/L/223), and in particular,

Noting that a WTO Secretariat shall be established pursuant to Article VI of the Agreement Establishing the WTO,

Considering the Marrakesh Ministerial Decision on Organizational and Financial Consequences Flowing from Implementation of the Agreement Establishing the WTO,

Recalling that the WTO is a sui generis organization established outside the United Nations system,

Recalling also the Decision of the WTO General Council on 7 February 1997 establishing the Working Group on Conditions of Service Applicable to the Staff of the WTO Secretariat and defining its terms of reference (WT/GC/M/18),

Stressing that all potential cost increases in the WTO budget, including those relating to staff, must be offset through efficiency gains, improved priority-setting and other savings measures to ensure cost neutrality in the overall level of the WTO budget,

Reaffirming that the WTO shall continue the practice of making decisions by consensus on budgetary and administrative matters,

Decide that:

1. it is the objective of the General Council that the WTO Secretariat should be established by 1 January 1999 with its own regulations and rules governing the management of the staff and their compensation arrangements, under the following conditions;

2. the Working Group on Conditions of Service Applicable to the Staff of the WTO Secretariat shall submit to the General Council a detailed proposal for a WTO compensation and personnel plan that is independent from the UN Common System of salaries, allowances and benefits. The proposal shall include a compensation philosophy, present the rationale and justification for each new element of the plan, and maintain, at the maximum, cost neutrality in comparison with current personnel costs. The proposal shall set out full details of procedures for control by
WTO Members of an independent compensation and personnel plan and meet other requirements specified in the annex;  

3. before considering the Working Group’s revised proposal, a panel of independent actuaries appointed with the approval of the General Council must provide to the General Council certification that the Working Group’s proposed compensation (salaries and all benefits) and personnel scheme will be personnel-cost neutral according to the terms of reference specified in the annex and that the Working Group’s proposed independent WTO pension fund would be viable; and  

4. once the General Council determines that the Working Group’s proposal for an independent WTO compensation and personnel plan is acceptable, it shall authorize the Director-General to inform the United Nations Joint Staff Pension Fund that the ICITO wishes to apply for termination of its membership in the Fund and set a date for the establishment of the WTO Secretariat on this basis.

Decision Adoped by the General Council and the ICITO Executive Committee on 16 October 1998

(WT/L/282)

The WTO General Council and ICITO Executive Committee,

Recalling their Decision adopted on 24 April 1998 (WT/L/269), and in particular,

Noting that a WTO Secretariat shall be established pursuant to Article VI of the Agreement Establishing the WTO,

Considering the Marrakech Ministerial Decision on Organizational and Financial Consequences Flowing from Implementation of the Agreement Establishing the WTO,

Recalling that the WTO is a sui generis organization established outside the United Nations system,

Recalling also the Decision of the WTO General Council on 7 February 1997 establishing the Working Group on Conditions of Service Applicable to the Staff of the WTO Secretariat and defining its terms of reference (WT/GC/M/18),

Take note of the report of the Chairman of the Working Group and of the detailed proposal submitted by the Working Group for an independent WTO compensation and personnel plan, including the compensation philosophy, the rationale and justification for each new element of the plan, and the procedures for control of the plan by WTO members,
Take note also of the certification provided by the panel of independent actuaries that the plan will be personnel-cost neutral and that the proposed Pension Plan will be viable according to the terms of reference specified in the annex to the Decision of 24 April 1998,

Take note further that, subject to the amount of assets to be recovered from the United Nations Joint Staff Pension Fund, one or more of the plan adjustments specified in Annex 1 of the present Decision may be required in order to ensure cost neutrality over the period 1999 - 2005, without prejudice to the long-term viability of the proposed Pension Plan,

Decide to endorse the compensation philosophy and adopt the Staff Regulations and Staff Rules and the Regulations and Administrative Rules of the WTO Pension Plan, as contained in Annex 2 of the present Decision, subject to such adjustment specified in Annex 1 as may be required in order to ensure cost neutrality over the period 1999 – 2005,

Decide also to authorize the Director-General to inform the United Nations Joint Staff Pension Fund that ICITO wishes to apply for termination of its membership in the Fund on 31 December 1998, subject to the conclusion of satisfactory transfer arrangements with the Fund,

Decide further that, again subject to such satisfactory transfer arrangements with the Fund and to acceptance of the proposed Plan by the staff, the WTO Secretariat shall be established on 1 January 1999,

Instruct the Secretariat to enable the General Council to review this Decision if necessary, in the light of any significant developments relating to the transition to the new compensation and personnel plan, including a transfer amount below the cost-neutral threshold in Annex 1, and

Instruct the Secretariat, in the absence of a further decision by the General Council being required, to inform the General Council of the amount transferred from the United Nations Joint Staff Pension Fund and any adjustments made in accordance with Annex 1 to the present Decision.

1 Not incorporated.
The Director-General is authorized to make budgetary expenditures of the World Trade Organization for 1999 CHF 120,204,500, and the permanent costs for the Appellate Body and its Secretariat for 1999 CHF 1,990,950 amounting to a total of CHF 122,195,450.

This expenditure is to be financed by contributions amounting to CHF 121,100,000, by miscellaneous income estimated at CHF 1,095,450.

The contributions of the Members shall be assessed in accordance with the attached scale of contributions. Contributions from Members in respect of the 1999 budget are considered as due and payable in full as at 1 January 1999.

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**Total**                                      | 100.00| 121,100,000|
COUNCIL FOR TRADE IN GOODS

MAJOR REVIEW OF THE AGREEMENT ON TEXTILES AND CLOTHING IN THE FIRST STAGE OF THE INTEGRATION PROCESS

Adopted by the Council for Trade in Goods on 16 February 1998 (G/L/224)

Introduction

1. The Council is responsible for overseeing the implementation of the Agreement on Textiles and Clothing (ATC) and for this purpose is required by Article 8.11 to “conduct a major review before the end of each stage of the integration process”. Article 8.12 states, “In the light of its review the Council for Trade in Goods shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations embodied in this Agreement is not being impaired”. As the first stage, which began with the entry into force of the WTO on 1 January 1995, was completed at the end of 1997, the Council was required to conduct its first review of the implementation of the ATC before the end of the year. To assist in this review, Article 8.11 of the ATC also requires that a comprehensive report be prepared by the Textiles Monitoring Body and be transmitted to the Council for Trade in Goods at least five months before the end of the stage.

2. Accordingly, in preparation for the current review, the TMB prepared a comprehensive report on the implementation of the ATC and submitted it to the Council on 31 July 1997 in document G/L/179. This comprehensive report addressed all of the operational provisions of the ATC, as required by Article 8.11, with particular emphasis on matters relating to the integration process, to the application of the transitional safeguard mechanism, and to those concerning the application of GATT 1994 rules and disciplines as defined in Articles 2, 3, 6 and 7 of the ATC, respectively. Furthermore, since the notification of integration programmes for Stage 2 was required at the latest by 31 December 1996, the TMB report also covered the fulfilment of that notification obligation.

3. The Council began the review at its regular meeting on 6 October 1997, focusing the discussion initially on the general aspects or overall perspectives of the implementation process (G/C/M/23, pages 17-26). The Council took note of the comprehensive report that had been prepared by the TMB and considered that it provided a substantial background for the review. The Council noted the views of Members on the goals and objectives of the review and how it might be structured.

4. It was agreed that a series of Council meetings be arranged to analyse the various issues in depth. The Council agreed to hold meetings on 16 and 20 October and 7 and 13 November 1997 to discuss the integration process, the transitional
safeguard mechanism, the application of GATT rules and disciplines as defined in Articles 2, 3, 6 and 7 of the ATC, respectively, and other relevant topics.

5. In their initial exchange of views, Members were in agreement that the comprehensive report of the TMB would be a valuable contribution to the review, providing detailed factual information on all aspects of the implementation process. At the meeting on 16 October 1997, the Council also received a paper by Hong Kong, China setting out elements for consideration in the review (G/C/W/95). The representative of Colombia, on behalf of the ITCB members that are also WTO Members, provided papers with assessments and analyses of the topics addressed at these meetings. These were subsequently circulated in G/C/W/99, 100, 101 and 103. Further statements made by Members and papers provided by some of them were reflected in the minutes of the relevant Council meetings, set out in documents G/C/M/24 to 28 while the report on the initial discussions, which was part of the Council meeting of 6 October, was included in G/C/M/23.

6. The Agreement on Textiles and Clothing (ATC), in accordance with Article 1.1, sets out provisions to be applied by Members during a transitional period of ten years for the integration of the textiles and clothing sector into GATT 1994.

7. The Ministerial Declaration adopted at the first Ministerial Meeting of the WTO (December 1996, Singapore), contains the following section on Textiles and Clothing: “We confirm our commitment to full and faithful implementation of the provisions of the Agreement on Textiles and Clothing (ATC). We stress the importance of the integration of textile products, as provided for in the ATC, into GATT 1994 under its strengthened rules and disciplines because of its systemic significance for the rule-based, non-discriminatory trading system and its contribution to the increase in export earnings of developing countries. We attach importance to the implementation of this Agreement so as to ensure an effective transition to GATT 1994 by way of integration which is progressive in character. The use of safeguard measures in accordance with ATC provisions should be as sparing as possible. We note concerns regarding the use of other trade distortive measures and circumvention. We reiterate the importance of fully implementing the provisions of the ATC relating to small suppliers, new entrants and least-developing country Members, as well as those relating to cotton-producing exporting Members. We recognize the importance of wool products for some developing country Members. We reaffirm that as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such action as may be necessary to abide by GATT 1994 rules and disciplines so as to achieve improved market access for textiles and clothing products. We agree that, keeping in view its quasi-judicial nature, the Textiles Monitoring Body (TMB) should achieve transparency in providing rationale for its findings and recommendations. We expect that the TMB shall make findings and recommendations whenever called upon to do so under the Agreement. We
emphasize the responsibility of the Goods Council in overseeing, in accordance with Article IV:5 of the WTO Agreement and Article 8 of the ATC, the functioning of the ATC, whose implementation is being supervised by the TMB”.

8. The Council reiterated the commitment by Members to the full and faithful implementation of all provisions of the Agreement on Textiles and Clothing. The Council noted that, as specified in Article 9, the ATC and all restrictions thereunder shall stand terminated on 1 January 2005, on which date the textiles and clothing sector shall be fully integrated into GATT 1994 and that there shall be no extension of the ATC.

The Process of Integration

9. The process for the integration of textiles and clothing products covered by the ATC into GATT 1994 rules and disciplines is set out in Articles 2.6 to 2.11 of the ATC. According to the ATC, integration takes place in four stages, as specified in Articles 2.6 and 2.8, except for those Members which did not maintain restrictions under the MFA and, pursuant to Article 6.1, chose not to retain the right to use the safeguard provisions of Article 6. Such Members are, according to Article 2.9, deemed to have integrated their textile and clothing products into GATT 1994 and are, therefore, exempted from complying with the provisions of Articles 2.6 to 2.8 and 2.11. As regards the first stage, Article 2.6 states that “On the date of entry into force of the WTO Agreement, each Member shall integrate into GATT 1994 products which accounted for not less than 16 per cent of the total volume of the Member’s 1990 imports of the products in the Annex, in terms of HS lines or categories. The products to be integrated shall encompass products from each of the following four groups: tops and yarns, fabrics, made-up textile products, and clothing”. The same requirements exist for the integration of products in Stages 2 and 3 except that the volume of products to be integrated would be not less than 17 per cent and 18 per cent of the Members’ 1990 imports, respectively. At the end of the transition period, on 1 January 2005, all remaining products would be integrated and the Agreement together with all restrictions under it would be terminated.

10. In the Council’s discussion of the integration process, some Members stressed the importance of non-discriminatory trade in textiles and clothing to the economic and social development of their countries, it being a key foreign exchange earner and an important source of employment. Consequently, an open and liberal trading system for textiles and clothing was of considerable importance. Some Members were of the view that the integration programmes of the four Members maintaining restraints carried over from the MFA were a different matter from those of the other Members as they involved the elimination of quantitative restraints while the others did not involve the elimination of quantitative restraints. Accordingly, they directed their comments primarily at the integration programmes notified
by these four Members. They pointed out that, notwithstanding the fact that the required percentages of products to be integrated had been met (with the exception of a shortfall in one Member which was being addressed in the TMB), the integration programmes of the importing Members for Stages 1 and 2 were not commercially meaningful for developing exporting Members: the products selected for integration were concentrated in less value-added products such as tops, yarns and fabrics, with only small shares of made-up textile products and clothing; furthermore, the shares of integrated products were substantially lower in terms of value of trade than in volume of trade while more of the integrated trade was being accounted for by imports from developed countries than from developing countries. These Members noted that the proportion of the integrated trade in respect of products that were under restraint was in the range of only 0-3 per cent of 1990 imports of products covered by the ATC. As the first and second stages of integration would have little or no impact on the restraints, with over 96 per cent of restricted trade remaining to be integrated even after seven years of implementation, there would be no benefits for developing countries. These Members also considered that this “back-loading” of integration with virtually all meaningful integration being left to the last three years of the ATC, coupled with the use of other trade-restricting instruments, would not be conducive to meeting the objectives of trade liberalization. The process of integration was far from being “progressive in character” as envisioned in the ATC. Another area of concern to these Members was the lack of information on the process of autonomous industrial adjustment mentioned in Article 1.5 of the ATC in order to facilitate integration. Such adjustment would be all the more necessary with integration being effectively left to the last three years of the transition.

11. Some other Members, noting that the objective of the ATC was the integration of the textiles and clothing sector into GATT 1994 rules and disciplines by 1 January 2005, responded that the ATC, including the provisions relating to integration, applied to all Members and not just to four Members. They were of the view that the integration process could only be examined with reference to the specific provisions of the ATC. In response to the points raised by other Members, they stressed that nothing in the ATC stated that a certain percentage of products under quota would be required to be integrated at each stage and that it was the right of each Member to choose the products from the Annex to the ATC for integration. In this context the Members maintaining restrictions notified under Article 2 stressed that they had met all of their obligations in respect of both Stages 1 and 2; further, they confirmed their commitment to achieve full integration by 2005. They noted that their integration programmes included some restrained products for the second stage. They also observed that not all benefits to be achieved through the integration process could be met at the outset or at any particular stage. These Members further observed that the pattern of integration of products seemed to be a universal phenomenon followed by most Members with integration programmes. One Member noted that, in its particular case, over 50 per cent of the products
it integrated were textile made-up products. It had also announced the removal of a number of quotas on one product, using Article 2.15. Another Member had undertaken to eliminate restrictions, applying Article 2.15 of the ATC, so that by the end of 1998, 94 per cent of its quotas would be removed. With respect to autonomous industrial adjustment in terms of Article 1.5, another Member noted that there had been substantial adjustment under the MFA and it was continuing at the present time. Some Members had provided information in this regard to the TMB, which was noted in its report.

12. The comprehensive report of the TMB provides information on the integration process in Section II with an overall assessment being contained in Sub-Section E.

13. The Council noted that, subject to certain corrections, the legal requirements for integration of textile and clothing products into GATT 1994 in the first two stages had been fulfilled. The Council noted, however, that the integration programmes of the major importing Members during the first stage, and as announced for the second stage, included only a small number of products which had actually been under quota restrictions, therefore, leaving a large number of products for which quota restrictions would need to be eliminated during the remainder of the transition period.

14. The Council recalled the importance attached by Ministers in their Declaration at the first Ministerial Conference in Singapore to the implementation of the ATC so as to ensure an effective transition to GATT 1994 by way of integration, which is progressive in character. It also welcomed that two Members had applied the provisions of Article 2.15 for the early elimination of quantitative restraints and encouraged Members to continue to have recourse, where appropriate, to the provisions of Article 2.15, and to Article 2.10 on advanced integration.

15. The Council recalled that Members should allow for continuous autonomous industrial adjustment and increased competition in their markets in order to facilitate the integration of the textiles and clothing sector into GATT 1994. The Council noted that further information in this regard would facilitate the review of progress.

The Application of the Growth Rate Factors

16. The ATC also requires that the growth rates applicable to the restraints carried over from the former MFA shall be increased by a factor at each stage. Article 2.13 requires that during Stage 1 of the Agreement, the growth rates carried over from the former MFA would be increased by not less than 16 per cent. Article 2.14 requires that the growth rates be increased by not less than 25 per cent during the second stage and by not less than 27 per cent during the third stage, except where the Council for Trade in Goods or the Dispute Settlement Body
decides otherwise.

17. Some Members were of the view that the ATC had anticipated two paths to the progressive liberalization of textile and clothing trade; one was integration and the other was the application of growth rate factors. The two paths were not substitutes; rather, the intention was that they would proceed in parallel. In calculating the effects of the increased growth rates they considered that the increase in the quota levels in the first stage by the application of growth rate factors was misleading. A number of Members felt that the application of the growth rate factors would not significantly increase market access. Any assessment of the economic effect of the growth rate increases would have to take into account the fact that quotas with low rates of utilization tended to have higher growth rates. The point being made was that without meaningful integration and with the increases in the quotas being minimal, these processes could not be counted upon to produce a smooth and effective integration of this sector into WTO rules.

18. Some other Members considered that the provisions for enhanced growth rates contained in Articles 2.13 and 2.14 of the ATC would operate to give substantial increases in the volumes of the restrictions concerned. The application of the growth rate factors was cumulative and exponential, providing a valuable part of the integration process. They also considered that the accelerated growth rates would cause quotas to increase from their present levels to levels where they would no longer operate as a limitation well before the ten-year transition was completed. The important point was the effect of quota growth on the restraint, particularly in view of the slower growth rate in the domestic markets. Over the ten-year time-span, for many or all of the quotas that were currently being filled, the quota growth would cause them to no longer be true restraints.

Application of the Transitional Safeguard Mechanism

19. Article 6 of the ATC recognizes that during the transition period it may be necessary to apply the transitional safeguard mechanism on imports of products covered by the ATC and not yet integrated into GATT 1994 that cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Article 6.1 specifies that the transitional safeguard should be applied as sparingly as possible, consistently with the provisions of Article 6 and the effective implementation of the integration process under the ATC.

20. In the review of the application of the safeguard mechanism in the first stage of the implementation of the ATC, some Members considered that the introduction of an exceptionally large number of safeguard measures in the first year of the Agreement could not be considered as sparing use of the safeguard, particularly when, in most cases, the recourse had been found to be unjustified. As such there had been a manifestation of protectionism which resulted in a serious negative
impact on the implementation of the ATC. This had caused great concern for some Members with respect to the manner in which the obligations of the ATC were being applied and, in more general terms, with respect to liberalization in this sector. It was, however, not only the number of safeguard measures which caused concern to these Members but also the trade distorting implications of such actions. In cases where recourse to Article 6 had been found to be unjustified, legitimate export trade had suffered unwarranted harassment. Requests for consultations on a safeguard action had often led to a range of potentially adverse implications, causing disruptive effects for existing exports and creating uncertainty in the marketplace with very serious impact on the well-being of the exporting Member’s industry and economy. There was, in effect, a multiplier effect to the use of the safeguard, not only on the producer of the product in question but on export earnings, employment and overall prosperity associated with trade liberalization. Some Members felt that the use of transitional safeguards had not been sparing; additional restrictions imposed as a result of the application of transitional safeguards severely offset and hindered the progress towards achieving any effective implementation of the integration process. These Members considered that one particular Member had failed to comply with the requirements for invoking Article 6. These Members also considered that this had been confirmed by the TMB. None of the actions of this Member challenged before the TMB and/or the dispute settlement panels were found to be justified.

21. Some other Members considered it was the right of those Members which had fully complied with their relevant notification obligations to apply the safeguard mechanism in accordance with the ATC. In practice, only two Members had so far chosen to apply safeguards and there was a noticeable decreasing trend in the application of such measures in the recent period. These Members stated that the safeguard mechanism had been applied in full conformity with the provisions of the ATC. Of the 34 safeguard actions that had been taken, most were in the first six months of the ATC. Some Members considered that the significant change in the use of the safeguard from the first six months in 1995 should be noted by all Members. In addition to the quantitative change in the safeguard actions taken, the TMB and dispute settlement panels’ findings had provided important clarifications regarding the application of the provisions of Article 6. It was also stated that, in the case of a Member that had chosen to retain the right to use Article 6, recourse to the transitional safeguard was an indication of changes in trade patterns. Noting that the purpose of Article 6 of the ATC was to address serious damage or actual threat thereof to domestic textile producers during a transition period, they made the point that if imports were to increase to the extent that they caused or threatened to cause serious damage, any Member could exercise its rights under Article 6.

22. The comprehensive report of the TMB provides information on the application of the transitional safeguard mechanism in Section III, with comments and observations being provided in Sub-Section G.
23. The Council observed that recourse to safeguard actions under the Agreement had been made by two Members. It noted the concerns expressed by exporting Members and the panel decisions with respect to two of these safeguard actions by one Member, and the guidance that these decisions give when taking such actions. Recognizing the right of Members to use the safeguard provisions of the ATC, the Council recalled the Ministerial Declaration at Singapore that such use, in accordance with ATC provisions, should be as sparing as possible.

Application of GATT 1994 Rules as Defined in Articles 2, 3, 6 and 7 of the ATC, respectively

24. Under this heading, the Council exchanged views on other measures in respect of trade in textiles and clothing, including the changes made in rules of origin by one Member, as well as its proposal to maintain export visa requirements for these products after the quotas had been removed. It also discussed the application of anti-dumping measures on textile and clothing products by another Member and issues related to circumvention, customs formalities and market access.

25. As regards the changes in rules of origin relating to textiles and clothing by one Member, some Members considered that these changes were having a disruptive effect and were causing serious problems in the administration of quotas. Administrative regulations such as rules of origin were as powerful a tool for protectionism as the quota system and the overall effect of the new rules of origin had been to make access to that market more difficult for exporters. A number of Members expressed their concern over the unilateral imposition of these rules and the apparent inconsistency of this action with the Agreement on Rules of Origin, the ATC and Article I of GATT 1994. Consequently, there had been a negative contribution to progressive liberalization, further upsetting the balance of rights and obligations. In sum, the changes in rules of origin had upset the balance of rights and obligations, adversely affected access, impeded full utilization of quotas and had disrupted trade in textiles and clothing from exporting Members.

26. The Member concerned explained that the rules of origin had been implemented quite smoothly as there had been more than adequate time for exporters to prepare for the implementation of these rules. There had been no violation of the MFN principle, the provisions were universal and applied to all Members. The ATC contained specific provisions on consultation procedures and the concerned Member remained ready to consult with any Member that felt it had a problem with the rules of origin changes.

27. The comprehensive report of the TMB provides information on changes in rules of origin, including comments by the TMB in Section VI, paragraphs 254 to 264.

28. The Council noted the concerns of some Members on issues involving rules
of origin under Article 4 of the ATC. It called on Members to use the mechanisms available in the WTO, including those under the ATC providing for consultations, with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments when addressing matters on rules of origin, so that the balance of rights and obligations between the Members concerned is not upset.

29. In the discussion, some Members also mentioned other administrative requisites which they considered to be inconsistent with the objective of trade liberalization in this sector. Among these were bond requirements being enforced by a Member for shipments from companies suspected of being involved in the transshipment of goods. Customs had also increased the minimum bond amounts for all textile and clothing importers for goods imported from all sources which, in turn, increased the cost of imports. The increase in paperwork and cost for importers from such administrative measures would adversely affect buyers’ decisions for sourcing products from various suppliers. Reference was also made to possible cutbacks being made by a Member in certain quotas and/or group limits in lieu of trade accounted for by products which were to be integrated at the beginning of the second stage in January 1998. Any reduction in quota levels as a result of the adjustment could adversely affect the possibilities for development of exports in the non-integrated portions of categories as well as for the utilization of flexibilities by the exporting Member. Any decision to carry out adjustments without prior consultations with the Members concerned would be contrary to the principle and procedures contemplated in Articles 4.3 and 4.4 of the ATC.

30. In response to the latter point, the Member concerned confirmed that such proposals had been made to the Members on which the integration was going to have an effect on either group limits or part categories that had been integrated. It was considered that the proposals the Member concerned had put forward were reasonable and consistent with Article 4 of the ATC.

31. The comprehensive report of the TMB provides information on the administration of restrictions in Section VI.

32. The provisions concerning market access in Article 7.1 state that as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round to take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to, inter alia, achieve improved market access for textile and clothing products, ensure the application of policies relating to fair and equitable trading conditions as regards textiles and clothing, and avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons.

33. Some Members noted that in certain Members little had been done to improve access conditions and in some cases there had been tariff increases, the introduction of specific duties, minimum import pricing regimes, labelling and
certification requirements and the maintenance of balance of payments provisions affecting textiles and clothing. It was important that improved access be achieved in real terms. Concerns existed that, while the stages of integration to 1 January 2005 will result in the disappearance of all restraints, certain Members will have done little to improve access to their own markets.

34. Other Members noted that such market access could not be considered as a pre-requisite for the removal of the MFA restrictions, and that no problem regarding non-fulfilment of specific commitments undertaken by the Members during the Uruguay Round had been raised in the appropriate WTO bodies. They felt that these issues should be dealt with under the relevant provisions of GATT 1994 in the appropriate WTO bodies. Some Members felt that the reciprocal approach advanced by one Member at offering more meaningful integration in exchange for greater market access in exporting developing countries was not justified.

35. The comprehensive report of the TMB provides information on the topic of market access in Section VIII, Sub-Sections D and E.

36. As part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, the Council recalled the provisions of Article 7.1 of the ATC and called on all Members to take such actions as may be necessary to abide by GATT 1994 rules and disciplines so as to, inter alia, achieve improved market access to markets for textile and clothing products or through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities.

37. With reference to anti-dumping actions, some Members were concerned in particular that the largest number of actions taken by one Member had been targeted at textile products and often involved products which were subject to quantitative restrictions under the ATC. Those Members expressed concern about the way and the pattern in which anti-dumping measures were initiated in respect of textiles and clothing. In practice double protection was being exercised through this type of action. The use of anti-dumping action against products under quota and repeated actions against the same products touched the very essence of the objective of trade liberalization which the ATC was meant to bring about and could be considered as tantamount to trade harassment. The application of anti-dumping actions, while continuing to invoke the provisions of the ATC, would appear to be uncalled for and a negative contribution to progressive liberalization, further upsetting the balance of rights and obligations embodied in the ATC.

38. One Member stated in reply that it applied its anti-dumping legislation, which was fully in conformity with WTO rules, in a transparent and non-discriminatory manner across all sectors. No special provisions existed for the textiles sector and there was no pattern in respect of this sector or Members. The Member concerned
noted that imports affected by anti-dumping duties represented 0.32 per cent of total imports in this sector in 1996. An anti-dumping or subsidy investigation must be opened upon receipt of a complaint containing prima facie evidence of dumping or subsidization and resulting injury. The Member concerned, noting that the ATC did not condone dumping, invited any Member to avail itself of consultations under the relevant WTO Agreement. Some Members indicated that any Member had the right under the WTO to use anti-dumping measures whenever the circumstances called for it, whether for products covered by the ATC or for any other product.

39. The comprehensive report of the TMB provides information on anti-dumping measures in Section VIII, paragraphs 287 and 299.

40. Recalling the concerns of some Members regarding the use of trade measures in respect of textile and clothing products, including those which were already under restraint, the Council called on Members to observe the relevant WTO provisions so as to ensure the application of policies relating to fair and equitable trading conditions regarding textile and clothing products in areas including, *inter alia*, dumping and anti-dumping rules and procedures.

41. Several Members brought before the Council the proposal of a Member to maintain visa requirements on textiles and clothing products which would be integrated into GATT. They said that such a measure would be against the letter and spirit of the ATC. They considered that an essential consequence of the integration of restricted products was the elimination of the specific requirements applied in connection with the import or export of these products due to the existence of quotas. Such requirements included those related to the issuances of visas by exporting Members. While export visas in respect of products restrained under the ATC could be justified as administrative arrangements under Article 2.17 of the ATC, once such products were integrated into GATT 1994, the ATC ceased to be applicable and the normal disciplines of GATT 1994 should apply to such products. This measure would also give rise to important issues in connection with the application of non-discriminatory treatment under the GATT (Article I), fees and formalities (Article VIII) and publication and administration of trade regulations (Article X), and would have implications for the integration process.

42. In response, the concerned Member stated that there were no grounds for concern among exporting Members on this issue. It had been proposed that exporting Members voluntarily retain the use of export visas for integrated products but this was not a mandatory requirement. Either party could terminate the visa arrangement in whole or in part. The concerned Member remained available to any Member with concerns in this area and expected that it would be possible to reach mutually satisfactory arrangements.

43. The Council noted the concern of exporting Members in relation to the proposal of a Member to maintain visa requirements on textile and clothing products which would be integrated into GATT 1994.
Other Issues Relating to the Implementation of the ATC

44. A number of Members referred to Article 1.2 of the ATC which provided that Members would use Articles 2.18 and 6.6(b) of the ATC in such a way as to permit meaningful increases in access possibilities for small suppliers and the development of commercially significant trading opportunities for new entrants in the field of textiles and clothing trade. A footnote to this provision stated that to the extent possible, exports from a least-developed country Member may also benefit from this provision. However, they noted that in the implementation of Article 2.18, the methodologies used by only one of the Members maintaining restraints of increasing the respective growth rates first by 16 per cent and then by 25 per cent had fulfilled the requirements of Article 1.2. They noted that two Members maintaining restraints had applied only a 25 per cent increase. These Members made reference to the observation that the results in terms of market access in the first stage would have been improved if the methodology chosen for the advancement by one stage of the growth rates had included the growth factors of the first stage, as done by one Member (refer to paragraph 47 below). They considered that the term “advancement by one stage” in Article 2.18 did not mean substitution of the second stage growth factor for the first stage growth factor. The stages had cumulative effect and it was incidental that the growth enhancement factors for later stages were higher than in earlier stages, therefore, the growth factor for Stage 2 was to be applied in addition to the Stage 1 growth factor. Aside from this technical aspect, Article 2.18 should be implemented both within the context and general meaning of the ATC which was liberalization of trade and the purpose of the special provisions regarding small suppliers, that is to provide significant increases in access to them in terms of advancement by one stage of the growth rates with a view to contribute to the future possibilities of developing their trade. Some Members also noted that, in the application of safeguard measures by a Member, involving Members considered to be small suppliers, account had not been taken of the specific requirement in Article 6.6(b) to provide differential and more favourable treatment.

45. In response to these points, other Members considered that they had met their obligations and had implemented the provisions of Article 2.18 faithfully. One Member confirmed that it had increased the growth rates first by 16 per cent and then by 25 per cent. Some other Members considered that these matters, in general, had not been the subject of consultations and concern was expressed that some Members were bypassing the provisions and procedures in the ATC and bringing the matters directly to the Council. As regards the application of Article 2.18, the intent of the language of this Article was that “advancement” should mean substitution of the second stage growth rate for the first stage growth rate, not cumulation of the first and second stage growth rates. In this way, small suppliers would receive a meaningful increase in their market access by “front-loading” these considerably faster growth rates. In addition one Member had extended Article 2.18 to six
additional Members by applying this provision on the basis of 1991 and 1994 imports, whereas Article 2.18 refers only to applying this provision on the basis of 1991 imports.

46. In response to the comment that certain Members were bypassing the ATC provisions and procedures and were bringing matters to the Council directly, it was pointed out by some Members that the Council’s role was not to duplicate the work of the TMB but that the mandate to oversee ATC implementation required the Council to ensure that the stipulated objectives of the Agreement would be fulfilled, namely, an integration process progressive in character and liberalization of trade. Furthermore, multilateral rules constrained what might be agreed bilaterally. Where a measure was not challenged bilaterally, or even where a measure was endorsed in a bilateral agreement, it did not by any means follow that the measure in question was consistent with multilateral disciplines.

47. The comprehensive report of the TMB provides information on the implementation of the provisions of Articles 2.18 and 6.6(b) in Section IV, Sub-Section D and Section IX, Sub-Section B.

48. With respect to the treatment of the least-developed country Members, some Members pointed out that certain least-developed countries had benefitted from the provisions of Article 2.18 while one Member had not. This was discriminatory as between least-developed countries and inconsistent with the objectives of the ATC. The Member stressed the importance of taking into account the special concerns of the least-developed Members in order to ensure improved market access for their products.

49. One Member maintaining restraints indicated that it maintained no restrictions in respect of least-developed countries, the exports of which normally benefitted from a zero duty rate under the GSP or other preferential arrangements. With respect to two other Members maintaining restraints, they indicated that they took this obligation seriously and had implemented it. In particular, they had provided considerably higher growth rates for the least-developed Member referred to in paragraph 48 above. In addition one Member had recently removed the restraints on one of the most important export categories for the one least-developed Member that did not qualify under the specific provisions of Article 2.18.

50. The comprehensive report of the TMB provides information on the implementation of provisions relating to least-developed country Members in Section IX, Sub-Section A.

51. The Council noted the initiatives announced by Members to positively address the concerns expressed by least-developed country Members at the High Level Meeting on Least-Developed Countries held in Geneva in October 1997.

52. Some Members made reference to Article 1.4 of the ATC which states
that the particular interests of cotton-producing exporting Members should, in consultation with them, be reflected in the implementation of the provisions of the Agreement. These Members noted that the Members maintaining restraints had not allowed special concessions to cotton-producing, exporting countries which would have been in conformity with the letter and spirit of the ATC.

53. In response, with respect to the case of cotton-producing Members, two Members maintaining restraints considered that they were in full compliance with the ATC having held consultations with these exporters. In the case of the third Member maintaining restraints, it also considered that it had acted fully in compliance with this provision. No-one had approached it on the matter, possibly because only a few of its restraints were based on fibre content; nevertheless, it remained ready to enter consultations if any other Member so wished.

54. The comprehensive report of the TMB provides information on cotton-producing, exporting Members in Section IX:C.

55. The Council recalled the provisions of the ATC in favour of small suppliers, least-developed country Members and cotton-producing exporting Members, and reiterated the importance of the full implementation of these provisions.

56. Some Members stated that there was a continuing problem with circumvention that showed no sign of diminishing over time. One Member pointed out that there had been a steady increase in the number of court cases in that country where exporters had systematically circumvented the restraints on textile imports. These Members considered that the exporting countries involved had a responsibility to increase their vigilance in combatting this problem.

57. The comprehensive report of the TMB provides information on the provisions of the ATC relating to circumvention in Section VII.

58. The Council noted the concern of some Members with regard to issues relating to circumvention and reiterated the importance of full observance of the provisions of this Agreement.

59. Reference was also made to the importance of all Members fully meeting their notification obligations in a timely manner. Notifications were important for transparency but also had elements of legal rights and obligations. In respect of new restrictions introduced subsequent to the ATC coming into effect, some Members expressed concern that these had not been notified in detail either to the TMB or to any other WTO body. The Member concerned recalled that this matter was under examination in a more general context in the Committee on Regional Trade Agreements and notification requirements were being complied with.

60. The comprehensive report of the TMB provides information on compliance with notification obligations in Section X.
61. To ensure maximum transparency in the implementation of the ATC and to facilitate the work of the Textiles Monitoring Body, the Council called upon Members to comply, in a complete and timely manner, with all notification obligations of the ATC.

62. Some Members considered that the process of overseeing the implementation of the ATC would be facilitated if the Council were to establish a more structured and continuous process. They raised the possibility of an interim review under the same terms as provided for in Article 8.11. Some other Members considered that no change was required since the ATC already provided a clear and proper framework for the oversight function of the ATC. They also noted that Members already have the right to raise textiles issues in the Council at any point considered necessary.

63. The Council emphasized the importance of its overseeing and of regularly evaluating the progress, in accordance with Article IV:5 of the WTO Agreement and Article 8 of the ATC, of the functioning of the ATC, whose implementation is being supervised by the TMB.

**QUESTIONNAIRE**

**ON STATE TRADING**

*Approved by the Council for Trade in Goods on 21 April 1998 (G/STR/3)*

Name of Member

I. **ENUMERATION OF STATE TRADING ENTERPRISES**

A. Identification of state trading enterprises.

B. Description of products affected (including tariff item number(s) encompassed in product description).

II. **REASON AND PURPOSE**

A. Reason or purpose for establishing and/or maintaining state trading enterprise.

B. Summary of legal basis for granting the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers.

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1 This questionnaire is to be filled out according to the Guidelines contained on pages BISD/98 180 to 183.
III. DESCRIPTION OF THE FUNCTIONING OF THE STATE TRADING ENTERPRISE

A. Summary statement providing overview of operations of the state trading enterprise.
B. Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise.
C. Type of entities other than the state trading enterprise that are allowed to engage in importation/exportation and conditions for participation.
D. How import/export levels are established by the state trading enterprise.
E. How export prices are determined.
F. How the resale prices of imported products are determined.
G. Whether long-term contracts are negotiated by the state trading enterprise. Whether the state trading enterprise is used to fulfil contractual obligations entered into by the government.
H. Brief description of market structure.

IV. STATISTICAL INFORMATION (SEE ATTACHED TABLES I-III)

V. REASON WHY NO FOREIGN TRADE HAS TAKEN PLACE (AS APPROPRIATE)

VI. ADDITIONAL INFORMATION (AS APPROPRIATE)

Table I - State trading: name of state trading enterprise

<table>
<thead>
<tr>
<th>Description of product(s) (including HS number(s))</th>
<th>Total quantity imported*</th>
<th>Quantity imported by state trading enterprise</th>
<th>Average import price</th>
<th>Average representative domestic sales price</th>
<th>Mark-up**</th>
<th>National production</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

* In cases where no imports have taken place under columns 2 or 3, provide an explanation under Section V of this questionnaire.

** Members may report either under columns 4 and 5 or under column 6.
**Table II - State trading: name of state trading enterprise**

Statistical information, exports

<table>
<thead>
<tr>
<th>Description of product(s) (including HS number(s))</th>
<th>Total quantity exported*</th>
<th>Quantity exported by state trading enterprise</th>
<th>Average procurement price**</th>
<th>Average representative domestic sales price</th>
<th>Average export price</th>
<th>National production</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

* In cases where no exports have taken place under columns 2 or 3, provide an explanation under Section V of this questionnaire.

** In cases where the initial procurement price is augmented by other payments, additional payments should also be reported.

**Table III - State trading: name of state trading enterprise**

Statistical information, domestic activities

<table>
<thead>
<tr>
<th>Description of product(s) (including HS number(s))</th>
<th>Domestic purchases by state trading enterprise</th>
<th>National production</th>
<th>Domestic sales by state trading enterprise</th>
<th>National consumption</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
GUIDELINES FOR COMPLETING THE QUESTIONNAIRE

The following information should be provided separately for each state trading enterprise notified.

Section I - to be submitted in full every three years and updated annually.
Objective: Identify state trading enterprises at national and sub-national levels and the scope of products covered.

A. Identification of state trading enterprise: Name of the entity granted exclusive or special rights or privileges.1

B. Description of product(s): Products for which each identified state trading enterprise has exclusive or special rights or privileges. Include HS tariff number(s), at appropriate level of specificity, corresponding to the products under the authority of the state trading enterprise concerned.

Section II - to be submitted in full every three years and updated annually.
Objective: State reason or purpose for establishing and/or maintaining the state trading enterprise. Identify and summarize legal provisions.

A. Reason or purpose: Explanation of reason for granting exclusive or special rights or privileges to the state trading enterprise.

B. Legal authority: Identify and briefly summarize authority which grants exclusive or special rights or privileges. Cite constitutional, legislative, and/or regulatory provisions, if any.

Section III - to be submitted in full every three years and updated annually.
Objective: Describe functioning of the state trading enterprise.

A. Summary overview of operations of the state trading enterprise. Include, where possible, references to the illustrative list of activities of state trading enterprises.

B. Specify all exclusive or special rights or privileges granted to the STE as well as any other support or assistance provided by the government. Comment should include, but not necessarily be restricted to, descriptions of the following: (i) monopoly importer; (ii) single desk seller; (iii) statutory power to control imports or exports even if not exercised; (iv) responsibility for issuing import/export licences; (v) responsibility for administering tariff rate quotas; (vi) recipient of special financing (including commercial or

1 A “state trading enterprise” is defined according to Article XVII of GATT 1994 and the Interpretative Notes thereto, and the Understanding on the Interpretation of Article XVII of GATT 1994.
concessional credit or credit guarantees); (vii) recipient of tax advantages; (viii) recipient of subsidies; (ix) recipient of off-budget support or other support provided by the government or its instrumentalities; (x) preferential access to foreign exchange.

The descriptions should include, where possible, references to the illustrative list of relationships between governments and state trading enterprises.

C. Indication of other types of entities that participate in the same activities as the state trading enterprise, such as private traders that import/export commodities also imported/exported by the state trading enterprise. Description of conditions under which they are allowed to engage in activities in competition with state trading enterprises - e.g., (i) equal terms for all trade, (ii) equal terms for specified quantity, (iii) participation subject to special restrictions/guidelines.

D. Specify criteria/considerations taken into account by the state trading enterprise in determining the quantity of imports or exports it will undertake - e.g., (i) minimum purchase commitments, (ii) tariff rate quota administration procedures, (iii) domestic supply/price situation, (iv) international price situation, (v) export performance requirements, (vi) export restrictions, (vii) commercial considerations (e.g., marginal price relative to marginal cost, market demand). Include a description of any direct or indirect government involvement in the determination.

E. How the state trading enterprise determines its export price - e.g., (i) in relation to prices in other markets, (ii) through tendering. Include information on the use of revenue generated.

F. When the state trading enterprise imports, how it determines the price at which it sells products to domestic wholesalers, retailers, or end-users. Include information on service fees and mark-ups, as well as on use of revenue generated.

G. Whether and how long-term contracts are negotiated by the state trading enterprise. Include information on any long-term contracts negotiated during the reporting period. Whether and how the state trading enterprise is used to fulfil contractual obligations entered into by the government.

H. Brief description of market structure - e.g., domestic market structure, nature of competition, relation to international market, type of import protection, etc.

Section IV - to be submitted annually on a calendar, fiscal or marketing year basis. Tables should cover the most recent three years for which data is available. Price data required for standardized products only. Where price data expressed in other than US$, indicate applicable exchange rate.
Table I - Objective: Provide import information, by product.

1. Description of product(s): Product description (e.g., wheat/flour) including HS number.
2. Total imports: Total quantity of imports of the product.
3. Quantity imported by state trading enterprise: Quantity of imports of the product by state trading enterprise.
4. Average import price: Total cost of imports by the state trading enterprise (c.i.f. basis) divided by the total quantity imported by the state trading enterprise.
5. Average representative domestic sales price: Average domestic wholesale market price during the year in question.
6. Mark-up: Average difference between the import price and resale price. Members may choose to report the average mark-up instead of the average import price and the average representative domestic price under columns 4 and 5.
7. National Production: Quantity of national production at the appropriate level of specificity.

Table II - Objective: Provide export information, by product.

1. Description of product(s): Product description (e.g., wheat/flour) including HS number.
2. Total quantity exported: Total quantity of exports of the product.
3. Quantity exported by state trading enterprise: Quantity of exports of the product by the state trading enterprise.
4. Average procurement price: Average price paid by state trading enterprise to procure the product. In cases where the initial procurement price is subsequently augmented by other payments, such as pool returns or government subsidies, those additional payments should also be reported.
5. Average representative domestic sales price: Average domestic wholesale market price during the year in question.
6. Average export price: Average sales price of exports (f.o.b. basis) by the state trading enterprise (total value divided by total quantity).
7. National Production: Quantity of national production at the appropriate level of specificity.

Table III - Objective: Provide information on domestic commercial activities where products are internationally traded by the state trading enterprise.

1. Description of product(s): Product description (e.g., wheat/flour) including HS number
2. Domestic purchases by state trading enterprise: Quantity purchased by the state trading enterprise from domestic production.
3. National Production: Quantity of national production at the appropriate level of specificity.
4. *Domestic sales by state trading enterprise:* Quantity sold by the state trading enterprise to domestic users.

5. *National Consumption:* Quantity of national consumption at the appropriate level of specificity.

Section V - **Objective:** *Explanation of why no trade has taken place.*

In the event no trade has taken place for a product covered by the authority of a state trading enterprise, explain why.

Section VI - **Objective:** *Provision of additional information.*

Countries may provide any additional information that may be appropriate.
COMMITTEE ON ANTI-DUMPING PRACTICES

RECOMMENDATION CONCERNING
THE TIMING OF THE NOTIFICATION UNDER ARTICLE 5.5

Adopted by the Committee on Anti-Dumping Practices on 29 October 1998
(G/ADP/5)

The Committee notes that Article 5.5 of the Agreement on Implementation of Article VI of the GATT 1994 provides that “The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned”. The Committee considers that the second sentence of Article 5.5 calls for a notification to be made between two specific events, but does not establish any guidelines to determine more precisely when that notification must be made.

The Committee considers that guidelines for determining more precisely when the notification called for by the second sentence of Article 5.5 must be made would be useful. The Committee recognizes that different Members have different processes and deadlines for the examination of applications and the initiation of investigations. Thus, a specific guideline, establishing a date certain by which the notification should be made, might be unworkable. Nonetheless, the Committee considers that more general guidelines can be established.

In light of the above considerations, the Committee recommends that the notification required by the second sentence of Article 5.5 should be made as soon as possible after the receipt by the investigating authorities of a properly documented application, and as early as possible before the decision is taken regarding initiation of an investigation on the basis of that properly documented application.
COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES

FORMAT FOR NOTIFICATIONS UNDER ARTICLE 8.3 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Adopted by the Committee on Subsidies and Countervailing Measures on 22 February 1995
(G/SCM/14)

Introduction

The purpose of this standard format is to assist WTO Members in making notifications under the first sentence of Article 8.3 of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”). In view of the statement in Article 8.3 that notifications under this provision must be “sufficiently precise to enable other Members to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of paragraph 2”, the questions in this standard format seek information relevant to an assessment of notified assistance in light of the relevant legal requirements in Article 8.2 and do not seek information on trade effects of subsidies or on statistics on production, consumption, imports and exports. It should be noted in this regard that the standard format pertains only to notifications under the first sentence of Article 8.3 and not to annual updates of these notifications referred to in the third sentence of that provision.

Each section below includes several questions of a general nature on issues such as the objectives of a programme, the level of government involved and the institutional framework for the implementation of the programme and the financing instruments used in the programme. In addition, there are more specific questions designed to generate information relevant to an evaluation of whether assistance under a particular programme meets the conditions of Article 8.2 of the SCM Agreement.

With regard to the questions in this standard format on arrangements which may exist for monitoring, auditing and evaluation of assistance under a notified programme, it should be stressed that this standard format does not add to or detract from the relevant legal requirements in Article 8.2 of the SCM Agreement.

As provided in footnote 34 to Article 8.3, Members are not required to provide confidential information, including confidential business information.

I. ASSISTANCE FOR RESEARCH ACTIVITIES

(a) Describe the policy objectives of the assistance, including, if applicable, any sectoral objectives.
(b) Provide a copy of the law, regulation and/or other legal instrument under which the assistance is provided. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies granted for research activities, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.

(c) Identify the level(s) of government involved in the provision of assistance for research activities which is notified and provide a detailed description of the institutional framework for the implementation of the programme, including, if applicable, a description of the role of non-governmental entities.

(d) Identify the specific financing instrument(s) used in the programme and provide a detailed description of the incidence and duration of assistance under each instrument.

(e) Identify the assisted research areas and, if possible, the assisted research projects. Provide a technical description of the specific goals of the research activities and explain how these activities fall within the definitions of “industrial research” and “pre-competitive development activity” in footnotes 28 and 29 of the SCM Agreement.

(f) In the case of industrial research, to the extent practicable in the context of an advance notification of a programme, explain what new knowledge is being sought and what new products, processes or services or improvements in existing products, processes or services are intended to be developed using this knowledge. To the extent possible describe the end result of the industrial research.

(g) In the case of pre-competitive development activity, to the extent practicable in the context of an advance notification of a programme, describe the end result of the pre-competitive development activity and explain how existing products, production lines, manufacturing processes, services or other on-going operations will be affected as a result of this activity.

(h) If a prototype is being developed, to the extent practicable in the context of an advance notification of a programme, describe how the prototype will be developed and describe what modifications are foreseen which would be required to make the prototype capable of commercial use.

(i) Describe the industries and entities, to the extent known, whose research activities will be eligible under the programme.

(j) If the programme covers research activities conducted on a contract basis, explain, to the extent practicable in the context of an advance notification of a programme, the nature of the contractual arrangements in question. If possible, provide a model contract (in English, French or Spanish).
Committee on Subsidies and Countervailing Measures

(k) Specify the total amount of assistance budgeted under the programme.

(l) Provide a breakdown of expenditure by project, or, if not possible, by research area.

(m) Specify the amounts of assistance permitted under the programme for (a) industrial research and (b) pre-competitive development activity.

(n) Explain how it is ensured that the assistance does not cover more than 75 per cent of the costs of industrial research, 50 per cent of the costs of pre-competitive development activity or, in situations referred to in footnote 30, 62.5 per cent of both of these costs. Describe the methodology used in calculating these costs.

(o) Describe the specific types of costs covered by the assistance. Explain how it is ensured that the assistance is limited exclusively to the costs mentioned in items (i)-(v) of article 8.2(a) of the SCM Agreement. Describe the methodology used in calculating these costs.

(p) Describe any arrangements which may exist for monitoring, auditing and evaluation.

II. ASSISTANCE TO DISADVANTAGED REGIONS WITHIN THE TERRITORY OF A MEMBER

(a) Describe the general framework of regional development, as provided for in footnote 31, pursuant to which the assistance is granted. In this connection, explain how the regional development policy of which the programme forms part is internally consistent and generally applicable and describe how the programme is intended to contribute to regional development.

(b) Provide a copy of the law, regulation and/or other legal instrument under which the assistance is provided. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies granted to disadvantaged regions, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.

(c) Identify the level(s) of government involved in the implementation of the regional assistance programme and provide a detailed description of the institutional framework for the implementation of the programme, including, if applicable, a description of the role of non-governmental entities.

(d) Identify the regions eligible for assistance under the programme. Explain how these regions are contiguous geographical areas with a definable economic and administrative identity.

(e) Identify the criteria on the basis of which the regions have been designated
as disadvantaged. Provide a copy of the relevant law, regulation or other official document in which such criteria are spelled out.

(f) Describe the measurements of economic development which have been included in these criteria. Explain how any composite measurement of economic development was determined and calculated. Provide for a period of three years the relevant statistical data for the region and for the territory as a whole of the Member used in determining that a region is disadvantaged.

(g) Identify the specific financing instrument(s) used in the programme and provide a detailed description of the incidence and duration of assistance under each instrument.

(h) Describe the criteria for determining the eligibility of the beneficiaries of the assistance and the procedures regarding applications for assistance under the programme. Provide (in English, French or Spanish) a copy of a standard application form or instructions, if any.

(i) Specify the total amount of assistance budgeted under the programme. Describe the specific types of costs covered by the assistance.

(j) Specify the ceilings, expressed in terms of investment costs or costs of job creation, on the amount of assistance to individual projects. Explain the methodology used for calculating the investment costs and the costs of job creation. Explain how such ceilings have been differentiated according to the different levels of development of the assisted regions.

(k) Describe any provisions which may exist under the programme to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2.

(l) Explain how it is ensured that the amount of the assistance does not exceed the ceilings.

(m) Describe any arrangements which may exist for monitoring, auditing and evaluation.

III. ASSISTANCE TO PROMOTE ADAPTATION OF EXISTING FACILITIES TO NEW ENVIRONMENTAL REQUIREMENTS

(a) Describe the policy objectives of the programme, including, if applicable, any sectoral objectives.

(b) Provide a copy of the law, regulation and/or other legal instrument under which the assistance is granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies granted to promote adaptation of existing facilities to new environmental requirements, including the conditions under which those...
subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.

(c) Identify the level(s) of government involved in the implementation of the environmental assistance programme and provide a detailed description of the institutional framework for the implementation of the programme, including, if applicable, a description of the role of non-governmental entities.

(d) Explain how the environmental requirements in question are “new” requirements. Provide a copy of the law or regulation which imposes the new environmental requirements. Explain which nuisances and pollutants are intended to be reduced by these requirements. Identify the level of government at which these requirements are imposed.

(e) Describe the time frame for the application of the new environmental requirements to existing facilities.

(f) To the extent practicable in the context of an advance notification of a programme, provide a technical description of the adaptation of existing facilities necessary to meet the new environmental requirements and identify those facilities. Explain how these requirements would result in a reduction of the specific nuisances or pollutants and explain how these requirements result in greater constraints and financial burdens on firms.

(g) Identify the specific financing instrument(s) used in the programme and provide a detailed description of the incidence and duration of assistance under each instrument.

(h) Explain whether the assistance is provided on the total cost of the reduction of the nuisances or pollutants or on an individual phase of implementation of the new environmental requirements. Identify any legal provision and/or provide other relevant information which explains how the one time, non-recurring condition is met.

(i) Specify the total amount of assistance budgeted under the programme.

(j) Describe the criteria for determining the eligibility of beneficiaries of the environmental assistance and the procedures regarding applications for environmental assistance. Provide (in English, French or Spanish) a copy of a standard application form or instructions, if any.

(k) Explain how it is ensured that the assistance is limited to the adaptation of existing facilities. Describe the methodology used for calculating the costs of adaptation of existing facilities to the new environmental requirements. Describe the specific types of costs covered by the assistance. Explain how it is ensured that the assistance does not cover more than 20 per cent of the costs of this adaptation.

(l) Explain how it is ensured that the assistance is directly linked and
Decisions and Reports

proportionate to a firm’s planned reduction of nuisances and pollution and that the assistance does not cover any manufacturing cost savings which may be achieved.

(m) Describe any arrangements which may exist for monitoring, auditing and evaluation.

FORMAT FOR NOTIFICATIONS UNDER ARTICLE 27.13 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Adopted by the Committee on Subsidies and Countervailing Measures on 22 February 1995
(G/SCM/15)

1. Provide a copy of the law, regulation and/or other legal instrument establishing the privatization programme under which subsidies referred to in Article 27.13 are granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of the table of contents or chapter headings of the legal instrument in question and of any provision which directly relates to the subsidies notified under paragraph 3 below.

2. Provide information on the objectives and implementation of the privatization programme referred to in paragraph 1 above and the enterprises concerned. Submit a copy of this programme and provide such additional explanation as may be necessary. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which show that subsidies are granted within and directly linked to this programme, and (ii) the table of contents or chapter headings of this programme.

3. Provide a copy of the law, regulation and/or other legal instrument under which the subsidies are granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies in question, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.

4. Describe the specific form of the subsidies. Where applicable, explain how the subsidies cover social costs.

5. Specify the limited period of time of the privatization programme and of the subsidies granted in connection therewith.

6. Explain how the subsidies are granted within and directly linked to the privatization programme.
FORMAT FOR NOTIFICATIONS UNDER ARTICLE 27.11 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Adopted by the Committee on Subsidies and Countervailing Measures on 22 February 1995
(G/SCM/16)

1. Indicate the date on which export subsidies covered by Article 3 were eliminated.

2. List the export subsidies covered by Article 3 which have been eliminated after the entry into force of the WTO Agreement\(^1\) and identify the means by which the export subsidies were eliminated.

PROCEDURES FOR ARBITRATION UNDER ARTICLE 8.5 OF THE AGREEMENT AND ON SUBSIDIES AND COUNTERVAILING MEASURES

Adopted by the Committee on Subsidies and Countervailing Measures on 2 June 1998
(G/SCM/19)

Introduction

The Committee on Subsidies and Countervailing Measures has discussed at length the provisions contained in Article 8.5 of the Agreement on Subsidies and Countervailing Measures. In view of the importance of these provisions, as well as the limited time specified in Article 8.5 for the completion of arbitration proceedings and the absence of detailed guidance for their conduct, the Committee has developed the following procedures with the aim of facilitating the operation of arbitration proceedings and enhancing transparency and predictability for all Members with respect to the application of Article 8 of the Agreement. The Committee affirms that because arbitration under Article 8.5 determines the status of a notified programme or individual cases of subsidization under Article 8, the results of any such arbitration proceeding are equally applicable to all Members. This is without prejudice to the right of any Member to request arbitration.

The Committee notes that the provisions of Article 8.5 cannot be viewed strictly in isolation, insofar as they form an integrated part of the whole of Part IV of the Agreement. In this regard, the Committee recognizes the importance of the review procedure under Article 8.4 and the seriousness with which Members are expected to treat it. In particular, to the extent that Members may have questions about the consistency of a notified programme with the conditions and criteria

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\(^{1}\) It is understood that in notifying the elimination of certain export subsidies under Article 27.11, Members may make reference to the relevant information provided in notifications submitted pursuant to Article 25.
provided for in the provisions of Article 8.2, the Committee would expect Members to make full and substantive use of the procedures under Article 8.4 in order to clarify all relevant questions regarding a notified programme. In the same vein, the Committee notes that, pursuant to Article 8.3, a Member which is notifying a programme is required to provide sufficiently precise information to enable other Members to evaluate the consistency of the programme with the relevant conditions and criteria of Article 8.2. The Committee would, therefore, expect notifying Members to cooperate as fully as possible in responding to the questions of other Members in the course of the Article 8.4 review procedure.

In short, the Committee exhorts all Members to participate constructively and in good faith in the notification and review process provided for in paragraphs 3 and 4 of Article 8 so as to resolve any questions and concerns about notified programmes at the earliest opportunity. Where appropriate, it is recognized that such efforts encompass the possibility of concerned Members consulting informally prior to requesting arbitration in order to avoid unnecessary arbitration requests. Finally, without prejudice to Members’ rights as provided for under Article 8.5, the Committee notes that: (i) the interests of clarity, predictability and greater legal certainty would be best served if arbitration requests involving Committee determinations under Article 8.4 (or the failure of the Committee to make a determination) were made as soon as practicable following the conclusion of the procedure set forth in Article 8.4; and (ii) arbitration procedures would be facilitated if requesting Members fully identify and describe those issues which were not raised during the Article 8.4 procedure.

Procedures

The Committee on Subsidies and Countervailing Measures hereby decides, pursuant to the decision of the General Council of 31 January 1995 (WT/GC/M/1), to adopt the following procedures for use in binding arbitration conducted pursuant to Article 8.5 of the Agreement on Subsidies and Countervailing Measures. These procedures shall not add to or detract from the existing rights and obligations of Members under the Agreement on Subsidies and Countervailing Measures or under any other WTO Agreement.

I. Request for arbitration

1. Any Member wishing to request arbitration under Article 8.5 shall address a written request to that effect to the Chairman of the Committee on Subsidies and Countervailing Measures (“the Committee”). The request shall include:

   (a) the basis for the request, i.e. a determination by the Committee under Article 8.4, a failure by the Committee to make such a determination, and/or the violation in individual cases of subsidization of the conditions set out in a subsidy programme
notified under Article 8.3;

(b) the specific questions to be addressed by the arbitration body, as related to requirements under the provisions of Article 8.2, and a statement of the position taken by the Member requesting the arbitration with respect to each such question;

(c) a brief summary of the information on which the request is based.

2. Any request for arbitration shall be circulated immediately to the Members.

3. Without prejudice to the right of any Member to request arbitration, Members should take into account the need to avoid undue multiplication of arbitration proceedings in respect of the same programme, and should therefore avail themselves of the procedures under paragraph 4 for becoming Parties, or the procedures under paragraph 17 for becoming Third Parties, to an arbitration.

4. In order to become Parties to the arbitration proceeding, other Members shall have a period of 15 days after the date of circulation of the request for arbitration to provide the Chairman of the Committee with a communication which shall conform with the requirements for requests for arbitration set forth in paragraph 1. Any such communication shall be circulated immediately to the Members.

5. During the 30-day period referred to in paragraph 10, Parties also may agree, subject to the provisions of Section VI, to any supplemental or alternative procedures for arbitration under Article 8.5 to those specified herein, provided that such supplemental or alternative procedures are not incompatible with Article 8.5. Any such supplemental or alternative procedures shall be promptly notified to the Members. In the event that there is no agreement by all Parties on such supplemental or alternative procedures, the procedures specified herein shall apply exclusively and in full.

II. Referral to arbitration

6. As soon as the composition of the arbitration body has been decided, a notice to that effect shall be circulated promptly to the Members.

7. For purposes of Article 8.5, the date of circulation of the notice under paragraph 6 shall be deemed to be the date on which the matter is referred to the arbitration body.

III. Parties to the Arbitration Proceeding

8. The Parties to the arbitration proceeding shall be the Member which

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1 As used throughout this text, the terms “Party” and “Parties” do not encompass the terms “Third Party” and “Third Parties” provided for in Section VI, infra.
has notified the subsidy programme in question, the Member which requests the arbitration, and any other Member which has become a Party to the arbitration in accordance with paragraph 4.

IV. Composition of the Arbitration Body

9. The arbitration body shall consist of three arbitrators, unless the Parties agree to a different uneven number.

10. The members of the arbitration body and its president shall be appointed by agreement of the Parties. If the Parties do not reach agreement within 30 days after the date of circulation of the request for arbitration, unless the Parties agree on a longer period, any Party may request the Director-General of the WTO to appoint, in consultation with the Chairman of the Committee, the arbitrator or arbitrators not yet appointed. Such appointment shall be made, after consultation with the Parties, within 10 days of the request to the Director-General.

11. Except as the Parties otherwise agree, the arbitrators shall not be citizens of any of the Parties or Third Parties to the arbitration proceeding.2

12. The arbitrators shall be chosen from among persons with relevant legal, economic, financial or technical expertise, including expertise in the Agreement on Subsidies and Countervailing Measures, with respect to the matter referred to the arbitration body.

13. Based upon nominations put forward by delegations and approved by the Committee, the Secretariat shall maintain an indicative list of qualified persons from which arbitrators may be selected. This list shall include an identification of each person’s academic and/or professional background and qualifications.

14. Where a Party to an arbitration is a developing country Member, the arbitration body shall, if the developing country Member so requests, include at least one arbitrator from a developing country Member.

V. Terms of Reference of the Arbitration Body3

15. If a request for arbitration pertains to a determination of the Committee under Article 8.4, or a failure of the Committee to make such a determination, the arbitration body shall determine, in light of the specific questions raised under paragraphs 1 and 4 by the Parties to the arbitration, whether the subsidy programme notified under Article 8.3 does not meet the conditions and criteria of Article 8.2.

16. If a request for arbitration pertains to alleged violation in individual cases

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2 In the case where a customs union or a common market is a Party or Third Party to an arbitration, this provision applies to citizens of all members of that customs union or common market.

3 These terms of reference apply equally to requests for second or later arbitrations.
of the conditions set out in a subsidy programme notified under Article 8.3, the arbitration body shall determine, in light of the specific questions raised under paragraphs 1 and 4 by the Parties to the arbitration, whether or not individual cases of subsidization violate the conditions set out in the subsidy programme notified under Article 8.3. If a Party so requested under paragraph 1 or 4, the arbitration body also shall determine whether the programme in question does not meet the conditions and criteria of Article 8.2.

VI. Third Parties

17. A Member not wishing to become a Party to the arbitration, but wishing instead to participate in the arbitration on a limited basis, shall have a period of 20 days after the date of circulation of the request for arbitration to inform the Chairman of the Committee in writing that it wishes to become a Third Party to the arbitration proceeding. A Third Party may intervene only with respect to specific questions raised by Parties.

18. A Member that has informed the Committee under paragraph 17 of its interest to participate as a Third Party in the arbitration proceeding shall have the right to make a written submission to the arbitration body and to receive copies of written submissions of the Parties to the arbitration proceeding, shall have an opportunity to be heard at meetings of the arbitration body, and shall otherwise have the right to participate in the arbitration proceeding as specified elsewhere in these procedures. A Third Party may not participate in the selection of arbitrators or in the establishment of the arbitration body’s working procedures.

VII. Working Procedures

19. The arbitration proceedings shall be conducted on the basis of written submissions and documents. The Parties and Third Parties to the arbitration proceedings shall make written submissions within time periods to be determined by the arbitration body after consultation with the Parties. The arbitration body shall decide whether further written submissions are necessary and shall fix a period of time for such submissions after consulting the Parties.

20. The arbitration body also may hold meetings with the Parties and shall hold one such meeting if any Party so requests at an appropriate stage of the proceedings. Any such meeting normally shall include Third Parties. If in exceptional circumstances the arbitration body holds a meeting with Parties only, the arbitration body also shall, upon request of a Third Party, hold one session for Third Parties to present their views, at which Parties shall have the right to be present. Written texts of the oral statements made by Parties and Third Parties shall be submitted to the arbitration body, and shall consist only of the information and views actually presented orally.
VIII. Process

21. The proceedings of the arbitration body shall be confidential. Written submissions to the arbitration body shall be treated as confidential. The arbitration body and all Parties and Third Parties to a proceeding shall treat as confidential any information submitted to the arbitration body which the submitter has designated as confidential. Nothing in these procedures shall preclude a Party or a Third Party to an arbitration from disclosing statements of its own positions to the public.

22. A Party or Third Party to an arbitration shall make available to all other Parties and Third Parties its written submissions. A Party or a Third Party 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. When providing a non-confidential summary, a Party or Third Party will duly take into account the expeditious nature of these proceedings.

23. There shall be no ex parte communications with the arbitration body concerning matters under consideration by the arbitration body.

24. Before presenting its conclusions, the arbitration body shall provide to the Parties and Third Parties a written summary of the information on which it intends to base its conclusions. The arbitration body shall provide an opportunity for the Parties and Third Parties to comment, within a time period to be established by the arbitration body, on the written summary. Each Third Party shall have the right to comment only on those sections of the written summary which pertain to the specific questions that that Third Party has addressed.

25. The arbitration proceedings shall take place at the seat of the World Trade Organization.

26. The WTO Secretariat shall act as Secretariat to the arbitration body, and shall perform all administrative functions necessary to assist the arbitration body, including the receipt and circulation of communications related to arbitration requests, and the maintenance of an organized permanent record for each arbitration proceeding.

IX. Information before the Arbitration Body

27. The arbitration body shall proceed on the basis of the information before it, to include such of the following as exist and are relevant:

(a) the notifications of the subsidy programme in question, and any yearly updates of such notifications;

(b) the findings of the Secretariat, the minutes of the Committee and the determination by the Committee, as recorded during the procedure under Article 8.4;
Committee on Subsidies and Countervailing Measures

(c) the documents and arguments submitted to the Secretariat and the Committee in the procedure under Article 8.4;
(d) the record(s) of any previous arbitration(s) related to the same programme;
(e) any information provided to the arbitration body by the Parties and Third Parties under these procedures;
(f) any information or technical advice obtained by the arbitration body under the provisions of paragraphs 28, 29, and 30.

28. A Member should respond promptly and fully to any request by an arbitration body for such information as the arbitration body considers necessary and appropriate.

29. The arbitration body shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before an arbitration body seeks such information or technical advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member.

30. The Parties and Third Parties shall have full access to any requests for information or technical advice under this or the preceding two paragraphs, as well as to any information or technical advice obtained thereby. At the time that it requests information or technical advice under this or the preceding two paragraphs, the arbitration body shall obtain the agreement of the individual, body or Member to disclose to the Parties and Third Parties all such information or technical advice. The Parties and Third Parties shall treat as confidential any information or technical advice that an individual, body or Member has designated as confidential. The arbitration body shall provide an opportunity to the Parties and Third Parties to comment upon any information or technical advice obtained under this or the preceding two paragraphs.

X. Rules of Conduct

31. As provided in paragraph IV:1 of the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, the Rules of Conduct apply to arbitrators acting pursuant to Article 8.5, and to those Members of the Secretariat called upon to assist in arbitration proceedings pursuant to Article 8.5. In addition, the Rules of Conduct shall apply to any individual from whom any information or technical advice is sought under paragraphs 28, 29 and 30 of these procedures.

XI. Conclusions of the Arbitration Body

32. The conclusions of the arbitration body shall consist of a determination, in light of the specific questions raised under paragraphs 1 and 4 by the Parties to the
arbitration, of whether the subsidy programme notified under Article 8.3 does not meet the conditions and criteria of Article 8.2, and/or whether or not the individual cases of subsidization violate the conditions set out in the subsidy programme notified under Article 8.3.

33. The arbitration body shall present to the Members its conclusions and the reasons on which those conclusions are based in the form of a single, collegial decision, within 120 days from the date of circulation of the notice under paragraph 6.

34. These conclusions shall be binding in accordance with Article 8.5.

XII. Review of these Procedures

35. Without prejudice to Article 31 of the Agreement on Subsidies and Countervailing Measures, the Committee shall, no later than five years after the adoption of these procedures, review their operation, and may decide at that time on any modifications to them.

REPORT BY THE INFORMAL GROUP OF EXPERTS TO THE COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES

Taken note by the Committee on Subsidies and Countervailing Measures on 23-24 April 19984
(G/SCM/W/415/Rev.2)

The attached report is submitted by the Informal Group of Experts to the Committee on Subsidies and Countervailing Measures (“the Committee”). As reflected in document G/SCM/5, the Informal Group of Experts was created by a decision of the Committee, at its meeting of 13 June 1995, with the following terms of reference:

“To examine matters which are not specified in Annex IV to the Agreement or which need further clarification for the purposes of paragraph 1(a) of Article 6, and to report to the Committee such recommendations as the Group considers could assist the Committee in the development of an understanding among Members, as necessary, regarding such matters.”

In accordance with these terms of reference, the Informal Group of Experts’ report contains a number of recommendations with respect to particular calculation issues arising under Annex IV to the Agreement on Subsidies and Countervailing Measures (“the Agreement”). In addition, it reports on the Group’s discussions of all issues that it considered. An outline of the issues discussed by the Group was circulated in G/SCM/W/413. The report is organized such that its main body

4 Questions, answers and comments regarding the Report of the Informal Group of Experts were circulated in G/SCM/W/416 and Suppls. 1 and 2.
describes the Group’s discussions and recommendations, by topic. Following this, the texts of all of the Group’s recommendations are appended separately. Also appended is the full text of Annex IV of the Agreement.

The Committee decided that the Informal Group would be composed of experts nominated by Members and by countries eligible to become original Members of the WTO, and that the experts would serve in their personal capacities rather than as representatives of governments. The Committee further decided that the members of the Group should have substantive expertise in subsidy calculation methodology and be able to contribute actively, both orally and in writing, to the work of the Informal Group. The members of the Informal Group of Experts are: Mr. Robert Arnott, succeeded by Mr. David Sprott (Australia); Mr. Stephen Gospage (EC); Mr. Takuya Ishikawa, succeeded by Mr. Jo Okumura (Japan); Mr. Ju-Young Lim (Korea); Mr. Roy A. Malmrose (US); Mr. Alberto Lerín Mestas (Mexico); Mr. Wayne Neamtz, succeeded by Mr. Andre Moncion (Canada); and Ms. Vera Thorstensen (Brazil). Mr. Victor do Prado (Brazil) served as Chairman of the Group, and Ms. Clarisse Morgan (WTO Secretariat) as Secretary of the Group. The Group thus far has held ten meetings, on the following dates: 1 November 1995, 13 December 1995, 29 February 1996, 26 April 1996, 18-19 July 1996, 7-8 October 1996, 25-26 November 1996, 5-6 February 1997, 8-10 April 1997, and 21-22 May 1997. The Group expects to continue meeting to try to resolve issues where to date no consensus has been reached, which include accelerated depreciation, upstream subsidies, equity infusions, royalty-based financing, sales denominator for export subsidies, and expected cost/risk of ad hoc loan guarantees.

The Group wishes to emphasize the following substantive points with respect to the report. First, as required by paragraph 1 of Annex IV, all of the Group’s discussions were held and recommendations formulated from the point of view of cost to government. Second, the Group’s recommendations in the context of Article 6.1(a) and Annex IV of the Agreement are made exclusively with respect to that context, and are without prejudice to any other area (such as countervailing measures). Third, it is implicit throughout the report that only measures that constitute specific subsidies within the meaning of Articles 1 and 2 of the Agreement, to which Article 6.1(a) applies per the Agreement - in whatever form (i.e., grants, loans, etc.) - are covered by the Group’s recommendations. As such, any subsidy exempted by the Agreement from the application of Article 6.1(a) is not covered by the report or recommendations. Fourth, the Group does not view the report as exhaustive of every potentially relevant issue under Article 6.1(a) and Annex IV. Thus, the fact that the report may not refer to a given issue or given measure is not meant to imply that such an issue is irrelevant in this context, or that such a measure should not be included in any calculation under Article 6.1(a) and Annex IV.

Finally, the Group recognizes that, in the interests of transparency, predictability and administrability, its recommendations should be as simple as
possible. For this reason, for certain questions which were discussed but were found to be excessively difficult to administer and/or to have at most a small impact on the final results of any given calculation, the Group does not recommend any adjustments in the calculations of cost to government or *ad valorem* subsidization. As an example, the question of flotation costs of bonds was discussed, as were administrative costs associated with the provision of subsidies. While these costs arguably should be included in any Article 6.1(a) calculation, the Group believes that the effort to measure these costs would outweigh any marginal increase in the accuracy of the subsidy calculations that might result.

This revised version of the report takes into account comments and suggestions made by Members in the context of Committee informal consultations regarding the report.

REPORT BY THE INFORMAL GROUP OF EXPERTS TO THE COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES

Introduction

The Informal Group of Experts conceived its basic task, pursuant to the mandate assigned to it by the Committee, as formulating recommendations on how to calculate the cost to government of, and the *ad valorem* subsidization from, particular types of subsidies. In preparing this report, the Group recognized that a number of issues that it had discussed were issues that might potentially affect more than one type of subsidy, and decided that, for ease of reading and logic of presentation, the report should discuss such cross-cutting issues first. The issues of this type that were discussed are: expensing versus allocation of subsidy benefits; allocation period; government cost of funds and time value of money; adjustments for inflation and interest; inflationary economy countries; sales denominator; and start-up situations. These issues are presented in Sections I through VII, respectively. Section VIII then addresses the individual types of subsidies discussed by the Group: grants, loans, interest rate subsidies, debt forgiveness, loss coverage, tax concessions, equity infusions, loan/credit guarantees, government provision of goods and/or services, assumption of legal obligations, export-related subsidies, upstream subsidies, multiple exchange rate programmes, research and development subsidies, and worker training. The text of the report presents summaries of the Group’s discussions on each point, and summaries of its recommendations. Separately appended to the report are the texts of all of the Group’s recommendations. Regarding the measures identified, only measures that constitute specific subsidies within the meaning of Articles 1 and 2 of the Agreement, to which Article 6.1(a) applies per the Agreement, are covered by the report and recommendations. As such, any subsidy exempted by the Agreement from the application of Article 6.1(a) is not covered by the report or recommendations.
I. EXPENSING VERSUS ALLOCATION OF SUBSIDY BENEFITS

A. Implications for determination of serious prejudice based on 5 per cent threshold

1. The question of whether and under what circumstances subsidies should be allocated over some multi-year period, versus attributed to a single year (i.e., “expensed”) was extensively discussed. In particular, it was noted that although the payment of a subsidy generally would occur at a single moment in time, it might not be appropriate in the context of Article 6.1(a) to attribute that subsidy (i.e., the presumption of serious prejudice based on more than 5 per cent ad valorem subsidization of a product) exclusively to a single year. If this were done, even a very large subsidy would have no effects, for purposes of Article 6.1(a), beyond the year in which it was granted. That is, regardless of its size, the impact of any given subsidy would vanish, for purposes of Article 6.1(a), as of the end of the year in which it was granted. In addition, if the possibility of allocation did not exist, the ad valorem subsidization during the year in which the subsidy was granted could be overstated.

2. Such an outcome was deemed inappropriate under Article 6.1(a) for a number of reasons. First, if the presumption of serious prejudice could never last beyond a single year, this might make implementation of an appropriate remedy (i.e., removal of the adverse effects of the subsidy or withdrawal of the subsidy) difficult where serious prejudice under Article 6.1(a) was found. For example, by the time a remedy was obtained, the “adverse effects” of the subsidy purportedly would have vanished of their own accord. Second, if expensing resulted in overstatement of the ad valorem subsidization for the year in which the subsidy was granted, this could give rise to an unjustified presumption of serious prejudice for that year. Moreover, paragraph 7 of Annex IV, by referring to pre-WTO subsidies whose benefits were allocated to future production, suggests that allocation of subsidy benefits is foreseen in the context of calculating 5 per cent ad valorem subsidization of a product. If there were no possibility of allocating any post-WTO subsidies, this would create an inconsistency between the allowed treatment of pre- and post-WTO subsidies in the context of Article 6.1(a).

3. On the other hand, allocating all subsidies, regardless of their nature, would seem inappropriate if their impact upon the recipient was limited and of short duration. Moreover, if all subsidies were allocated, the duration of the presumption of serious prejudice might be inappropriately lengthened. Thus, it was concluded that not all subsidies should be allocated.

4. It thus was necessary to identify under what circumstances subsidies of various kinds should be allocated versus expensed. The Group developed recommendations in this regard, in the form of an illustrative table of subsidies that should be allocated versus expensed, along with a cover note explaining the
underlying principles for such a categorization. It was felt that such a table would create the most transparency and predictability for all concerned. The illustrative table and cover note are presented in Recommendation 1.

B. Illustrative table and general principles (Recommendation 1)

5. The illustrative table reflects the Group’s conclusions regarding a number of points. First, the table indicates that certain types of subsidies (e.g., grants) may be either expensed or allocated, depending on the circumstances. Where a given type of subsidy could be either expensed or allocated depending on the circumstances, it is shown straddling the two columns. Other types of subsidies generally would be either always expensed or always allocated. Certain considerations relevant to the question of expensing or allocating different types of subsidies also are reflected in the table.

6. The table and cover note reflect certain additional recommendations, as well. The first of these is that research subsidies be presumptively allocated, unless expensing is demonstrated to be more appropriate in a given case. Similarly, it is recommended that non-recurring and/or large subsidies be presumptively allocated, unless expensing is demonstrated to be more appropriate in a given case. Further, it was deemed appropriate, primarily from the standpoint of administrative convenience, that very small subsidies be expensed regardless of type or other considerations. A level of less than 0.5 per cent of sales for any individual subsidy is recommended for this threshold. Finally, the cover note indicates that the inclusion of any given type of measure in the table is not intended to imply that such a measure in all cases would be relevant in the context of Article 6.1(a). Rather, only measures meeting the Agreement’s definitions of “subsidy” and “specificity” would be considered in this context.

7. The table includes a category for export-related subsidies, notwithstanding that the relevance of the question of expensing versus allocating in the context of such subsidies might be limited, at least with respect to those export-related subsidies that are export subsidies in the sense of the Agreement. That is, the prohibition on export subsidies, and the non-applicability to such subsidies of the presumption of serious prejudice where transition periods apply, could mean that subsidies of this type might only rarely be at issue under Article 6.1(a). On the other hand, where the prohibition applies, the Agreement does not appear to force a Member to allege that a subsidy is prohibited, and therefore to seek a remedy only under Article 4. Thus it was deemed appropriate to include a reference to these subsidies in the table.

8. The table also reflects discussions as to whether subsidies for debt forgiveness and loss coverage should be allocated or expensed in the context of Annex IV calculations, or whether they should be considered at all, given that such subsidies would give rise to a separate presumption of serious prejudice. For the reasons discussed in Sections VIII.D and E, it was deemed appropriate to include
such subsidies in the expense/allocate table, without prejudice to the existence of any separate presumptions of serious prejudice under Article 6.1(b), (c) or (d).

9. Regarding the subsidies in the table that are shown as sometimes being expensed and sometimes allocated, the discussion focused on further elaborating the criteria that might be applied in making such a determination in any given case. The following general principles were identified, affirmative answers to one or more of which normally would point toward allocating, rather than expensing, a given subsidy:

1. Whether the purpose of the subsidy was for the purchase of fixed assets
2. Whether non-recurring and/or large
3. Whether oriented toward future production
4. Whether consisting of equity
5. Whether carried forward in recipient’s accounting records

These principles also generally underlie the recommendations as to expensing or allocating the remaining types of subsidies shown in the table.

10. The purpose of a subsidy, in particular whether it is used for acquisition of assets, was deemed relevant by the Group. The Group noted that as a general principle, subsidies for asset acquisition should be allocated over time, while recurring subsidies to cover operating costs or other subsidies for non-asset purposes might in many circumstances be expensed.

11. The frequency and size of a subsidy were deemed relevant to the question of expensing versus allocating. Just as it is recommended that recurring and/or small subsidies be expensed, so is it recommended that non-recurring and/or large subsidies generally be allocated. One consideration in this context is that it might be illogical to expense very large subsidies due to the likely substantial impact that such subsidies would have on the recipient companies beyond the year in which they were received. For example, it is likely that non-recurring large subsidies would be used to purchase fixed assets, or even if not so used, would free up a comparable amount of company funds for this purpose. By contrast, recurring subsidies are more likely to be relatively small, are more likely to be used for non-asset purposes, are more likely to be oriented toward present rather than future production, are less likely to consist of equity, and are less likely to be carried forward in the recipient’s accounts, than are non-recurring subsidies.

12. The remaining general principles are essentially self-explanatory. Whether a subsidy is oriented toward production in future periods, consists of equity, or is carried forward in the recipient’s accounts were viewed as related to the question of whether its benefits persist beyond a single period, and hence whether it should be allocated to future periods.
II. ALLOCATION PERIOD (RECOMMENDATION 2)

13. For those subsidies that will be allocated, it was recognized that guidance would be useful as to how to determine the allocation period. As a general matter, it is recommended that the average useful life of all of the recipient’s physical depreciable assets should be used as the allocation period for all types of subsidies except long term loans, and possibly equity infusions, depending on the circumstances. It is further recommended that the average useful life of assets be calculated as the ratio of the total average book value of operational assets to the average annual depreciation expense.

14. The recommendations establish a hierarchy of data sources for calculating the average useful life of assets in a given situation. The preferred source (from the standpoint of accuracy) is deemed to be the overall information for the firm or firms receiving the subsidy. If such data cannot be obtained or are not reasonable, data for other firms producing the product in the same country could be considered, or failing that, data for firms in the same business sector in that country (defined as the next largest category in the International Standard Industrial Classification (“ISIC”) or similar nomenclature system). If this is not possible or feasible, data for firms producing the product outside that country could be used. Issues that could affect the suitability of a given firm’s data could include the calculation of depreciation expense on some basis other than the useful life of assets, the use of a depreciation method other than straight line, and/or irregular changes to the asset pool. Regardless of the data source, the Group recommends the method for calculating the useful life of assets that is described in paragraph 13 and Recommendation 2.

15. The most recent relevant multi-year period which is representative of normal operations should be chosen for calculating the necessary averages, to prevent potential extraordinary events in a single year from distorting the calculation. Normalizing adjustments may be necessary if assets have undergone extraordinary revaluations, or in the case of hyperinflation. Moreover, accounting data should be preferred to tax depreciation data in selecting a data source for the calculations, as the former are the more likely to reflect the true economic lifespan of assets.

16. For subsidies from long-term loans, it is recommended that the allocation period be the life of the loan. For equity infusions, if the amount of the subsidy can be calculated as a grant (i.e., if there is a market price for the equity (see Section VIII.G) the allocation period would be the useful life of assets, calculated as described. If there is no such market price, however, and some other method is used to determine the amount of any subsidy, another basis for determining the allocation period might be more appropriate. For example, the period during which an investor might “reasonably” expect a return on an investment could be used, or it could be assumed that a cost to government potentially could arise during the entire period in which the government held the equity.
III. GOVERNMENT COST OF FUNDS AND TIME VALUE OF MONEY

17. It was recognized that the cost to government approach mandated in paragraph 1 of Annex IV raises the question, affecting all types of subsidies, of how a government’s cost of funds should be measured. That is, governments raise funds in two ways, taxation and borrowing, each of which carries some cost. Some Group members viewed these costs as limited to the observable (“monetary”) costs associated with raising the funds. Others believed that these costs also include certain non-observable costs, in particular the opportunity cost to the government associated with using such funds, and potential indirect costs of taxation. The issue discussed was the extent to which some or all of these costs should be reflected in Article 6.1(a)/Annex IV calculations.

18. With respect to loans, as set forth in the relevant section of this report, the Group recommends using an appropriate government borrowing rate (i.e., a bond rate) as a proxy for the government’s cost of funds. Thus, the discussion in this section of the government’s cost of funds applies to allocated subsidies other than loans.

19. Regarding the observable monetary component of a government’s cost of funds, the Group generally agreed that this is comprised of the administrative costs incurred in raising taxes, as well as the interest cost incurred on government borrowing. The amounts of such costs in principle can be directly derived from government accounts.

20. In this context, some Group members took the view that a weighted average monetary cost of funds should be calculated, and attributed to every subsidy provided. Thus, under this approach, the same underlying (average) monetary cost of funds would be attributed to all subsidies. That is, no attempt would be made to identify particular subsidies with particular sources of funds. The reasoning behind this proposed approach was that government funds from all sources most often are commingled in a general revenue account, making it impossible in most cases to identify particular government expenditures (including subsidies) with particular sources of funds (borrowing or taxation).

21. The Group noted that to calculate such a weighted average monetary cost in a relatively precise way, detailed data would be needed on the government’s monetary costs incurred in raising tax revenue, as well as on the different rates of interest paid by the government on its various outstanding debt instruments. Also necessary would be information on the relative proportions of total government revenues accounted for by borrowed funds and tax revenues, respectively.

22. Although some members of the Group found the concept of the weighted average monetary cost of funds useful, the Group nevertheless concluded that trying to apply it in Article 6.1(a)/Annex IV calculations might prove not to be feasible. Of particular concern in this regard would be data availability (especially where
several levels of government might be involved), as well as practical difficulties of collecting and analysing the data.

23. In addition, some Group members found the concept of the weighted average monetary cost of funds incomplete, in part because it would not reflect in any way the potential indirect cost of taxation, which in their view is quite high. These Group members pointed to many governments’ heavy reliance on borrowing as evidence of the extent of this cost. In the view of these Group members, if there were no cost to taxation beyond its small monetary administrative cost, governments would tax more heavily and rely less on borrowing than is in fact the case. These Group members suggested that the long-term government borrowing rate represents the most accurate measure of the potential indirect cost of taxation, in the sense of representing the amount that governments are willing to pay to avoid resorting to additional taxation.

24. Some Group members also felt that governments incur opportunity costs in using funds to provide subsidies, and that such costs would not be reflected if calculations were limited to monetary costs. According to this point of view, imputation of an opportunity cost in the Article 6.1(a) context would not imply holding the government to a profit-maximization standard with respect to the use of its funds. Rather, such an opportunity cost could be conceptualized as the opportunity cost to the government that arises when government resources are employed for a given purpose, thereby becoming unavailable for any of the other possible purposes to which they could have been put. In the subsidy context, a relatively straightforward example of such a cost would be that, by virtue of providing a subsidy, a government would forego the opportunity to reduce its interest expenses by retiring some of its debt (e.g., by buying back outstanding bonds). (Or, conversely, to finance a subsidy, the government would need to issue a bond, on which it would incur interest expenses.) In either case, the opportunity cost to the government could be measured as the interest expense that the government would incur on those bonds.

25. A somewhat overlapping concept, which was discussed extensively in the context of allocated subsidies, is time value of money. In the view of Group members favouring incorporation of time value of money where subsidies are allocated, such adjustments are purely technical in nature, allowing amounts of money at different points in time to be compared in real (rather than nominal) terms. A simple example of a time value of money question would be to calculate the amount of money at some future date that would be equivalent to a given sum today. In this case, the answer would be found by applying an appropriate interest (or “discount”) rate to the present-day sum for the relevant period. The basic argument raised in favour of including the time value of money was that allocating a subsidy constitutes a movement of money through time, and that money cannot meaningfully be moved through time without taking into account its time value. That is, if a subsidy is divided into equal nominal annual increments, the real value of the last increment...
will be smaller than the real values of those that precede it, meaning that the total real amount of subsidization over the period would be understated. The Group recognized that, depending on the discount rate used, adjusting for time value of money also might take into account the concepts of opportunity cost to government of the funds provided as subsidies, and/or of the potential indirect cost of taxation. No consensus was reached as to whether such concepts should be reflected in Article 6.1(a)/Annex IV subsidy calculations.

26. There also was considerable discussion as to how time value calculations, if incorporated, should be performed. In particular, a range of views was expressed as to whether time value should figure only in calculation of the initial amount of a subsidy, or whether the related adjustments should be made to the subsidy amounts allocated to each year of an allocation period. Regarding the former approach, the methodology discussed would calculate the total amount of a grant (including its discounted lifetime financing cost) as of the date the subsidy was provided, then allocate this amount over time. Inflation indexing would be applied to the allocated amounts to keep the original significance and value of the subsidy intact throughout the allocation period. The methodology discussed in the context of the second approach to time value calculations would “gross up” the allocated annual increments of the initial nominal subsidy amount by a discount rate set at a prevailing government bond rate. No additional adjustment for inflation would be necessary under this approach, as the discount rate already would incorporate the expected rate of inflation.

27. The basic argument raised against including the time value of money in subsidy allocation calculations was that such an approach would be inconsistent with the cost-to-government approach required by paragraph 1 of Annex IV. According to this view, the cost to the government of providing a subsidy that is allocated over time should be no different in year 5 than in year 1, because from the government’s point of view, the cost to the government is incurred at the time the subsidy is provided, in the amount of the initial nominal value of the subsidy, even if that value is then allocated over time. Some Group members also were of the view that, to the extent that incorporating the time value of money would be based in part on the concept of opportunity cost to government, this would be inappropriate. In particular, according to this view, introducing the concept of opportunity cost would shift the perspective of the analysis to a benefit-to-recipient approach, contrary to the Agreement’s requirement that a cost-to-government approach be used.

IV. ADJUSTMENTS FOR INFLATION AND INTEREST

28. The Group recognized that, even if theoretical agreement were reached on the questions of weighted average monetary cost of funds, government opportunity costs of funds, time value of money and potential indirect costs of taxation, in practical terms these costs would be difficult to measure directly. Moreover, no
consensus was reached as to proxies that could be used to represent these costs in subsidy calculations. In view of this, the Group changed the framework of its analysis slightly, to focus on the effects on subsidy amounts of inflation and interest, particularly with respect to subsidies allocated over time. The Group believed that by changing focus in this way, a number of these underlying issues could be addressed at least partially, and in an administratively practicable manner. The specific question considered by the Group in this regard was the extent to which subsidy calculations might take into account the compounding effects of inflation and interest (implicit or explicit) associated with nominal subsidy amounts as they are moved through time.

29. The Group noted here that any interest rate in fact is comprised of two components, anticipated inflation and the “real” interest rate, i.e., the pure cost of use of the money over the relevant period. In view of this, the Group found it useful to consider these two components separately in discussing and devising its recommendations. The Group noted that the real interest rate in simple terms is the difference between the nominal interest rate and the inflation rate.

A. Inflation

30. Regarding inflation, a major consideration, which arises in the context of allocating subsidy amounts over time, is how to ensure a consistent basis for both the numerator (subsidy amount during the relevant period) and the denominator (value of sales during the relevant period) in calculating the ad valorem subsidization of a product. It was recognized that this question is related to how frequently and on what basis the sales denominator should vary over the course of the allocation period for a given subsidy. In this regard, as discussed in detail in Section VI.B, the Group recommends that each year of an allocation period should have its own sales denominator, i.e., the previous year’s sales.

31. This recommendation is relevant to whether or not the subsidy amount should be adjusted for inflation because over time, the nominal value of a firm’s sales will tend to change purely due to inflation, even if the firm’s scope or scale of operations does not change. Thus, as the sales denominator is revised each year during an allocation period, it automatically will incorporate the effects of inflation. If no adjustment is made to the numerator (the allocated subsidy amount) also to adjust for inflation over time a dissimilarity between the nature of the numerator and that of the denominator will be introduced. Given this, it was concluded that adjusting the numerator to account for the effects of inflation would be appropriate. Making such an adjustment would prevent inflation from eroding the real significance and value of the subsidy over the course of the allocation period.

32. By virtue of being indexed for inflation, the allocated subsidy amounts would progressively increase in nominal terms, although their value would remain constant in real terms. Because, as noted, the sales denominator also would
incorporate an amount for inflation every year during an allocation period, the comparability of the numerator and denominator would be preserved.

B. Interest

33. Beyond the question of inflation, the Group discussed the extent to which allocated subsidy amounts also should be adjusted in some way to incorporate an element of “real” interest. The Group concluded that it would be appropriate to make some adjustment for real interest where subsidies are allocated over time.

34. This conclusion was arrived at from several different perspectives. First, as discussed above, the Group recognized that where governments borrow, an interest cost will be incurred which generally will not be able to be identified with any particular set of expenditures made from the borrowed funds. This was deemed to argue in favour of attributing some interest cost to all subsidies. The additional perspectives brought to bear on this question were opportunity cost to the government and the time value of money, as discussed. Either of these perspectives would involve imputation of some interest component to allocated subsidies, as a measure of the cost of foregone uses of the funds over the relevant period, or as a means of maintaining the subsidies’ real value and significance as they move through time.

C. Methodology\(^1\) (Recommendation 3)

35. In view of the foregoing considerations, and the difficulties encountered by the Group in reaching consensus on a single theoretical basis for a conceptually pure allocation methodology, the Group recommends that allocated subsidy amounts be adjusted fully for inflation and include as well a portion of the “real” interest rate. It is specifically recommended that this be done by attributing to allocated subsidy amounts the full rate of inflation plus one-half of the difference between the rate of inflation and the government borrowing rate on debt whose maturity most closely approximates the allocation period of the subsidy. In the Group’s view, this approach provides an approximation of the previously-mentioned components of government costs of funds, as well as an administratively practicable method of maintaining the real value of a subsidy over a given period. The only exception to this approach would be where the rate of interest was less than the rate of inflation (which might occur during periods of high inflation). In this circumstance, the recommended adjustment factor is the full rate of inflation, unadjusted for any interest component.

36. The Group further recommends that, as a general principle, the adjustment factor should be derived from the interest and inflation rates prevailing at the time the subsidy is received, and that this factor be kept constant throughout the allocation

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\(^1\) As noted above, this recommended approach applies to allocated subsidies other than loans.
period. Thus, for every year of an allocation period, excluding the year of receipt, the allocated subsidy amount would reflect an amount for the compounded adjustment factor.\(^2\) The Group recognizes that keeping the adjustment factor fixed over the allocation period may not be appropriate during periods of significant changes in inflation and interest rates. In such cases, derivation of the adjustment factor on an annual basis over the course of the allocation period may be more appropriate.

37. The following example illustrates how the adjustment factor would be determined. If the government’s borrowing rate is 10 per cent and the rate of inflation is 6 per cent at the time the subsidy is received, the adjustment factor would be 8 per cent: 6 per cent (inflation rate) plus 2 per cent, calculated as one-half of the four-percentage-point difference between 10 per cent (government borrowing rate) and 6 per cent (inflation rate). In practice, this adjustment factor can be calculated as the arithmetic average of the inflation rate and the government borrowing rate.

38. The allocation methodology recommended by the Group in this section is made exclusively in the context of Article 6.1(a) and Annex IV, and as such is not intended to affect the allocation methodologies followed by individual countries employing countervailing measures. Also by virtue of this context, this recommendation is limited to the cost-to-government perspective for measuring a subsidy, and thus is intended to be relevant only with respect to that perspective.

\(\text{D. Data sources for government borrowing rates (Recommendation 4)}\)

39. In the contexts of both the adjustment factor just discussed, and the comparator interest rates for determining the cost to government of subsidies in the form of loans (see Section VIII.B), the Group recognized that some means of identifying government borrowing rates would be necessary. In this regard, the Group concluded that the yield to maturity on government securities (new issues or those trading in secondary markets) represents the most accurate measure of the rate of interest paid by a government. By identifying a bond or other government debt instrument with the appropriate term to maturity, it would be possible to match the allocation periods of the subsidies and the maturities of the government debt instruments, as foreseen in the Group’s methodological recommendations.

40. A variety of sources for information on the secondary market for government securities were identified. Particularly noted for being available on a fully up-to-date basis, and for being apparently comprehensive in their coverage of issuing countries, markets and currencies, are the on-line services of Reuters and Bloomberg. Moody’s International Manual and the IMF’s Government Finance

\(^2\) The Group discussed the issue of whether the adjustment factor should be applied to the year of receipt. Due to the differences with respect to the conceptual bases for the adjustment factor, the Group had difficulty reaching a consensus. In the end, the Group decided that the adjustment factor should not be applied to the subsidy amount allocated to the year of receipt.
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Statistical Yearbook were identified as additional sources of interest rates on government bonds.

V. INFLATIONARY ECONOMY COUNTRIES (RECOMMENDATION 5)

41. The second major issue discussed in the context of inflation is the question of “inflationary economy countries”. Paragraph 5 of Annex IV provides explicitly for indexing the sales denominator for inflation where the recipient firm is located in an “inflationary economy country”. A number of questions were identified and discussed with respect to this paragraph.

A. Definition of “inflationary”

42. It was noted as an initial matter that Annex IV does not define the term “inflationary economy country”, but it was generally believed that “inflationary” in the context of paragraph 5 is intended to refer to countries with high inflation. If such a limit were not adopted, arguably any country with a positive rate of inflation would be “inflationary” in the sense of paragraph 5. Yet the fact that this paragraph sets inflationary economy countries apart as a special case seems to indicate that only certain countries should be covered by its provisions.

43. Various possible means for identifying “inflationary” countries were discussed. First, the possibility of establishing a fixed numerical definition was considered. In this context, it was noted that neither the Interamerican Development Bank, nor the World Bank, nor the International Monetary Fund uses any numerical standard to define “inflationary” economy countries. Moreover, while the United States in past anti-dumping cases has used 50 per cent, more recently the US methodology has moved away from such a numerical approach. The Group concluded that, without some external reference point, a numerical standard would not be advisable, as it would be difficult to define and justify.

44. Therefore, the Group recommends that the determination of whether a country is inflationary in the sense of paragraph 5 of Annex IV should be made case by case, based on two criteria: (1) a comparison of that country’s rate of inflation with the average rate in developed countries; and (2) the extent to which inflation indexing is used routinely in transactions and accounting. (It was noted that if a company routinely indexes its sales values for inflation, such indexed sales values could be used as the sales denominator in the subsidy calculations performed pursuant to Article 6.1(a)).

B. Whether and how to reflect inflation in numerator

45. Paragraph 5 of Annex IV provides explicitly for inflation indexing of the

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3 If the country involved is a developed country, this average should exclude that country.
sales denominator for "inflationary economies", but is silent with respect to the numerator. As discussed in Section IV, the Group’s general recommendation is that subsidy amounts (the numerator) be adjusted for at least the rate of inflation. The recommendation in addition provides for the possibility that the adjustment factor could be revised annually if inflation and interest rates are changing rapidly. In view of this, the Group found that no additional recommendation was needed regarding adjusting the numerator for inflation in the case of inflationary economy countries.

46. The question of which inflation index or indexes to apply to the numerator and denominator in the case of inflationary economy countries was considered. In particular, countries that use inflation indexing normally publish and use a series of different inflation indexes, and not all countries will create the same number or type of such indexes. Thus, it might be difficult to identify a single standard inflation index that would necessarily exist or could appropriately be applied to all situations that might arise under paragraph 5 of Annex IV.

47. In particular, while it was recognized that establishing as the norm the use of the general composite rate of inflation could increase the transparency and predictability of the outcome where an inflationary economy country was involved, it also was recognized that such an approach might have limitations. That is, if the Group recommended this or any other single inflation index, such an index might not be appropriate to all situations.

48. It was noted that the recipient firm’s accounting records could provide useful guidance in determining which inflation index to use. It was deemed appropriate to leave this question open.

49. The Group discussed as an alternative converting the subsidy amounts and sales denominators to a stable currency commonly used in international business transactions, or to a basket of currencies (such as the Purchasing Power Parity index or the average for developed countries). It was noted that in some inflationary economies, such currency conversions are made instead of inflation indexing in international accounting practices, and in the preparation of consolidated accounting balances. If such an approach were taken, separately indexing for inflation would not be necessary, and thus there would be no need to identify the appropriate inflation indexes to be applied to the numerator and the denominator. Moreover, if such a currency conversion were made, then the adjustment factor for inflation and interest recommended in Section IV and Recommendation 3 could be based on inflation and interest rates for the currency or basket of currencies used, considerably simplifying the cost to government and subsidization calculations. If a basket of currencies were used, it was noted that it would be advisable to weight average the exchange rates included by some appropriate factor.
VI. SALES DENOMINATOR (RECOMMENDATION 6)

A. Period on which sales denominator is based (Recommendation 6, Parts A-C)

50. The issues involved in identifying the appropriate sales denominator for calculations of ad valorem subsidization of a product, within the confines established by Annex IV, were discussed extensively. At the outset, the guidance in paragraphs 2 and 3 of Annex IV on this issue was acknowledged. In particular, these paragraphs provide that the relevant sales data shall be those for the most recent 12-month period preceding the period in which the subsidy is granted. The general view was that this means that, except as otherwise explicitly provided, a lag will always exist between the period covered by the numerator and that covered by the denominator (i.e., current-year subsidies will be divided by the previous year’s sales).

51. Two special cases in the context of this general rule were identified. The first occurs in the case of an inflationary economy country, where sales in the preceding calendar year are to be indexed for the inflation experienced during the most recent 12-month period. That is, while there is a lag in the basic data, the data themselves are in a sense updated through the application of the inflation index.

52. The second special case pertains to the treatment of tax-related subsidies, as set forth in Footnote 64 to Annex IV. This footnote states that for tax-related subsidies, the value of the product is to be “the total value of the recipient firm’s sales in the fiscal year in which the tax related measure was earned” (emphasis added). This language indicates that a single period should be used in identifying the numerator and the denominator, i.e., the period in which the subsidy was earned, which would mean that no lag would be present. It was noted in this context that the “earning” of a tax subsidy normally occurs during the fiscal year preceding the fiscal year in which the related tax return is filed. Thus, tax revenue normally will be foregone by the granting government in the year after the tax subsidy is earned. Taking into account the language of Footnote 64, the Group recommends in calculations of ad valorem subsidization from tax subsidies that the numerator should be the amount of the tax subsidy earned in the fiscal year preceding the fiscal year in which the relevant tax return was filed, and that the denominator should be the company’s sales in that same fiscal year, i.e., the one preceding the fiscal year in which the tax return was filed.

53. The Group further noted that the reference, in paragraphs 2 and 3 of Annex IV to “the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted” was somewhat ambiguous. In particular, the period referred to might be either the recipient firm’s most recent accounting year, or alternatively, the actual 12 months immediately prior to the month in which the subsidy was granted (whether or not this period coincided with the recipient’s
accounting year). The Group recommends, because of the possibility of year-end adjustments for discounts, rebates, returns, etc., and general ease of obtaining data, that the sales data for the most recent accounting year be used. Under this approach, if a subsidy were granted in April, and the firm’s accounting year was the calendar year, the sales denominator would be the firm’s sales during the preceding calendar year. In addition, the Group recommends that the sales data used be net rather than gross sales.

B. Variability (Recommendation 6, Part D)

54. A further question discussed regarding the sales denominator was whether and when the sales denominator should vary in the calculation of the ad valorem rate of subsidization from allocated subsidies. Several possibilities were discussed. One approach would be to establish a single sales denominator for each subsidy - the level of sales during the year preceding the period in which the subsidy was granted - and carry that denominator forward for that subsidy for the entire period over which the subsidy was allocated. Thus, if the aggregate amount of subsidization in the year being reviewed consisted of allocated amounts of three subsidies, each of which had been granted in a different, prior year, there would be three sales denominators (one for each subsidy), which would be used to determine a separate ad valorem rate of subsidization for each subsidy for the year of review. These ad valorem percentages, each of which had been calculated over a different year’s sales level, then would be added together to determine the overall rate of subsidization. The fact that keeping the sales denominator fixed would tend to overestimate the actual rate of subsidization during periods of expanding sales, while tending to underestimate this rate during periods of declining sales, was identified as a drawback, while the certainty of establishing a single ad valorem rate of subsidization for each allocated subsidy was identified as an advantage.

55. A second approach would be to apply a single sales denominator to all subsidies granted in or allocated to a given year. This denominator would be the level of sales during the year preceding the most recent granting of a subsidy. Thus, during the period of allocation of a subsidy, the sales denominator would remain fixed at the level of sales during the year preceding the first subsidy, until a second subsidy was granted, at which point the sales denominator applied to both subsidies would shift to the level of sales during the year preceding the granting of the second subsidy, and so forth. This approach was viewed as a possible means to establish some degree of predictability as to the rate of subsidization that would arise from each subsidy, while at the same time allowing for changes in the level of sales over time to be at least partially incorporated. On the other hand, this approach would suffer from the same potential for overstatement or understatement of the ad valorem subsidization as the first approach.

56. Because of the limitations of the first two approaches, and because
it is viewed as more closely reflecting reality, the Group recommends a third approach, under which each year of an allocation period would have its own sales denominator, i.e., the previous year’s sales level. Thus, if a subsidy granted in 1996 were allocated over five years, the sales denominator used to determine the 1996 rate of subsidization would be 1995 sales, the denominator for the 1997 rate of subsidization would be 1996 sales, etc. This approach suggests that where allocated subsidies were involved, the word “granted” in paragraph 2 of Annex IV would be taken to mean “allocated”. In other words, the denominator would be the recipient’s sales during the most recent 12-month period preceding the period to which the relevant portion of the subsidy was allocated.

57. A major consideration in making this recommendation is that facts, in particular, companies’ sales levels, change over time. For example, a company’s scope of operations may expand or contract, or inflation may change the value of sales even where the volume remains constant. Varying the sales denominator each year was deemed the best way to ensure that the level of subsidization was calculated on an up-to-date basis for each year of an allocation period. In this connection, the Group also noted that adjusting the sales denominator each year is consistent with its recommendation to adjust allocated subsidy amounts for inflation and interest each year. On balance, these positive elements were deemed to outweigh any decrease in predictability that might result from such an approach.

C. Calculation of the 5 per cent on an industry-wide or firm-specific basis (Recommendation 6, Part E)

58. Another question raised in the context of the sales denominator was whether ad valorem subsidization is to be measured on a firm-specific or industry-wide basis. On this point, a range of views was expressed. If subsidization were calculated on a firm-specific basis, a presumption of serious prejudice could arise even where only one small firm received subsidies amounting to more than 5 per cent of its sales, while the majority of the industry was unsubsidized. On the other hand, if subsidization were calculated on an industry-wide basis, there might be no presumption of serious prejudice, even where a single firm was heavily subsidized, so long as other firms received small or no subsidies.

59. In favour of an industry-wide approach, it was stated that Article 6.1(a)’s reference to “total ad valorem subsidization of a product exceeding 5 per cent” could be viewed as requiring a calculation of subsidization of the product as a whole, rather than the product produced by an individual subsidized firm. For example, in an industry consisting of five firms, two of the five might receive more than 5 per cent subsidization, while the weighted average rate of subsidization for the industry as a whole (counting the non-subsidized firms sales) might be less than 5 per cent.

60. In this connection, some concern was expressed over the possibility that subsidization of a single firm could give rise to a presumption of serious prejudice
under Article 6.1(a), even where the industry-average subsidization of the product was less than 5 per cent, in particular, that this might give rise to non-meritorious cases.

61. In spite of these concerns, however, the Group concluded that the language of Article 6.1(a) and Annex IV provide for calculation of subsidies on a firm-specific basis. In particular, it was pointed out that paragraphs 2-5 of Annex IV are worded entirely in terms of individual recipient firms. In this context, it also was noted that Article 6.1(a), while referring to the total ad valorem subsidization of a product, also directs through footnote 14 that the rate of subsidization is to be calculated in accordance with Annex IV which, as noted, is couched in terms of individual recipient firms. Further, the reference to “total” subsidization could be taken to mean total subsidization under multiple programmes received by an individual firm. In addition, it was noted that the enumeration in Article 6 of the adverse effects that constitute serious prejudice case (e.g., price undercutting, and displacement of exports of a like product) could result from individual firm actions, and that under Article 6.1(c), subsidization of an individual enterprise explicitly gives rise to a presumption of serious prejudice. The Group also noted that, in any event, firms with less than 5 per cent subsidization would not be presumed to be causing serious prejudice.

D. “Tying” of subsidies to particular products (Recommendation 6, Part F)

62. The reference in paragraph 3 of Annex IV to the “tying” of subsidies to certain products in calculating ad valorem subsidization was discussed. This provision indicates that for subsidies tied to the production or sale of a given product, the relevant denominator is sales of that product, while paragraph 2 of Annex IV provides that for all other subsidies, the relevant denominator is the recipient firm’s total sales. Paragraph 3 does not specify how “tying” is to be established, however, leaving open a number of questions, for example, how closely related to a product a subsidy must be to be “tied” to that product; and how the sale of assets/plants affects the amount of a subsidy and its “tying” to a product.

63. It was noted that the panel report on *Lead and Bismuth Steel* contains language relevant to the question of “tying” which could provide useful guidance, and which forms the basis for the Group’s recommendations on this point. Under this approach, a subsidy would be deemed to be tied if its intended use was known to the giver of the subsidy, and so acknowledged, prior to or concurrent with the subsidy’s bestowal. It was recognized that other possible approaches might exist as well.
E. **Sales denominators for tied and untied subsidies, and aggregation of ad valorem subsidization from different kinds of subsidies** *(Recommendation 6, Part G)*

64. A further question pertains to identifying the correct sales denominator where both tied and untied subsidies are received. In particular, paragraph 6 of Annex IV’s requirement that “subsidies given under different programmes and by different authorities in the territory of a Member shall be aggregated” raises the question generally of how such aggregation should be done when calculating *ad valorem* subsidization.

65. The Group recognizes that, as required by Annex IV, where a subsidy is tied to a particular type of product, the subsidy received should be divided by sales of that product. The Group further recognizes that, as also required by Annex IV, where a subsidy is untied, the subsidy amount should be divided by the company’s total sales. In this connection, the Group recommends that where a mixture of tied and untied subsidies is received, the respective *ad valorem* subsidy calculations should be performed separately (each using the appropriate sales denominator), and the resulting *ad valorem* percentages added together to arrive at the total *ad valorem* subsidization of the product.

66. For example, assume that an Article 6.1(a) case has begun with respect to milk. If a company produces steel and milk, and receives a tied subsidy to produce milk, the subsidy amount should be divided by the recipient company’s sales of milk to determine the *ad valorem* subsidization from that subsidy. If the company also receives an untied subsidy, this subsidy amount should be divided by the firm’s total sales of steel and milk. The two resulting *ad valorem* percentages then should be added together to arrive at the total *ad valorem* subsidization of milk.

67. Another question pertaining to the sales denominator is whether a single sales denominator should be used with respect to subsidies of different scopes, for example, export versus domestic subsidies, or subsidies for sales to particular markets. (In this context, it is recalled that an export subsidy might be incorporated into an Article 6.1(a) allegation, rather than separately being used as the basis for an allegation of prohibited subsidy under the Article 4 procedures. See Section I.B, above.) The Group considered but did not reach a consensus on whether export subsidies should be divided by export sales or by total sales, nor on whether subsidies tied to particular markets should be divided by sales to that particular market or by total sales.

VII. **START-UP SITUATIONS (RECOMMENDATION 7)**

68. The question of recipient firms “in a start-up situation”, as provided for in paragraph 4 of Annex IV, was discussed. It was recognized by the Group that the lack of experience in applying paragraph 4 precluded the development of
recommendations in this area. In particular, the Group recognized that footnote 65 to Annex IV would need to be considered in defining the commencement of a start-up period.

69. The description in paragraph 4 as to when the start-up period ends, namely one year after the beginning of production of the product, was seen as suggesting that a start-up period could begin several years before production began, and extend through the end of the first year of production. It was recognized, however, that paragraph 4 does not specify in precise terms at what point “production” would be considered to have begun (i.e., production for sale, production in commercial quantities, production of a prototype, etc.).

70. The question also was raised as to the numerator and denominator for calculation of the 15 per cent subsidization threshold in the context of a start-up (that is, whether the overall rate of subsidization exceeds 15 per cent of total funds invested). It was concluded that the numerator should be the total absolute amount of subsidies received during the relevant period, and the denominator should be total funds invested.

71. While recognizing again that without experience in implementing paragraph 4 establishment of a methodology was not possible, it was noted that in general terms, funds invested could be viewed as being equal to total assets: land, buildings, equipment, and other assets. The point was made that the question of how these assets were financed was not relevant to measuring their value. That is, funds invested should not be limited to the firm’s equity, in view of the fact that debt financing could be used as well. Thus, the “assets” side of the balance sheet should provide the general basis for determining the amount of funds invested.

72. A question was raised as to what portion of a subsidized loan should be included in the calculation of the total value of subsidies received during the start-up period. In particular, it was questioned whether the principal amount of the loan plus the interest subsidy should be included, or whether only the interest subsidy should be included. The Group noted that as a general principle, only the interest subsidy should be included. Among other reasons, if the full principal amount were included, this would mean that the treatment of subsidized loans in the context of a start-up situation would be different from that in the general, non-start-up context. (See Section VIII.B, below, on loans.) Nevertheless, the possibility was discussed that if the start-up firm could not have obtained the loan from any other source at any reasonable market price/cost, it might be appropriate to include the full principal amount in the calculation of total subsidies received. No firm conclusion was reached on this issue.

73. It also was noted that the protection afforded to the subsidy recipient by the 15 per cent threshold only lasts for a limited period. Thus, if a firm received a considerable amount of start-up subsidization, although not enough to reach the 15
per cent threshold, a case based on the 5 per cent threshold could be brought once the first year of production had passed.

74. It also was discussed, and is recommended, that whether or not a serious prejudice case based on the start-up provisions was brought under paragraph 4 of Annex IV, any later (post-start-up period) cases based on the 5 per cent threshold should include any portions of start-up subsidies that were allocable to the relevant period for purposes of the 5 per cent calculation. To exclude such early subsidies from later 5 per cent cases simply on the grounds that they were start-up subsidies would create a multi-year grace period for these subsidies, which would be inconsistent with the clear end-point for the start-up period reflected in paragraph 4.

VIII. COST TO GOVERNMENT OF AND AD VALOREM SUBSIDIZATION FROM DIFFERENT TYPES OF SUBSIDIES

75. Beyond the foregoing cross-cutting issues (e.g., allocation, inflation, interest, sales denominator, etc.), which would affect calculations involving all kinds of subsidies, it was recognized that calculating the cost to government of any given kind of subsidy might raise issues unique to that kind of subsidy. Thus, the question of the cost to government of a subsidy was discussed extensively in the context of particular kinds of subsidies.

A. Grants (Recommendation 8)

76. Two basic kinds of grants, outright grants and reimbursable grants, were identified. Moreover, it was noted that grants might be provided in instalments, rather than as one-time payments.

1. Outright grants (Recommendation 8, Part A)

77. The Group agreed that at the most basic level, the cost to government of a grant is its face value. In accordance with the general methodology recommended, for allocated grants this amount would be adjusted to reflect inflation and interest.

78. For grants paid in instalments, it is recommended that each instalment be treated as a separate grant. This approach is consistent with the recommendation to vary the sales denominator each year during an allocation period. It also allows for any differences between the amount of an instalment grant authorized and the amount actually paid to be reflected in the calculations in a simple and straightforward way.

2. Reimbursable Grants (Recommendation 8, Part B)

79. For grants with terms that include the obligation of reimbursement in the
event that certain conditions are fulfilled (e.g., that the recipient becomes profitable), the similarity with contingent liability loans was recognized (see Section VIII. B.2, below). Given this, it is recommended that during the period before they are reimbursed, reimbursable grants be treated as a series of short-term interest-free loans. The cost to the government in such a case would be calculated using the methodology for ordinary loans, described below.

80. It is recognized that, regardless of the fact that a given grant was nominally reimbursable, it might be determined at some point that such a grant in fact never would be reimbursed (as in the case, for example, of a chronically unprofitable recipient). Thus, it may become appropriate to determine that a nominally reimbursable grant in effect has become an outright grant, and to treat it as such. In such a situation, the cost to the government of the grant would be its outstanding amount as of that date (that is, the original amount less any reimbursement that had been made to that point).

81. Given that where a reimbursable grant has become an outright grant this is similar to an instance of debt forgiveness, it is recommended that the allocation period for any such outstanding amount should begin on the date as of which it is determined that this amount effectively has become an outright grant. This approach is recommended to ensure that the “principal amount” of reimbursable grants is captured in Article 6.1(a) subsidy calculations where such grants have been outstanding for lengthy periods and have no realistic prospect of being reimbursed. To do otherwise would mean that only an imputed interest cost associated with what effectively were outright grants would be reflected in Article 6.1(a) calculations.

B. Loans (Recommendation 9)

82. Two different kinds of loans, ordinary loans and contingent liability loans, were discussed in the context of cost to government.

1. Ordinary loans (Recommendation 9, Part A)

83. It is recommended that the cost to the government of an ordinary loan be measured based on the extent to which the effective interest rate charged on the loan provided is lower than the appropriate government bond rate in the year in which the loan is given. For short-term government loans (i.e., loans with a maturity of less than one year), the appropriate bond rate would be that on short-term government bonds of comparable maturity. For long-term government loans, the appropriate bond rate would be that on long-term government bonds of comparable maturity. As a simplified example, if the appropriate government bond rate was 5 per cent, and the interest rate on the loan was 4 per cent, the cost to the government of providing the loan would be one percentage point of interest. Any grace period provided by the government loan, during which time interest did not accrue, also
would be considered a cost incurred by the government, calculated using the appropriate government bond rate. For purposes of establishing a relatively simple and predictable calculation methodology, it is further recommended that the benefits thus calculated be deemed to arise on a year-by-year basis over the life of the loan (i.e., as a series of recurring grants). The Group also notes that deferrals of principal and/or interest normally will give rise to additional costs to the government.

2.  *Contingent liability loans (Recommendation 9, Part B)*

84. It was noted that contingent liability loans are similar to reimbursable grants, in that they are repayable only upon the occurrence of some future event, such as achievement of a certain level of profitability. Because it is impossible to predict the occurrence of future events, it is recommended, as for reimbursable grants, that contingent liability loans be treated as if they were a series of short term interest-free loans for purposes of determining the cost to the government.

85. If such loans eventually were repaid, the amount of the subsidy would be calculated in accordance with the methodology described above for ordinary loans.

86. It was recognized that, as with reimbursable grants, it might be determined that a given contingent liability loan would not be repaid. In the event that such a conclusion was reached, it is recommended that such loans be treated as grants. In these circumstances, the amount of the subsidy (i.e., the cost to the government) would be the face amount of the loan less any repayments, plus accrued interest calculated using the government’s long-term bond rate.

87. Given that where a contingent liability loan has become an outright grant this is similar to an instance of debt forgiveness, it is recommended that the allocation period for any outstanding contingent loan amount begin on the date as of which it is determined that this amount effectively has become an outright grant. This approach is recommended to ensure that the principal amount of contingent liability loans is captured in Article 6.1(a) subsidy calculations where such loans have been outstanding for lengthy periods and have no realistic prospect of being repaid. To do otherwise would mean that only an imputed interest cost associated with what effectively were outright grants would be reflected in Article 6.1(a) calculations.

C.  *Interest rate subsidies (Recommendation 10)*

88. The question of interest rate subsidies, as distinct from subsidized government loans, was discussed. In particular, it was noted that such subsidies might arise where the loan itself was obtained from a commercial source, with the government covering some or all of the interest cost.

89. Two possible cases of interest rate subsidies were identified. The first
would be where, as of the receipt of the loan, or at some later point, the government subsidized the interest expense on an ongoing basis as payments became due. In this situation, it is recommended that the subsidy be calculated as the amount of interest covered by the government. It is recommended that such interest amounts be treated as a series of recurring grants provided on the dates on which interest payments were due.

90. The second case would be where the government provided, at a certain point in time, a lump sum payment to offset the recipient’s interest expenses (whether with respect to past interest, paid or unpaid, or with respect to future interest expenses). In this situation, it is recommended that the amount of the subsidy, once paid, be treated as a non-recurring grant.

D. Debt forgiveness (Recommendation 11)

91. The question of how to treat, in the context of Article 6.1(a), subsidies in the form of debt forgiveness was discussed. As one aspect of this issue, it was noted that the fact that subsidies of this type would give rise to a separate rebuttable presumption of serious prejudice under Article 6.1(d) did not mean that such subsidies necessarily would be irrelevant in the context of paragraph 6.1(a)/Annex IV. For example, it is foreseeable that a single act of debt forgiveness might be found not to have caused, by itself, serious prejudice (i.e., the presumption would have been rebutted). Nevertheless, if the overall rate of subsidization (from that subsidy plus other subsidies to the same product) amounted to more than 5 per cent ad valorem, a second rebuttable presumption would be created. Conversely, however, the fact that a given instance of debt forgiveness was involved in an Article 6.1(a) case would not prejudice the separate presumption that would exist by definition under Article 6.1(d).

92. To the extent that subsidies in the form of debt forgiveness are at issue in a given case under Article 6.1(a), it is recommended that the cost to the government be measured as the amount of the government outlay (i.e., the outstanding principal plus accrued interest). This amount should be treated as a grant received on the date the debt is forgiven.

E. Loss coverage (Recommendation 11)

93. The question of how, in the context of Article 6.1(a), to treat subsidies to cover operating losses raises similar questions to those with respect to debt forgiveness. That is, as in the case of debt forgiveness, inclusion of subsidies for loss coverage in an Article 6.1(a) case would be without prejudice to the separate presumption of serious prejudice to which such subsidies would give rise under either Article 6.1(b) or (c). On the other hand, any such separate presumption would not prevent subsidies of this kind from being included in a calculation of ad valorem subsidization in the context of Article 6.1(a).
94. To the extent that subsidies in the form of loss coverage are at issue in a given case under Article 6.1(a), it is recommended that the cost to the government be measured as the amount of the loss coverage provided. This amount normally should be treated as a grant, unless the loss coverage takes some other form.

F. Tax concessions (Recommendation 12)

95. On the general question of how to measure the cost to government of tax concessions, it was agreed that in principle, the cost to government would be the face amount of revenue foregone. It was recognized that the calculation of this amount in any given case would depend on the particular type of tax concession involved. It also was noted that the concept of “tax” in this context potentially could encompass all mechanisms whereby governments generate revenue, including import and export duties, social security contributions, etc.

1. Accelerated depreciation

96. For accelerated depreciation, two approaches to calculating the cost to government (i.e., the revenue foregone) were discussed. The first would be to calculate the subsidy on a year-by-year basis, only for those years in which the government foregoes revenue, on the grounds that it is impossible to predict the beneficiary’s true tax liability over the entire depreciation period. Moreover, it was noted that, although accelerated depreciation programmes generally are constructed in such a manner that tax reductions early on are recaptured at the end of the period, in practice such recapture may never occur. For example, if the beneficiary company is unprofitable at the end of the period, it typically would incur no tax liability. In addition, even if profitable at the end of the period, it may have incurred earlier losses that could have been brought forward to offset current profits, again removing or reducing the tax liability that otherwise would have arisen at that time. Further, if new equipment were purchased toward the end of the depreciation period, accelerated depreciation effectively could be “rolled over” upon the commencement of a new, front-loaded accelerated depreciation period on the new equipment, again meaning that recapture of tax reductions from the first depreciation period would be avoided.

97. The major disadvantage to this approach was that it would assume the recipient company to be unprofitable indefinitely into the future, or at a minimum to be free of tax liability. The second approach that was discussed is that used by the OECD in its calculations of the cost to government of various kinds of industrial support measures. For accelerated depreciation, the OECD approach is to calculate a lump sum by comparing the tax the company actually will pay to what it “normally” would have paid over the entire depreciation period. This amount is

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4 Thus, this amount would not be adjusted for inflation and interest.
then restated in terms of its present value as of the beginning of the depreciation period. The formula assumes that the company will be profitable, i.e., that it will pay tax, each year. The major disadvantage to this approach was that an absolutely accurate measurement could only be made at the end of the depreciation period.

98. No consensus was reached with respect to accelerated depreciation.

2. **Tax exemptions, deductions, holidays, etc.**  
   (Recommendation 12, Part A)

99. For tax exemptions, deductions, holidays, and any similar measures, it is recommended that the cost to the government be measured as the amount of revenue that the government otherwise would have collected.

3. **Tax deferrals** (Recommendation 12, Part B)

100. For tax deferrals, it is recommended that the cost to government be calculated by treating the amount of deferred tax as if it were an interest-free loan for the period of deferral.

G. **Equity infusions** (Recommendation 13)

101. The Group deemed that the methodology for determining the cost to the government of a subsidy conferred through the provision of equity would depend upon whether or not the recipient firm’s stock was publicly traded. It was recognized in this connection that the provision of equity by a government to a firm does not necessarily constitute a subsidy. Only if there is a benefit to the recipient from the provision of the equity will a subsidy exist.

102. Where the recipient firm’s stock is publicly traded, the Group recommends that the cost to the government, if any, of an equity infusion by the government be determined by comparing the price the government actually paid to the firm for the equity with the relevant market price for the equity. If the government paid more than the relevant price for the equity, the cost to the government would be the amount of the overpayment. This overpayment would be treated as a grant for purposes of the calculation of ad valorem subsidization.

103. In cases where there is no market price for the shares, determination of whether and to what extent a subsidy is provided will be less straightforward. The Group noted that if a subsidy exists, the cost thereof to the government should be calculated in accordance with the general principles of this report. No consensus was reached as to specific methodology in this regard.
H. Loan/credit guarantees (Recommendation 14)

104. The Group noted that guarantees can operate with respect to the guarantee beneficiary either as a borrower or as a lender. In the former case, the beneficiary is a borrower whose debt is guaranteed against the borrower’s own default. In the latter case, the beneficiary is a lender, for example, through the provision of credit to its customers. A guarantee in this situation guarantees this lender against potential default by its customers.

105. A two-part procedure was discussed for calculating the cost to the government of loan/credit guarantees, where such guarantees are provided in the context of a programme, as opposed to on an ad hoc basis. As part one, the overall viability of the loan guarantee programme over a relatively long period (normally, the five years prior to the receipt of the guarantee) should be determined. Normally, viability could be assessed by examining the programme’s financial statements over the period. If this examination revealed that the total fees paid into the programme by participating firms during the period were less than the total amount paid by the government in coverage of defaulted loans under the programme plus the costs of operating the programme, the programme would be deemed not to be viable, meaning that a cost to the government would have been incurred.

106. Part two would be to calculate the amount of the cost to the government to be attributed to the firm involved in the Article 6.1(a) enquiry. The first step under part two would be to calculate the cost to the government of the programme as a whole, as the difference between the total amount of fees actually paid into the programme by all of its participants (including those not involved in the enquiry) and the total amount of fees that would have been required for the programme to be viable during the relevant period. The second step would be to attribute the appropriate portion of this cost to the particular firm involved in the enquiry. This attribution would be based on that firm’s share of total loan amounts guaranteed under the programme during the relevant period. Thus, under this approach, a subsidy would be attributed to the firm involved in the enquiry whether or not that particular firm had made any claim under the programme for a default. This subsidy would be deemed to have been provided on the date(s) the fees were paid by that firm.

107. In the case of ad hoc guarantees (i.e., those that clearly are not linked to any guarantee programme), it is recommended that the cost to government of an ad hoc guarantee, in the event that a government covers a default, be the amount of the default coverage provided, less any fees paid for the guarantee. The Group recognizes that in these circumstances, the treatment of ad hoc guarantees for purposes of Article 6.1(a) would be identical to the recommended treatment of debt forgiveness.

108. Some Group members expressed the view that an ad hoc guarantee imposes
a cost on the providing government even where there is no default. Specifically, the expected cost of providing the guarantee could be calculated. For example, if the general default rate on government guaranteed loans or credits, or the probability of default on a specific guaranteed loan or credit, was 10 per cent, 10 per cent of the loan principal could be considered to be the cost to the government of providing the guarantee. This approach would be consistent with how some governments treat loan guarantees in their accounting and budget records. No consensus was reached on this issue.

I. Government provision of goods and/or services (Recommendation 15)

109. In general, it is recommended that the cost to the government of providing a good and/or service be calculated as the expenses/costs incurred by the government in providing the good or service, including a reasonable return, minus the price received for the good and/or service. If the cost to the government cannot be calculated according to this approach, it could be calculated using other approaches under the adequate remuneration standard of Article 14(d). This amount could be treated as a grant in the calculation of ad valorem subsidization.

110. A number of special considerations were discussed regarding how to measure the cost to the government of providing goods and services in specific contexts. For example, in certain circumstances such as the provision of widely-used inputs like electricity or natural gas, a price differential between different customers might not be abnormal. Large customers would tend to be charged a lower price by an electric utility than smaller users, based on the cost differential to supply them. Thus, it would be important to examine the standard price list or pricing schedule applicable to the different categories of customer. If a particular customer were charged a disproportionately low price in relation to the “normal price”, there might be a cost to the government. The “normal price” would be the price that would be expected based on the price schedule, or based on the price to comparable customers, which covered all of the government’s costs of providing the good or service to the customer (including a reasonable return).

J. Government purchase of goods (Recommendation 16)

111. In general, it is recommended that the cost to the government of purchasing goods be determined in accordance with the guidelines contained in Article 14(d) of the Agreement. That is, such calculations should be based on “more than adequate remuneration”. To the extent that a government is found to have overpaid for goods in comparison with their prevailing market value, the cost to the government would be the amount of the overpayment. This amount could be treated as a grant in the calculation of ad valorem subsidization.

112. It is recognized that the guidelines in Article 14 of the Agreement refer
to the “benefit to the recipient” context. Nevertheless, in the case of government purchases of goods, the cost to the government and the benefit to the recipient in practice are similar, making it possible to apply the Article 14 guidelines directly.

K. Assumption of legal obligations (Recommendation 17)

113. As a general matter, it is recommended that the cost to government of the assumption of legal obligations, to the extent that this involves an element of subsidization, be calculated as the amount of the obligations assumed. Various kinds of legal obligations were identified as possibly belonging in this category. These include the coverage by a government of severance pay, of other legally-imposed employment costs, possibly of certain environmental costs, and of similar obligations. This amount normally should be treated as a grant.

L. Export-related subsidies (Recommendation 18)

114. As noted in Section I.B, above, it is recognized that because export subsidies are prohibited, establishing a cost-to-government methodology may be of limited use. Nevertheless, to the extent that such subsidies are involved in a given case under Article 6.1(a), their cost to government would depend on their specific nature. That is, export-related subsidies in the form of credit guarantees would be treated in accordance with the loan/credit guarantee methodology, those in the form of grants would be treated in the same way as other grants, those in the form of loans would be treated in the same way as other loans, etc.

M. Upstream subsidies

115. The Group discussed, but reached no consensus on, upstream subsidies. It was recognized that any calculation method for such subsidies would need to include a basis for determining the amount of the subsidy benefitting the downstream product, and also would need to avoid any double-counting of the subsidy that might exist.

N. Multiple exchange rate programmes (Recommendation 19)

116. It is recommended that the cost to the government of application of a multiple exchange rate system to a given transaction be based on a comparison of the exchange rate actually applied with an appropriate benchmark, such as the market exchange rate or another exchange rate (such as the Purchasing Power Parity rate) published by an international organization. The cost to the government would be the difference between the absolute value of the transaction at the exchange rate actually applied, and the value that would have resulted if the benchmark rate had been applied. This amount should be treated as a grant.
O. Research and development subsidies (Recommendation 20)

117. It is recognized that the cost to government of subsidies for research and development will depend on the particular types of subsidies provided. For example, the cost to government of research subsidies in the form of grants should be determined in the same way as for all other grants, etc.

118. It is further noted that, because of the future orientation of R&D activities, it might be difficult to allocate the related subsidies to products not yet in production (i.e. such subsidies generally would not be “tied”). Given this, it may be appropriate in these circumstances to allocate such subsidies across the recipient firm’s total sales.

P. Worker training (Recommendation 21)

119. The question of the cost to government of providing worker training in the context of Article 6.1(a) is recognized to raise a number of issues. First, it is noted as a general principle that in the most straightforward case, government-subsidized or government-provided worker training can be similar to a wage subsidy. That is, if a government’s payment for the worker training relieves a company of a cost that it otherwise would have had to pay, a subsidy that would be relevant under Article 6.1(a) may exist.

120. In addition, the question of whether a firm has a legal obligation to train its workers is relevant. That is, when a firm has a legal obligation, such as to retrain laid-off workers, and the government assists the company in paying for such retraining, a subsidy would exist to the extent that the government has incurred a cost in providing the assistance which would otherwise have been borne by the firm. It is recommended that such a subsidy be treated as a grant.

RECOMMENDATION 1

Illustrative Table on Expensing Versus Allocation of Subsidies in the Context of Article 6.1(a) and Annex IV

1. The attached table reflects the Informal Group of Experts’ recommended guidelines for determining when certain types of subsidies should be expensed versus allocated over time in calculating whether the 5 per cent threshold established in Article 6.1(a) has been met. The first page of the table identifies various types of subsidies that might be either expensed or allocated depending on the particular circumstances. Factors that would be relevant to this determination are identified for each type of subsidy. The second page identifies those types of subsidies that generally would be allocated, and those that generally would be expensed.
2. The treatment recommended for the different types of subsidies as well as the subsidy-specific reasoning shown are based on the following general principles: Allocation rather than expensing of a subsidy normally would be indicated if the purpose of the subsidy is for the purchase of fixed assets, if it is non-recurring and/or large, if it is oriented toward future production, if it consists of equity, or if it is carried forward in the recipient’s accounting records. In addition, two presumptions are deemed appropriate: First, R&D subsidies should be presumptively allocated, except where it is demonstrated that doing so would be inappropriate. Similarly, non-recurring subsidies should be presumptively allocated, except where it is demonstrated that this would be inappropriate.

<table>
<thead>
<tr>
<th>EXPENSE</th>
<th>ALLOCATE</th>
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<tbody>
<tr>
<td><strong>GRANTS</strong></td>
<td></td>
</tr>
<tr>
<td>Purpose is for other than purchase of fixed assets Recurring and/or small</td>
<td>Purpose is for purchase of fixed assets Non-recurring and/or large</td>
</tr>
<tr>
<td><strong>TAX BENEFITS/INDIRECT</strong></td>
<td><strong>TAX REBATES/IMPORT DUTY EXEMPTIONS</strong></td>
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<tr>
<td>For operating expenses Benefits related to direct taxes</td>
<td>For purchase of/related to fixed assets (e.g. import duty/indirect tax exemption on machinery)</td>
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<tr>
<td><strong>PROVISION OF GOODS AND SERVICES</strong></td>
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<tr>
<td>Provision of services/consumable inputs</td>
<td>Provision of fixed assets and non-general infrastructure</td>
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<td><strong>RESEARCH &amp; DEVELOPMENT</strong></td>
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<tr>
<td>Expense only if allocation not appropriate</td>
<td>Presumption to allocate</td>
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<tr>
<td><strong>LOSS COVERAGE/OPERATING COSTS (OVERLAPS WITH 6.1.(b) AND (c))</strong></td>
<td></td>
</tr>
<tr>
<td>Recurring and/or small</td>
<td>Non-recurring and/or large Benefit goods not yet produced</td>
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<tr>
<td><strong>INTEREST RATE SUBSIDIES</strong></td>
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<tr>
<td>Interest subsidy payments made as loan payments become due</td>
<td>Subsidy is lump sum to offset past, present or future interest due or paid</td>
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<tr>
<td><strong>EQUITY INFUSIONS</strong></td>
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<tr>
<td><strong>LONG-TERM LOAN BENEFITS</strong> (benefits exist over life of loan)</td>
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<tr>
<td>FORGIVENESS/ASSUMPTION OF LONG-TERM DEBT (OVERLAPS WITH 6.1(d) (including principal and interest)</td>
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<td>---------------------------------------------------------------</td>
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<tr>
<td>SHORT-TERM LOAN BENEFITS</td>
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<td>EXPORT REBATES</td>
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<td>EXPORT INSURANCE</td>
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<td>EXPORT PROMOTION ASSISTANCE</td>
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<td>REDUNDANCY PAYMENTS/EARLY RETIREMENT/ WORKER ASSISTANCE</td>
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<td>WORKER TRAINING</td>
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<td>WAGE SUBSIDIES</td>
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<td>PRICE SUPPORT PAYMENTS</td>
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<tr>
<td>SUBSIDIES BELOW MINIMUM THRESHOLD SIZE (&lt;0.5% of sales for any individual subsidy)</td>
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RECOMMENDATION 2

Identification of Allocation Period for Allocated Subsidies

1. As a general principle, the average useful life of assets should be used as the allocation period for subsidies subject to allocation.

2. A hierarchy of bases from which to determine the average useful life of assets should be used, as follows:
   - Information for the individual firm or firms receiving the subsidy
     Or, if not feasible/available/reasonable,
   - Information for other firms producing the product in the country in question,
     Or, if not feasible/available/reasonable,
   - Information for firms in the same business sector¹ in the country in question,
     Or, if not feasible/available/reasonable,
   - Information for other firms producing the product outside the country in question.

¹ Defined as the next-largest category in the International Standard Industrial Classification (“ISIC”) or similar nomenclature system.
3. If the first basis, above, can be used, the total average book value of physical depreciable assets (excluding land and construction in process) of the firm during the most recent relevant multi-year period could be divided by the average annual amount of depreciation expense during that period, with the result being the average useful life of assets in years. (Example: $1,000 average asset value/$100 average annual depreciation = 10 year average life of assets.) The relevant period should be defined so as to represent normal operations. A similar calculation could be made using any of the other bases in the hierarchy, if applied.

4. In the case of asset revaluations (write-downs or write-ups), or of hyperinflation, normalizing adjustments may be necessary.

5. In applying this methodology, there should be a preference for using accounting data rather than tax-related depreciation periods for determining the useful life of assets, as accounting data are more likely to reflect actual useful lives of assets.

6. The average useful life of all operational assets (as identified through the application of the hierarchy) normally should be used as the allocation period for allocable subsidies regardless of type, other than long-term loans and possibly equity infusions.

7. If the subsidy in question is the benefit from a long term loan, the allocation period should be the life of the loan.

8. If the subsidy in question is an equity infusion, and the subsidy is calculated as the overpayment for equity by a government, in comparison with the market value of the equity, this overpayment should be treated as a grant and allocated over the average useful life of assets as identified through the application of the above methodology. If another method is used to determine the cost to government of a subsidy from an equity infusion, a different approach to identifying the allocation period may be appropriate. For example, the period during which an investor might “reasonably” expect a return on an investment could be used, or it could be assumed that a cost to government potentially could arise during the entire period in which the government held the equity, on a year-by-year basis.

9. It is recognized that the approach recommended herein for determining the useful life of assets represents an estimation technique. This approach is recommended for its ease and straightforwardness of application to a large number of foreseeable situations, and in particular for its avoidance of the need to separately calculate the useful lives of individual assets. As reflected in this paper, however, there may be situations where some other approach will need to be used, or where the basic approach described herein may need to be adjusted.

2 If some method other than straight line depreciation is used by the firm, if the firm’s depreciation is not based on an estimate of the actual useful life of its assets, or if the firm’s acquisition of assets is very irregular, the first basis may not be appropriate, in which case one of the other bases in the hierarchy should be considered.

3 I.e., net of accumulated depreciation; based on beginning-of-period values.
RECOMMENDATION 3

Adjustments for Inflation and Interest

1. It is recommended, where subsidies are allocated over time, that subsidy amounts be adjusted fully for inflation and include a portion of the “real” interest rate. Specifically, the adjustment factor to be applied normally should be the full rate of inflation plus one-half of the difference between the rate of inflation and the appropriate government borrowing rate. (This can be calculated as the arithmetic average of the inflation and borrowing rates.) Where the rate of inflation is higher than the government borrowing rate, however, the adjustment factor should be the full rate of inflation, unadjusted for any interest component.

2. The adjustment factor should be calculated based on prevailing interest and inflation rates as of the date the subsidy is received. In general, this factor should be kept constant throughout the allocation period, and applied on a compounded basis to each of the annual subsidy allocations, excluding the amount allocated to the year of receipt. If during the allocation period there are significant changes in inflation and interest rates, however, it may be appropriate to recalculate the adjustment factor on an annual basis.

3. The appropriate government interest rate should be the rate for a government debt instrument whose maturity most closely approximates the length of the subsidy allocation period.

4. This methodology should be applied to all types of subsidies allocated over time other than loans.

RECOMMENDATION 4

Data Sources for Government Borrowing

Where government borrowing rates are required in making Article 6.1(a)/Annex IV calculations, it is recommended that the yields to maturity on government securities (new issues and those trading in secondary markets) be used. Identifying securities with appropriate terms to maturity will permit the allocation periods of the subsidies to be matched with securities of comparable maturities, as foreseen in certain of the methodological recommendations.
Committee on Subsidies and Countervailing Measures

RECOMMENDATION 5

“Inflationary Economy Countries”
in the Sense of Paragraph 5 of Annex IV

Determination of whether a country is inflationary

1. The determination of whether a country is inflationary in the sense of paragraph 5 of Annex IV (and thus whether the provisions of that paragraph should apply) is not easily susceptible to application of a numerical standard. Therefore, the determination should be made on a case-by-case basis, by applying a two-part analysis.

2. First, that country’s inflation rate should be compared with the average rate of inflation in developed countries. If the country involved in the dispute is a developed country, this average should exclude that country.

3. If the rate of inflation in the subject country is substantially higher than the average rate to which it is compared, this would mean that the country could be found to be inflationary, depending on the second part of the analysis. If, however, the rate of inflation in the subject country is not substantially higher than the comparison rate, the country would not be inflationary, and the analysis would not reach the second part.

4. As the second part of the analysis, the normal business and government accounting practices with respect to inflation should be considered. In particular, if at least monthly inflation indexing is used routinely throughout the economy of a country with an above-average rate of inflation, in both the public and private sectors, then that country should be considered inflationary in the sense of paragraph 5 of Annex IV.

Adjustment of the Numerator (Subsidy Amount) for Inflation in Inflationary Countries

5. It is noted that the Group’s general recommendation that allocated subsidy amounts be adjusted for inflation (and interest) would apply to inflationary economy countries. It is further noted that, for such countries, the adjustment factor may need to be revised annually, as provided for in the general recommendation.

6. It is recommended that the determination of which inflation index should be applied to the numerator and the denominator be made on a case-by-case basis, to ensure the selection of the most appropriate index to fit the particular circumstances.

7. As an alternative to adjusting the numerator and the denominator for inflation in the inflationary country granting the subsidy, both the subsidy amounts and the sales denominators could be converted to a stable currency commonly used
in international business transactions, or to a basket of currencies (the Purchasing Power Parity Index or the average for developed countries, for example).

8. If such a currency conversion is made, the adjustment factor for inflation and interest recommended in Recommendation 3 should be based on inflation and interest rates for the currency or basket of currencies used. If a basket of currencies is used, the exchange rates included should be weight-averaged by an appropriate factor.

RECOMMENDATION 6
Recommendations Concerning the Sales Denominator

A. Use of accounting year data

1. It is recognized that paragraphs 2 and 3 of Annex IV indicate that normally there will be a lag between the sales denominator and the numerator (i.e., the subsidy) in calculations of ad valorem subsidization. That is, as provided in paragraphs 2 and 3, the relevant sales data are those for the “most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted”.

2. It is recommended with respect to this general issue that the data for “the most recent 12-month period” should be the data for the recipient firm’s most recent full accounting year. Because of the possibility of year-end adjustments for discounts, rebates, returns, etc., use of sales data for a period other than a normal accounting period could introduce inaccuracies.

3. It is noted that the language of paragraphs 2 and 3 of Annex IV, by requiring use of a 12-month period for sales data that precedes the granting of a subsidy, builds in a lag between the subsidy and the sales data to which it is compared in the calculation of the ad valorem subsidization of a product.

B. Special case: tax-related subsidies

4. As provided for in footnote 64 to Annex IV, the sales denominator for tax-related subsidies is something of a special case. The footnote indicates that the sales to be used are those “in the fiscal year in which the tax related measure was earned.”

5. Taking into account this language, it is recommended, in calculating the ad valorem subsidization from tax-related subsidies, that the numerator be the amount of the tax subsidy earned in the fiscal year preceding the fiscal year in which the relevant tax return was filed, and that the denominator be the company’s sales in the same fiscal year, i.e., the one prior to the fiscal year in which the tax return was filed.
C. Use of net rather than gross sales

6. It is recommended that the recipient firm’s net sales (i.e., net of discounts, returns, allowances, etc.), be used in identifying the value of the recipient firm’s sales for calculations of ad valorem subsidization.

D. Variability of sales denominator during allocation period

7. It is recognized that, during the course of an allocation period for a subsidy, the nature and scope of a firm’s activities may change. Given this, if the sales denominator remained fixed during the allocation period, or were only irregularly revised, the numerator and denominator might not be comparable. In view of these considerations, it is recommended that the sales denominator be updated during every year of an allocation period (so as to reflect the relevant value of sales during the preceding accounting year).

8. Related to this, it is further recommended that the allocation of a particular subsidy amount to a given year in an allocation period be deemed to constitute the “granting” of that subsidy amount in the sense of paragraph 2 of Annex IV. In other words, the denominator would be the recipient’s sales during the most recent accounting year preceding the period to which the relevant portion of the subsidy was allocated.

E. Firm-specific sales denominator

9. It is recommended that the ad valorem subsidization of a product be calculated on a firm-specific, rather than an industry-wide, basis. This recommendation is based on the language of Annex IV, particularly that of paragraphs 2-5, which are worded entirely in terms of individual recipient firms. It is recognized that individual firms with less than 5 per cent subsidization would not be subject to a presumption of causing serious prejudice.

F. Determination of whether a subsidy is tied to a product

10. To determine whether a subsidy is “tied” to a particular product in the sense of paragraph 3 of Annex IV, and hence whether the sales denominator should be the recipient’s sales of that product alone, instead of its total sales, it is recommended that a subsidy be deemed to be tied to a product if its intended use is known to the giver, and so acknowledged, prior to or concurrent with the subsidy’s bestowal.

11. It is recognized, however, that in any given situation, some other approach might be more appropriate.
G. **Sales denominators for tied and untied subsidies, and aggregation of ad valorem subsidization from different kinds of subsidies**

12. It is recommended, where a firm receives both tied and untied subsidies, that separate ad valorem calculations be performed for each using the appropriate sales denominators, and that the resulting percentages be aggregated, to determine the total ad valorem subsidization of the product. Specifically, it is recommended that the ad valorem subsidization percentages from tied and untied subsidies be calculated using as the sales denominators the recipient firm’s sales of the relevant product and the recipient firm’s total sales, respectively, as required by Annex IV. The resulting ad valorem percentages then should be added together to determine the aggregate ad valorem subsidization of the product from these subsidies.

**RECOMMENDATION 7**

*Treatment of “Start-Up” Subsidies in Article 6.1(a) Calculations Made After the End of the Start-Up Period*

In the event that an Article 6.1(a) case is brought after the end of a start-up period during which subsidies were received, it is recommended that these subsidies be analyzed to determine whether any portion of them is allocable to the period under consideration. If so, these allocated subsidy amounts should be included in the calculation of ad valorem subsidization to determine if the 5 per cent threshold has been reached.

**RECOMMENDATION 8**

*Cost to the Government of Grants*

**A. Outright grants**

1. For outright grants not paid in instalments, it is recommended that the cost to the government be deemed to be the face amount of the grant, adjusted (if allocated over time) for inflation and interest in accordance with the general recommendation.

2. For outright grants paid in instalments, it is recommended that each instalment be treated as a separate grant. It is noted that this recommendation is consistent with the recommendation to vary the sales denominator during each year of an allocation period.

**B. Reimbursable grants**

3. It is noted that grants whose terms include the obligation of reimbursement in the event that certain conditions are fulfilled (e.g., that the recipient becomes profitable) are similar to contingent liability loans.
4. In view of this, it is recommended that such grants be treated as a series of short-term interest-free loans. The cost to the government for such grants during the period before they are reimbursed thus should be calculated according to the recommended methodology for ordinary loans (Recommendation 9).

5. It may be determined that a given reimbursable grant never will be repaid, (For example, the recipient may be unprofitable over a long period.) Should such a conclusion be reached, it is recommended that the reimbursable grant be treated as an outright grant. The cost to the government would be the original face amount of the grant, less any reimbursement that might have been made to that date.

6. It is recommended that the allocation period for any such outstanding amount should begin on the date as of which it is determined that this amount effectively has become an outright grant.

RECOMMANDATION 9
Cost to the Government of Loans

A. Ordinary loans

1. It is recommended that the cost to the government of an ordinary loan be measured based on the extent to which the effective interest rate charged on the loan provided is lower than the appropriate government bond rate in the year in which the loan is given. For short-term government loans (i.e., loans with a maturity of less than one year), the appropriate bond rate would be that on short-term government bonds of comparable maturity. For long-term government loans, the appropriate bond rate would be that on long-term government bonds of comparable maturity. As a simplified example, if the appropriate government bond rate was 5 per cent, and the interest rate on the loan was 4 per cent, the cost to the government of providing the loan would be 1 per cent. Any grace period provided by the government loan, during which time interest did not accrue, also would be considered a cost incurred by the government, calculated using the appropriate government bond rate. For purposes of establishing a relatively simple and predictable calculation methodology, it is further recommended that the benefits thus calculated be deemed to arise on a year-by-year basis over the life of the loan (i.e., as a series of recurring grants). It is noted in addition that deferrals of principal and/or interest may give rise to additional costs to the government.

B. Contingent liability loans

2. It is recognized that contingent liability loans are similar to reimbursable grants, in that they are repayable only upon the occurrence of some future event, such as achievement of a certain level of profitability. Because it is impossible to predict the occurrence of future events, it is recommended, as for reimbursable
grants, that contingent liability loans be treated as if they were a series of short term interest-free loans for purposes of determining the cost to the government.

3. If such loans eventually were repaid, the amount of the subsidy would be calculated in accordance with the methodology described above for ordinary loans.

4. In the event that a conclusion is reached that a given contingent liability loan will not be repaid, it is recommended that such loans be treated as grants. The amount of the subsidy (i.e., the cost to the government) would be the face amount of the loan, plus accrued interest calculated using the government’s long-term bond rate.

5. It is recommended that the allocation period for any outstanding contingent loan amount begin on the date as of which it is determined that this amount effectively has become an outright grant.

RECOMMENDATION 10

*Interest Rate Subsidies*

1. Where, as of the receipt of a loan, or at some later point, the government subsidizes the interest expense on an ongoing basis as interest payments become due, it is recommended that the subsidy be calculated as the amount of interest covered by the government. It is recommended that such amounts be treated as a series of recurring grants provided on the dates on which interest payments were due.

2. Where the government provides, at a certain point in time, a lump sum payment to offset the recipient’s interest expenses (whether with respect to past interest, paid or unpaid, or with respect to future interest expenses), it is recommended that the amount of the subsidy, once paid, be treated as a non-recurring grant.

RECOMMENDATION 11

*Debt Forgiveness and Loss Coverage*

1. It is noted that debt forgiveness and loss coverage may give rise to separate rebuttable presumptions of serious prejudice under Article 6.1(b), (c) and (d). Nevertheless, it is recognized that subsidies of these types might be included in claims under Article 6.1(a).

2. If a subsidy in the form of debt forgiveness is included in a claim under Article 6.1(a), it is recommended that the cost to the government for purposes of this claim be calculated as the amount of the government outlay (the outstanding principal plus accrued interest). It is further recommended that this amount be treated as a grant received on the date the debt is forgiven.
3. If a subsidy in the form of loss coverage is included in a claim under Article 6.1(a), it is recommended that the cost to the government for purposes of this claim be calculated as the amount of loss coverage provided. It is further recommended that this amount be treated as a grant, unless the loss coverage takes some other form.

4. These recommendations are without prejudice to any separate claims that might exist under the other subparagraphs of Article 6.1.

RECOMMENDATION 12

Tax Concessions

A. Tax exemptions, deductions, holidays, etc.
1. It is recommended that the cost to the government of tax exemptions, deductions, holidays, and any similar measures be calculated as the amount of revenue that the government otherwise would have collected.

B. Tax deferrals
2. It is recommended that the cost to the government of tax deferrals be calculated by treating the amount of the deferred tax as if it were an interest-free loan for the period of deferral.

RECOMMENDATION 13

Equity Infusions

1. It is recommended, where the recipient firm’s stock is publicly traded, that the cost to the government, if any, of an equity infusion be determined by comparing the price the government actually paid for the equity with the relevant market price for the equity. If the government has paid more than the relevant price for the equity, the cost to the government would be the amount of the overpayment.

2. It is further recommended that this amount be treated as a grant.

3. Where there is no market price for the equity, this recommended methodology would need to be modified.
RECOMMENDATION 14

Loan/Credit Guarantees

1. It is recognized that guarantees can be provided both to borrowers (as loan guarantees) and to lenders (as credit guarantees).

2. A two-part procedure is recommended for determining the cost to the government of loan or credit guarantees, where such guarantees are provided through a programme. The first part consists of assessing the long-term viability of the guarantee programme as a whole. The second part consists of attributing the to firm involved in the Article 6.1(a) enquiry the appropriate portion of the government’s cost under the programme.

3. To assess the long-term viability of a guarantee programme, it is recommended that the financial statements for the programme for a relatively long period, normally the most recent five years, be examined. If it is found that the total fees paid into the programme by participating firms during the period were less than the total amount paid by the government under the programme to cover defaulted loans plus the costs of operating the programme, the programme would not be viable.

4. In the second part of the analysis, attributing the appropriate amount of government cost under the programme to the relevant firm, it is recommended to first calculate the cost to the government of the programme as a whole. This cost should be calculated as the difference between the total amount of fees actually paid into the programme by all participants (including those not involved in the enquiry) and the total amount of fees that would have been required for the programme to be viable during the relevant period.

5. The next step in the recommended methodology would be to attribute the appropriate portion of this cost to the particular firm involved in the enquiry. This should be calculated by applying to the total cost that firm’s percentage share of total loan amounts guaranteed under the programme during the relevant period. This subsidy would be deemed to have been provided on the date(s) the fees were paid by that firm.

6. In the case of ad hoc guarantees (i.e., those that clearly are not linked to any guarantee programme), it is recommended, in the event that a default is covered by a government, that the cost to government of the ad hoc guarantee be the amount of the default coverage provided, less any fees paid for the guarantee.
RECOMMENDATION 15

Government Provision of Goods and/or Services

1. In general, it is recommended that the cost to the government of providing a good and/or service be calculated as the expenses/costs incurred by the government in providing the good or service, including a reasonable return, minus the price received for the good and/or service. If the cost to the government cannot be calculated according to this approach, it could be calculated using other approaches under the adequate remuneration standard of Article 14(d).

2. In addition, with regard to the provision of widely-used inputs (e.g., electricity, water or natural gas), it is recommended that a government be deemed to have incurred a cost in providing a good or service only if the price actually charged to a particular customer is less than the normal” price for that type or category of customer. The “normal” price would be the price that would be expected based on the price schedule, or based on the price to comparable customers, and which covered the cost (including a reasonable return) of providing the good or service to the customer.

3. It is recognized that a price differential for different customers might not be abnormal (as, for example, in the case of an electric utility). Only if, based on the standard price list or pricing schedule, the price charged to a particular customer were disproportionately low in relation to the price that would be expected based on the price schedule (or in relation to the price charged to other, comparable, customers), might a cost to the government possibly arise.

4. In the event that a cost to the government is found to exist, this cost should be calculated based on the difference between the normal” price for the good or service and the price actually charged.

RECOMMENDATION 16

Government Purchase of Goods

1. It is recommended that the cost to the government of purchasing goods be determined in accordance with the guidelines in Article 14(d) of the Agreement on Subsidies and Countervailing Measures. That is, such calculations should be based on more than adequate remuneration”. To the extent that a government pays more than adequate remuneration when purchasing goods, the cost to the government should be calculated as the amount of such overpayment. This amount should be treated as a grant.

2. It is noted that, although the guidelines in Article 14 are in the context of benefit to the recipient”, in the case of government purchases of goods, the cost to
the government and the benefit to the recipient in practice would be similar. Thus, the Article 14 guidelines can be applied directly under Article 6.1(a).

RECOMMENDATION 17

Assumption of Legal Obligations

1. Assumption of legal obligations might encompass such government actions as coverage of severance pay, of other legally-required employment costs, possibly of certain environmental costs, etc.

2. It is recommended that the cost to the government of assumption of legal obligations be the amount of the obligations assumed, to the extent that this involves an element of subsidization. This amount normally should be treated as a grant.

RECOMMENDATION 18

Export-Related Subsidies

1. Given the prohibition on export subsidies, it is recognized that subsidies of this type may only rarely, if ever, be included in a claim under Article 6.1(a).

2. To the extent that such subsidies are so included, it is recommended that their cost to the government be determined based on their form. Thus, the cost to the government of such subsidies in the form of grants would be determined using the approach for grants, those in the form of loans using the approach for loans, etc.

RECOMMENDATION 19

Multiple Exchange Rate Programmes

1. It is recommended that the cost to the government of application of a multiple exchange rate system to a given transaction be based on a comparison of the exchange rate actually applied with an appropriate benchmark rate, such as the market exchange rate or another exchange rate (e.g., the Purchasing Power Parity rate) published by an international organization.

2. The cost to the government would be the difference between the absolute value of the transaction at the exchange rate actually applied, and the value that would have resulted if the benchmark rate had been applied.

3. It is recommended that this amount be treated as a grant.
RECOMMENDATION 20

Research and Development Subsidies

1. It is recommended that the cost to the government of research and development subsidies be determined based on their form. Thus, the cost to the government of such subsidies in the form of grants would be determined using the approach for grants, those in the form of loans using the approach for loans, etc.

2. It is further recommended, in view of the future orientation of research and development activities, that subsidies for these activities be presumptively allocated across the recipient firm’s total sales, unless it is demonstrated that treating them as “tied” to the product in question is appropriate.

RECOMMENDATION 21

Worker Training

1. As a general principle, government-subsidized or government-provided worker training can resemble a wage subsidy, to the extent that it relieves a firm of a cost that the firm otherwise would have borne. It is noted that the question of whether a firm has a legal obligation to train its workers (e.g., to retrain laid-off workers) is relevant to the existence of a subsidy for worker training. Where such an obligation exists, a subsidy might arise if the government incurs a cost in providing the assistance.

2. It is recommended that the cost to the government be the cost that the government incurs in providing or funding the worker training and which would otherwise have been borne by the firm.

3. It is further recommended that this amount be treated as a grant.
APPENDIX: TEXT OF ANNEX IV TO THE AGREEMENT ON SUBSIDIES
AND COUNTERVAILING MEASURES

ANNEX IV

Calculation of the total ad valorem subsidization
(paragraphe 1(a) of article 6)

1. Any calculation of the amount of a subsidy for the purpose of paragraph 1(a)
of Article 6 shall be done in terms of the cost to the granting government.

2. Except as provided in paragraphs 3 through 5, in determining whether the
overall rate of subsidization exceeds 5 per cent of the value of the product, the value
of the product shall be calculated as the total value of the recipient firm’s sales in
the most recent 12-month period, for which sales data is available, preceding the
period in which the subsidy is granted.

3. Where the subsidy is tied to the production or sale of a given product, the
value of the product shall be calculated as the total value of the recipient firm’s sales
of that product in the most recent 12-month period, for which sales data is available,
preceding the period in which the subsidy is granted.

4. Where the recipient firm is in a start-up situation, serious prejudice shall be
deemed to exist if the overall rate of subsidization exceeds 15 per cent of the total
funds invested. For purposes of this paragraph, a start-up period will not extend
beyond the first year of production.

5. Where the recipient firm is located in an inflationary economy country, the
value of the product shall be calculated as the recipient firm’s total sales (or sales of
the relevant product, if the subsidy is tied) in the preceding calendar year indexed
by the rate of inflation experienced in the 12 months preceding the month in which
the subsidy is to be given.

6. In determining the overall rate of subsidization in a given year, subsidies
given under different programmes and by different authorities in the territory of a
Member shall be aggregated.

7. Subsidies granted prior to the date of entry into force of the WTO Agreement,

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1 An understanding among Members should be developed, as necessary, on matters which are not speci-
ified in this Annex or which need further clarification for the purposes of paragraph 1(a) of Article 6.
2 The recipient firm is a firm in the territory of the subsidizing Member.
3 In the case of tax-related subsidies the value of the product shall be calculated as the total value of the
recipient firm’s sales in the fiscal year in which the tax-related measure was earned.
4 Start-up situations include instances where financial commitments for product development or
construction of facilities to manufacture products benefiting from the subsidy have been made, even
though production has not begun.
the benefits of which are allocated to future production, shall be included in the overall rate of subsidization.

8. Subsidies which are non-actionable under relevant provisions of this Agreement shall not be included in the calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6.
COUNCIL FOR TRADE IN SERVICES

SECOND DECISION ON THE ACCEPTANCE
OF THE SECOND AND THIRD PROTOCOLS

Adopted by the Council for Trade in Services on 23 July 1998
(S/L/59)

The Council for Trade in Services,

Having regard to the Second and Third Protocols to the General Agreement on Trade in Services,

Recognising that it has been brought to the attention of the Council that Belgium has completed its ratification procedures,

Notwithstanding the Decision on the Acceptance of the Second and Third Protocols adopted by the Council on 30 July 1996 (S/L/28),

Decides as follows:

The Second and Third Protocols shall be reopened for acceptance by Belgium from the date of this decision until 30 September 1998. The Protocols shall enter into force for Belgium as from the date of such acceptance.

SECOND DECISION ON THE ACCEPTANCE
OF THE FOURTH PROTOCOL

Adopted by the Council for Trade in Services on 15 December 1998
(S/L/62)

The Council for Trade in Services,

Having regard to the Fourth Protocol to the General Agreement on Trade in Services (GATS),

Notwithstanding the Decision on the Acceptance of the Fourth Protocol to the GATS adopted by the Council on 19 December 1997 (S/L/51),

Decides as follows:

The Fourth Protocol shall be reopened for acceptance by Ghana from the date of this decision until 21 December 1998. The Protocol shall enter into force for Ghana as from the date of such acceptance.
DECISION ON DISCIPLINES RELATING TO THE ACCOUNTANCY SECTOR

Adopted by the Council for Trade in Services on 14 December 1998
(S/L/63)

The Council for Trade in Services,

Having regard to the Decision on Professional Services adopted by the Council on 1 March 1995 (S/L/3) and the recommendations of the Working Party on Professional Services contained in document S/WPPS/4,

Decides as follows:

1. To adopt the text of the disciplines on domestic regulation in the accountancy sector contained in document S/WPPS/W/21. These disciplines are to be applicable to Members who have entered specific commitments on accountancy in their schedules.

2. The Working Party on Professional Services shall continue its work pursuant to the terms of reference contained in the Decision on Professional Services (S/L/3) taking account of any decisions which may be taken in the Council regarding work on Article VI:4. In doing so the Working Party shall aim to develop general disciplines for professional services, while retaining the possibility to develop or revise sectoral disciplines, including accountancy. No later than the conclusion of the forthcoming round of services negotiations, the disciplines developed by the WPPS are intended to be integrated into the General Agreement on Trade in Services (GATS).

3. Commencing immediately and continuing until the formal integration of these disciplines into the GATS, Members shall, to the fullest extent consistent with their existing legislation, not take measures which would be inconsistent with these disciplines.

DISCIPLINES ON DOMESTIC REGULATION IN THE ACCOUNTANCY SECTOR

Adopted by the Council for Trade in Services on 14 December 1998
(S/L/64)

I. Objectives

1. Having regard to the Ministerial Decision on Professional Services, Members have agreed to the following disciplines elaborating upon the provisions
of the GATS relating to domestic regulation of the sector. The purpose of these disciplines is to facilitate trade in accountancy services by ensuring that domestic regulations affecting trade in accountancy services meet the requirements of Article VI 4 of the GATS. The disciplines therefore do not address measures subject to scheduling under Articles XVI and XVII of the GATS, which restrict access to the domestic market or limit the application of national treatment to foreign suppliers. Such measures are addressed in the GATS through the negotiation and scheduling of specific commitments.

II. General provisions

2. Members shall ensure that measures not subject to scheduling under Articles XVI or XVII of the GATS\(^1\), relating to licensing requirements and procedures, technical standards and qualification requirements and procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. For this purpose, Members shall ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives are, \emph{inter alia}, the protection of consumers (which includes all users of accounting services and the public generally), the quality of the service, professional competence, and the integrity of the profession.

III. Transparency

3. Members shall make publicly available, including through the enquiry and contact points established under Articles III and IV of the GATS, the names and addresses of competent authorities (i.e. governmental or non-governmental entities responsible for the licensing of professionals or firms, or accounting regulations).

4. Members shall make publicly available, or shall ensure that their competent authorities make publicly available, including through the enquiry and contact points:

   (a) where applicable, information describing the activities and professional titles which are regulated or which must comply with specific technical standards;

   (b) requirements and procedures to obtain, renew or retain any licences or professional qualifications and the competent authorities’ monitoring arrangements for ensuring compliance;

   (c) information on technical standards; and

   (d) upon request, confirmation that a particular professional or firm is licensed to practise within their jurisdiction.

5. Members shall inform another Member, upon request, of the rationale behind domestic regulatory measures in the accountancy sector, in relation to legitimate objectives as referred to in paragraph 2.

6. When introducing measures which significantly affect trade in accountancy services, Members shall endeavour to provide opportunity for comment, and give consideration to such comments, before adoption.

7. Details of procedures for the review of administrative decisions, as provided for by Article VI:2 of the GATS, shall be made public, including the prescribed time-limits, if any, for requesting such a review.

IV. Licensing requirements

8. Licensing requirements (i.e. the substantive requirements, other than qualification requirements, to be satisfied in order to obtain or renew an authorization to practice) shall be pre-established, publicly available and objective.

9. Where residency requirements not subject to scheduling under Article XVII of the GATS exist, Members shall consider whether less trade restrictive means could be employed to achieve the purposes for which these requirements were set, taking into account costs and local conditions.

10. Where membership of a professional organisation is required, in order to fulfil a legitimate objective in accordance with paragraph 2, Members shall ensure that the terms for membership are reasonable, and do not include conditions or pre-conditions unrelated to the fulfilment of such an objective. Where membership of a professional organization is required as a prior condition for application for a licence (i.e. an authorization to practice), the period of membership imposed before the application may be submitted shall be kept to a minimum.

11. Members shall ensure that the use of firm names is not restricted, save in fulfilment of a legitimate objective.

12. Members shall ensure that requirements regarding professional indemnity insurance for foreign applicants take into account any existing insurance coverage, in so far as it covers activities in its territory or the relevant jurisdiction in its territory and is consistent with the legislation of the host Member.

13. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.
V. Licensing procedures

14. Licensing procedures (i.e. the procedures to be followed for the submission and processing of an application for an authorization to practise) shall be pre-established, publicly available and objective, and shall not in themselves constitute a restriction on the supply of the service.

15. Application procedures and the related documentation shall be not more burdensome than necessary to ensure that applicants fulfil qualification and licensing requirements. For example, competent authorities shall not require more documents than are strictly necessary for the purpose of licensing, and shall not impose unreasonable requirements regarding the format of documentation. Where minor errors are made in the completion of applications, applicants shall be given the opportunity to correct them. The establishment of the authenticity of documents shall be sought through the least burdensome procedure and, wherever possible, authenticated copies should be accepted in place of original documents.

16. Members shall ensure that the receipt of an application is acknowledged promptly by the competent authority, and that applicants are informed without undue delay in cases where the application is incomplete. The competent authority shall inform the applicant of the decision concerning the completed application within a reasonable time after receipt, in principle within six months, separate from any periods in respect of qualification procedures referred to below.

17. On request, an unsuccessful applicant shall be informed of the reasons for rejection of the application. An applicant shall be permitted, within reasonable limits, to resubmit applications for licensing.

18. A licence, once granted, shall enter into effect immediately, in accordance with the terms and conditions specified therein.

VI. Qualification requirements

19. A Member shall ensure that its competent authorities take account of qualifications acquired in the territory of another Member, on the basis of equivalency of education, experience and/or examination requirements.

20. The scope of examinations and of any other qualification requirements shall be limited to subjects relevant to the activities for which authorization is sought. Qualification requirements may include education, examinations, practical training, experience and language skills.

21. Members note the role which mutual recognition agreements can play in facilitating the process of verification of qualifications and/or in establishing equivalency of education.
VII. Qualification procedures

22. Verification of an applicant’s qualifications acquired in the territory of another Member shall take place within a reasonable time-frame, in principle within six months and, where applicants’ qualifications fall short of requirements, shall result in a decision which identifies additional qualifications, if any, to be acquired by the applicant.

23. Examinations shall be scheduled at reasonably frequent intervals, in principle at least once a year, and shall be open for all eligible applicants, including foreign and foreign-qualified applicants. Applicants shall be allowed a reasonable period for the submission of applications. Fees charged by the competent authorities shall reflect the administrative costs involved, and shall not represent an impediment in themselves to practising the relevant activity. This shall not preclude the recovery of any additional costs of verification of information, processing and examinations. A concessional fee for applicants from developing countries may be considered.

24. Residency requirements not subject to scheduling under Article XVII of the GATS shall not be required for sitting examinations.

VIII. Technical standards

25. Members shall ensure that measures relating to technical standards are prepared, adopted and applied only to fulfil legitimate objectives.

26. In determining whether a measure is in conformity with the obligations under paragraph 2, account shall be taken of internationally recognized standards of relevant international organizations2 applied by that Member.

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2 The term “relevant international organizations” refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.
COUNCIL FOR TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

CALCULATION OF RENEWABLE PERIODS OF TEN YEARS UNDER THE PROVISIONS OF THE APPENDIX TO THE BERNE CONVENTION AS INCORPORATED BY REFERENCE INTO THE TRIPS AGREEMENT

(IP/C/14)

At its meeting of 16 July 1998, the Council took note of the following statement by its Chairperson, in the light of informal consultations held on the matter.

The provisions of Article I(2) of the Appendix as incorporated into the TRIPS Agreement can be understood so that, for the purposes of the TRIPS Agreement, the relevant periods are calculated by reference to the same date, i.e. 10 October 1974, as for the purposes of the Berne Convention. This would mean that renewable periods of ten years would be the same for the purposes of both Agreements, and that, also under the TRIPS Agreement, the period of ten years currently running would expire on 10 October 2004.
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1 Or upon entry into force of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, whichever the earlier.
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