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

Revision

This document is a first approximation to the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations.

For the convenience of delegations, an index to the texts contained in this document is contained in an Appendix. In order to facilitate the negotiations, a commentary precedes certain of these texts.

When this text is forwarded to the Brussels meeting of the TNC at Ministerial Level for action, it will be accompanied by the report of the Chairman of the Surveillance Body (MTN.SB/14), by the communications which participants wish to send to the Brussels meeting and by a record of the proceedings of the TNC meeting at official level of 26 November 1990.
DRAFT FINAL ACT EMBODYING THE RESULTS OF THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

1. Having met at Ministerial level from 3 to 7 December 1990 at Brussels
in order to conclude the Uruguay Round of Multilateral Trade Negotiations,
the representatives of the Governments and of the European Communities,
members of the Trade Negotiations Committee, agree that the Agreements,
Decisions and Understandings on trade in goods, as set out in Annex I, and
the General Agreement on Trade in Services, as set out in Annex II, [the
Agreement on Trade-Related Aspects of Intellectual Property Rights,
including Trade in Counterfeit Goods, as set out in Annex III—][and
institutional provisions as set out in Annex IV], [constitute [three]
[four] distinct legal texts] and embody the results of their negotiations.
They acknowledge that these texts may be subject to rectifications of a
formal character that do not affect the substance or meaning of the texts,
except as otherwise indicated.

2. By agreeing to the adoption of the present Final Act these
representatives [undertake] [indicate their intention] to submit, as
necessary, the legal texts and instruments included in the Annexes for the
consideration of their respective competent authorities with a view to
seeking approval of these legal texts and instruments in accordance with
appropriate procedures of the participant concerned.

3. Participants agree on the desirability of acceptance of [the]
Uruguay Round Agreements by all participants with a view to their entry
into force as early as possible [and in any event not later than 1 January
1992]. As foreseen in the final paragraph of the Punta del Este
Declaration, Ministers meeting also at the occasion of a Special Session of
the CONTRACTING PARTIES, to be held [prior to the end of 1991] [not later
than 1 December 1991], will decide on the implementation of the Agreements,
Decisions and Understandings attached hereto, including the possibility of
provisional implementation, and will fix a date for the entry into force of
such instruments. [The Ministers will also consider the possibility of
implementing [some of] the instruments on a provisional basis.] [The
contents of this Final Act and its Annexes shall be applied provisionally
among those signatories who notify the Director-General to the General
Agreement on Tariffs and Trade, in his capacity as depositary of this Final
Act, of their intention to engage in such provisional application, as from
the date when [...] signatories effect such notification.]

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1Ministers agreed at the Mid-Term Review that the negotiations on
Trade-Related Aspects of Intellectual Property Rights are without prejudice
to the views of participants concerning the institutional aspects of the
international implementation of the results of the negotiations in this
area which is to be decided pursuant to the final paragraph of the
Punta del Este Declaration, i.e. by Ministers meeting at a Special Session
of the CONTRACTING PARTIES.
4. Participants agree on the desirability of the application by the contracting parties, as from the date of entry into force of the Uruguay Round results, of the General Agreement on Tariffs and Trade on a definitive rather than on a provisional basis.

5. Participants further agree that in order to provide the administrative infrastructure for the international implementation of the Uruguay Round results, it would be desirable to establish [a new Multilateral Trade Organization] [a new organisational structure] which shall service the General Agreement on Tariffs and Trade, [and the Uruguay Round Agreements and shall provide the forum for negotiations of agreements in areas related to trade and development] [shall oversee and ensure the operation of the Uruguay Round Agreements, and shall service negotiations falling within the purview of the Uruguay Round Agreements [and in related trade areas], and take action as appropriate].

6. [The basic elements of an organizational agreement to this effect are contained in Annex IV.] Details of the structure and functioning of [such an agreement] [an organizational agreement] should be worked out by [an Interim Committee] in order to enable the Ministers to adopt the organizational agreement on the occasion of the Ministerial Meeting provided for in paragraph 3 in order that it come into effect at the same time as the entry into force of the Uruguay Round Agreements. [The Interim Committee] shall be serviced by the GATT Secretariat and shall be open to all participants in the Uruguay Round that have adopted this Final Act [and indicated their intention to accept the Uruguay Round Agreements as a whole]. The Director-General of GATT is requested to establish such a Committee within two months after the date of this Final Act.

7. [Without prejudice to the measures on special and more favourable treatment in favour of developing participants which appear in the Annexes, the participants agree that least-developed participants shall be granted a grace period of [...] years as from the date of entry into force of this Final Act, during which they will not be required to apply the new commitments negotiated in the course of the Uruguay Round].¹,²

[Participants agree on the desirability of granting a grace period of [...] years as from the date of entry into force of this Final Act to the least developed participants during which they should not be required to apply the new commitments negotiated in the course of the Uruguay Round. Such transitional arrangements should be without prejudice to the measures on differential and more favourable treatment in favour of developing country participants which appear in the various annexes.]¹

¹The final form and place of the provisions contained in this paragraph are to be considered in connection with the decision on the implementation of the results of the Uruguay Round, as set out in paragraph 3 above.

²The provisions of Part I of the Punta del Este Declaration are relevant.
8. [Participants agree that the Uruguay Round Agreements, [enumerated in Annexes I to III] shall be open for [simultaneous] acceptance [as a whole], by signature or otherwise, by all participants in the Uruguay Round of Multilateral Trade Negotiations.] [Participants agree that the Uruguay Round Agreements can only enter into force upon acceptance, by signature or otherwise, of all legal texts and instruments, without exception, that are included in [Annexes I and II].] This is without prejudice to the requirement that such participants who are not contracting parties to the GATT must negotiate their terms of accession to the GATT.

9. This Final Act shall be open for initialling by all participants in the Uruguay Round of Multilateral Trade Negotiations.

10. This Final Act and the texts set out in the Annexes shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish to each participant in the Uruguay Round of Multilateral Trade Negotiations a certified copy thereof.

11. The Annexes to this Final Act form an integral part thereof. The Annexes shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations, as provided for in the respective annexes.

Done at Brussels, this seventh day of December one thousand nine hundred and ninety in a single copy, in the English, French and Spanish languages, each text being authentic.

¹The question of the acceptance by participants in the Uruguay Round who have not accepted Tokyo Round Agreements and Arrangements, of texts resulting from the renegotiation of such Agreements or Arrangements remains to be considered.
ANNEX I

URUGUAY ROUND AGREEMENTS ON TRADE IN GOODS

[The following Agreements, Decisions and Understandings, the texts of which are set out below, are an integral part of the Uruguay Round Agreements.]

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1 The legal form of each text shall be decided at a later stage.
Commentary

Attached hereto is the draft of the Uruguay Round (1990) Protocol to the General Agreement on Tariffs and Trade, relating to the market access negotiations on tariffs and non-tariff measures.

The only outstanding issue relates to the period of implementation of the tariff reductions (as an example, a period of eight years has been inserted in paragraph 2 of the draft).

Negotiators have agreed to hold intensive bilateral market access negotiations with the objective

- of completing these negotiations by the end of the Brussels Ministerial Meeting and
- to annex their respective schedules of concessions to the Protocol, so that the Protocol can be signed by participants in Brussels.

¹Including Natural Resource-Based Products and Tropical Products.
URUGUAY ROUND (1990) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The contracting parties to the General Agreement on Tariffs and Trade and the European Communities which participated in the Uruguay Round of Multilateral Trade Negotiations 1986-1990 (hereinafter referred to as "participants"),

HAVING carried out negotiations pursuant to Article XXVIII bis, Article XXXIII and other relevant provisions of the General Agreement on Tariffs and Trade (hereinafter referred to as "the General Agreement"),

HAVE, through their representatives, agreed as follows:

1. The schedule of concessions annexed to this Protocol relating to a participant shall become a Schedule to the General Agreement relating to that participant on the day on which this Protocol enters into force for that participant pursuant to paragraph 7.

2. The tariff reductions agreed upon by each participant shall, except as may be otherwise specified in a participant's schedule, be implemented in equal annual rate reductions beginning on 1 January 1992, and the total reduction shall become effective not later than 1 January 1999. A participant which begins rate reductions on 1 July 1992 or on a date between 1 January and 1 July 1992 shall, unless otherwise specified in that participant's schedule, make effective [two-eighths] of the total reduction to the final rate on that date, followed by [six] equal instalments beginning 1 January 1994. The reduced rate should in each stage be rounded off to the first decimal. The provisions of this paragraph shall not prevent participants from implementing reductions in fewer stages or at earlier dates than indicated above.

3. The implementation of the concessions contained in the annexed schedules shall, upon request, be subject to multilateral examination by the participants having accepted this Protocol. This would be without prejudice to the rights and obligations of contracting parties under the General Agreement.

4. After the schedule of concessions annexed to this Protocol relating to a participant has become a Schedule to the General Agreement pursuant to the provisions of paragraph 1, such participant shall be free at any time to withhold or to withdraw in whole or in part the concession in such schedule with respect to any product for which the principal supplier is any other participant or any government having negotiated for accession during the Uruguay Round of Multilateral Trade Negotiations, but the
schedule of which, as established in these negotiations, has not yet become a Schedule to the General Agreement. Such action can, however, only be taken after written notice of any such withholding or withdrawal of a concession has been given to the CONTRACTING PARTIES and after consultations have been held, upon request, with any participant or any acceding government, the relevant schedule of concessions relating to which has become a Schedule to the General Agreement and which has a substantial interest in the product involved. Any concessions so withheld or withdrawn shall be applied on and after the day on which the schedule of the participant or the acceding government which has the principal supplying interest becomes a Schedule to the General Agreement.

5. (a) For the purpose of the reference in Article II:1(b) and (c) of the General Agreement to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

(b) For the purpose of the reference in Article II:6(a) of the General Agreement to the date of that Agreement, the applicable date in respect of a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

6. In cases of modification or withdrawal of concessions relating to non-tariff measures, the provisions of Article XXVIII of the General Agreement and the Procedures for Negotiations under Article XXVIII (BISD 27S/26) shall apply.

7. (a) This Protocol shall be open for acceptance by participants, by signature or otherwise, until 31 December 1991.

(b) This Protocol shall enter into force on 1 January 1991 for those participants which have accepted it on or before that date, and for participants accepting after that date, it shall enter into force on the dates of acceptance.

8. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof, pursuant to paragraph 7, to each contracting party to the General Agreement and to the European Communities.

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

DONE at Geneva this seventh day of December one thousand nine hundred and ninety, in a single copy, in the English, French and Spanish languages, each text being authentic. The Schedules annexed hereto are authentic in the English, French and Spanish language as specified in each Schedule.
This schedule is authentic only in the [English] [French] [Spanish] language.

**PART I**

**Most-Favoured-Nation Tariff**

<table>
<thead>
<tr>
<th>Tariff item number</th>
<th>Description of products</th>
<th>Base rate of duty (U/B)</th>
<th>Bound rate of duty</th>
<th>Initial negotiating right</th>
<th>Other duties and charges</th>
</tr>
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<tr>
<td>1</td>
<td>Manufactured etc. ...</td>
<td>24% [U] [B]</td>
<td>12%</td>
<td>CA</td>
<td></td>
</tr>
</tbody>
</table>
PART II

Preferential Tariff

(If applicable)
PART III

Non-Tariff Concessions

<table>
<thead>
<tr>
<th>Tariff item number</th>
<th>Description of products</th>
<th>Concessions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>
AGREEMENT ON RULES OF ORIGIN

Commentary

An overall compromise needs to be found on the following issues:

- Whether preferential rules used for the determination of the origin of goods should be included in the coverage of the agreement (Article 1, paragraph 1, 2, Footnote 1 to Articles 2(d) and 3(b)).

- Whether the agreement should contain a commitment for contracting parties to use the same rule of origin for all purposes covered by the agreement (Articles 2 and 3, sub-paragraph (a), Article 10, paragraph 1(a)).

- Whether there should be a requirement for contracting parties to notify in advance changes to their existing rules of origin or the new rules which they intend to introduce and consult on these (Article 6).

- Whether the agreement should provide for disciplines which would remain in effect in the event that the work programme for the harmonization of rules of origin fails to produce the expected outcome (Article 4).
AGREEMENT ON RULES OF ORIGIN

PREAMBLE

The CONTRACTING PARTIES,

NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of the GATT and increase the responsiveness of the GATT system to the evolving international economic environment;

DESIRING to further the objectives of the GATT;

RECOGNIZING that clear and predictable rules of origin and their application facilitate the flow of international trade;

DESIRING to ensure that rules of origin themselves do not create unnecessary obstacles to trade;

DESIRING to ensure that rules of origin do not nullify or impair the rights of contracting parties under the GATT;

RECOGNIZING that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;

DESIRING to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

RECOGNIZING the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this agreement;

DESIRING to harmonize and clarify rules of origin;

hereby agree as follows:
PART I
DEFINITIONS AND COVERAGE

Article 1

Rules of Origin

1. For the purposes of this agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any contracting party to determine the country of origin of goods [provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of Article I:1 of the General Agreement].

2. [Rules of origin referred to in paragraph 1 shall include, all rules of origin used in non-preferential commercial policy instruments, such as the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of the General Agreement; anti-dumping and countervailing duties under Article VI of the General Agreement; safeguard measures under Article XIX of the General Agreement; origin marking requirements under Article IX of the General Agreement; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for public procurement and trade statistics.¹]

¹The word "country", wherever it appears in this agreement, includes the territory of each of the contracting parties. For the purposes of this agreement, the European Communities shall be considered as a contracting party.

²It is understood that this provision is without prejudice to those determinations made for purposes of defining "domestic industry" or "like products of domestic industry" or similar terms wherever they apply.
PART II

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2

Disciplines during the transitional period

Until the work programme for the harmonization of rules of origin set out in Part IV below is completed, contracting parties shall ensure that:

[(a) they apply rules of origin equally for all purposes covered by this agreement, as set out in Article 1 above;]

[(b) under their rules of origin, the country to be determined as the origin of a particular good shall be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;]

(c) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:

- in cases where the criterion of change of tariff classification is applied, such a rule of origin, and any exceptions to the rule, must clearly specify the sub-headings or headings within the tariff nomenclature which are addressed by the rule;

- in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin;

- in cases where the criterion of manufacturing or processing operation is prescribed, the operation which confers origin on the good concerned shall be precisely specified;

(d) notwithstanding the measure or instrument of commercial policy to which they are linked, their rules of origin are not used as instruments to pursue trade objectives directly or indirectly;¹

(e) Rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. [They shall not be adapted to specific purposes.] They shall not pose unduly strict requirements [or require the fulfilment of a certain condition not related to manufacturing or processing, such as research and development, as a prerequisite for the
determination of the country of origin]. However, costs not directly related to manufacturing or processing may be included for the purposes of the application of an ad valorem percentage criterion consistent with sub-paragraph (c) above;

(f) the rules of origin which they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other contracting parties, irrespective of the affiliation of the manufacturers of the good concerned;¹ ²

(g) their rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(h) [their rules of origin are based on a positive standard. Rules of origin which state what does not confer origin (negative standard) are permissible as part of a clarification of a positive standard [or in individual cases where a positive determination of origin is not necessary]. [However, under exceptional circumstances, contracting parties may apply negative standards to individual cases, if they provide other contracting parties an explanation of their difficulties in applying a positive standard to such individual cases]];

(i) their laws, regulations, judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of Article X:1 of the General Agreement;

(j) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days of a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid

¹ [It is understood that this provision does not apply to rules of origin used for preferential trading arrangements.]

² [With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by contracting parties under the GATT.]

³ In respect of requests made during the first year from entry into force of this agreement, contracting parties shall only be required to issue these assessments as soon as possible.
when a decision contrary to the assessment is made in a review as referred to in sub-paragraph (1) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph (m) below;

(k) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(l) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(m) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 3

Disciplines after harmonization

After the entry into force of harmonized rules of origin in accordance with Part IV below, contracting parties shall ensure that:

[(a) they apply harmonized rules of origin equally for all purposes covered by this agreement, as set out in Article 1 above;]

(b) the harmonized rules of origin which they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other contracting parties, irrespective of the affiliation of the manufacturers of the good concerned;¹²

¹[It is understood that this provision does not apply to rules of origin used for preferential trading arrangements.]

²[With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by contracting parties under the GATT.]
(c) the harmonized rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(d) their laws, regulations, judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of Article X:1 of the General Agreement;

(e) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days of a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in sub-paragraph (g) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph (h) below;

(f) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(g) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(h) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.
[Article 4

Disciplines if harmonization work programme is otherwise completed

If the work programme set out in Part IV below is completed otherwise than as envisaged in Article 3 above, [contracting parties shall continue to observe the provisions of Article 2 above, in particular paragraphs (a) and (b) thereof] [the CONTRACTING PARTIES shall decide whether to continue, amend or discontinue this agreement].]
PART III

PROCEDURAL ARRANGEMENTS ON NOTIFICATION, REVIEW, CONSULTATION AND DISPUTE SETTLEMENT

Article 5

Institutions

There shall be established under this agreement:

1. A Committee on Rules of Origin (hereinafter referred to as the Committee) composed of the representatives from each of the contracting parties. The Committee shall elect its own Chairman and shall meet as necessary but not less than once a year, for the purpose of affording contracting parties the opportunities to consult on matters relating to the operation of Parts I, II, III and IV of the agreement or the furtherance of its objectives and to carry out such other responsibilities assigned to it under this agreement or by the CONTRACTING PARTIES. Any contracting party may bring a matter to the Committee [for examination]. Where appropriate, the Committee shall request information and advice from the Technical Committee (referred to in paragraph 2 below) on matters related to this agreement. The Committee may also request such other work from the Technical Committee as it considers appropriate for the furtherance of the objectives of this agreement. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Rules of Origin (hereinafter referred to as the Technical Committee) under the auspices of the Customs Co-operation Council as set out in Annex I of this agreement. The Technical Committee shall carry out the technical work called for in Part IV and prescribed in Annex I of this agreement. Where appropriate, the Technical Committee shall request information and advice from the Committee on matters related to this agreement. The Technical Committee may also request such other work from the Committee as it considers appropriate for the furtherance of the objectives of the agreement. The CCC secretariat shall act as the secretariat to the Technical Committee.

(Article 6

Notification and procedures for modification

1. Upon entry into force of this agreement, each contracting party shall notify within 90 days to the secretariat its rules of origin, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on that date. Lists of notifications shall be circulated to contracting parties through the GATT secretariat. If by inadvertence a rule of origin has not been notified, the contracting party concerned shall notify it immediately this fact becomes known.
2. During the period referred to in Article 2 above, contracting parties introducing changes, other than de minimis changes, to their rules of origin, or introducing new rules of origin, which, for the purpose of this Article, shall include any rule of origin not notified under paragraph 1 above shall [endeavour to]:

(a) publish a notice to that effect at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with the proposal;

(b) notify the proposal to other contracting parties, through the secretariat, at least 75 days before it is to be adopted;

(c) include in the notification a brief description of the proposal, the goods affected and an explanation of the reasons for the proposal;

(d) allow at least 30 days prior to the adoption of the proposal for contracting parties to hold consultations with a view to ensuring that it is as neutral as possible and in conformity with the agreed principles and procedures, as well as with GATT obligations and principles, and take any written comments and the results of consultations into account before finalizing the proposal.

3. Where exceptional circumstances arise or threaten to arise for a contracting party, that contracting party may omit such of the steps enumerated in paragraph 2 as it finds necessary, provided that it shall:

(a) in a manner as prescribed in paragraph 2(b) above notify as soon as possible and in no case later than 10 days after adoption of the proposal, other contracting parties of the proposal and of the nature of the exceptional circumstances involved; and

(b) consult with other contracting parties upon request, as soon as possible and in no case later than 30 days after adoption of the proposal.]

Article 7

Review

1. The Committee shall review annually the implementation and operation of this agreement having regard to its objectives. The Committee shall annually inform the CONTRACTING PARTIES of developments during the period covered by such reviews.
2. The Committee shall review the provisions of Parts I, II and III above and propose amendments as necessary to reflect the results of the harmonization work.

3. The Committee, in cooperation with the Technical Committee, shall set up a mechanism to consider and propose amendments to the results of the harmonization work, taking into account the objectives and principles set out in Article 10. This may include instances where the rules need to be made more operational or need to be updated to take into account new production processes as affected by any technological change.

Article 8¹

Consultation

The provisions of Article XXII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement.

Article 9¹

Dispute settlement

The provisions of Article XXIII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement.

¹It is understood that the procedures on consultation and dispute settlement[, including the possible role of the Committee in this context.] will be re-examined when the legal form of the agreement is examined.
PART IV

HARMONIZATION OF RULES OF ORIGIN

Article 10

1. Objectives and principles

With the objectives of harmonizing rules of origin and inter alia providing more certainty in the conduct of world trade, the CONTRACTING PARTIES shall undertake the work programme set out below in conjunction with the Customs Cooperation Council, on the basis of the following principles:

[(a) Rules of origin should be applied equally for all purposes covered by this agreement, as set out in Article 1 above;]

(b) Rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained, or where more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;

(c) Rules of origin should be objective, understandable and predictable;

(d) Notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international trade. They should not pose unduly strict requirements or require the fulfilment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion;

(e) Rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner;

(f) Rules of origin should be coherent;

(g) Rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.
2. Work programme

(a) The work programme shall be initiated as soon after the Uruguay Round as possible and will be completed within three years of initiation.

(b) The Committee and the Technical Committee provided for in Article 5 of this agreement shall be the appropriate bodies to conduct this work.

(c) To provide for detailed input by the CCC, the Committee shall request the Technical Committee to provide its interpretations and opinions resulting from the work described below on the basis of the principles listed in paragraph 1 of this Article. To ensure timely completion of the work programme for harmonization, such work shall be conducted on a product sector basis, as represented by various chapters or sections of the Harmonized System Tariff Nomenclature.

(i) Wholly obtained and minimal operations or processes

The Technical Committee shall develop harmonized definitions of:

- the goods which are to be considered as being wholly obtained in one country. This work shall be as detailed as possible;

- minimal operations or processes which do not by themselves confer origin to a good.

The results of this work shall be submitted to the Committee within three months of receipt of the request from the Committee.

(ii) Substantial transformation - Change in tariff classification

- The Technical Committee shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use of change in tariff subheading or heading when developing rules of origin for particular products or a product sector and, if appropriate, the minimum change within the nomenclature which meets this criterion.

The Technical Committee shall divide the above work on a product basis taking into account the chapters or sections of the Harmonized System, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within one year and three months from receipt of the request of the Committee.
(iii) Substantial Transformation - Supplementary Criteria

- Upon completion of the work under (ii) for each product sector or individual product category where the exclusive use of the HS nomenclature does not allow for the expression of substantial transformation, the Technical Committee:
  - shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use, in a supplementary or exclusive manner, of other requirements, including ad valorem percentages\(^1\) and/or manufacturing or processing operations\(^2\) when developing rules of origin for particular products or a product sector;
  - may provide explanations for its proposals;
  - shall divide the above work on a product basis taking into account the chapters or sections of the Harmonized System, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within two years and three months of receipt of the request from the Committee.

3. Role of the GATT

On the basis of the principles listed in paragraph 1 of this Article:

- the Committee shall consider the interpretations and opinions of the Technical Committee periodically in accordance with the time-frames provided in (i), (ii) and (iii) above with a view to endorsing such interpretations and opinions. The Committee may request the Technical Committee to refine or elaborate its work and/or develop new approaches. To assist the Technical Committee, the Committee should provide its reasons for requests for additional work and, as appropriate, suggest alternative approaches;
- upon completion of all the work identified in (i), (ii) and (iii) above, the Committee shall consider the results in terms of their overall coherence.

\(^1\)Where the ad valorem criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin.

\(^2\)Where the criterion of manufacturing or processing operation is prescribed, the operation which confers origin on the product concerned shall be precisely specified.
4. Results of the harmonization work programme and subsequent work

(a) The CONTRACTING PARTIES shall establish the results of the harmonization work in an annex as an integral part of this agreement. The CONTRACTING PARTIES shall establish a time-frame for the entry into force of this annex.

(b) [The contracting parties shall apply the principles laid down in Article 3 in a uniform manner wherever rules of origin are invoked for all purposes referred to in Article 1 as from the entry into force of the harmonized rules of origin.]

N.B. The issue of rules of origin for preferential purposes has not been resolved.
PART V

FINAL PROVISIONS

Article 11

National legislation

Each contracting party accepting or acceding to this agreement shall ensure, not later than the date of entry into force of this agreement for it, the conformity with the provisions of this agreement, of its laws, regulations and administrative practices to determine the country of origin of goods.

Etc.
ANNEX I

Technical Committee on Rules of Origin

1. The on-going responsibilities of the Technical Committee shall include the following:
   
   (a) at the request of any member of the Technical Committee, to examine specific technical problems arising in the day-to-day administration of the rules of origin of contracting parties and to give advisory opinions on appropriate solutions based upon the facts presented;
   
   (b) to furnish information and advice on any matters concerning the origin determination of goods as may be requested by any contracting party or the Committee;
   
   (c) to prepare and circulate periodic reports on the technical aspects of the operation and status of this agreement; and
   
   (d) to review annually the technical aspects of the implementation and operation of this agreement.

2. The Technical Committee shall exercise such other responsibilities as the Committee may request of it.

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by contracting parties or the Committee, in a reasonably short period of time, [particularly in respect of any work related to Article 5].

Representation

4. Each contracting party shall have the right to be represented on the Technical Committee. Each contracting party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a contracting party so represented on the Technical Committee is herein referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers at meetings of the Technical Committee. The GATT secretariat may also attend such meetings with observer status.

5. Members of the Customs Co-operation Council who are not contracting parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.
6. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as the Secretary-General) may invite representatives of governments which are neither contracting parties nor members of the Customs Co-operation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

7. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Meetings

8. The Technical Committee shall meet as necessary, but not less than once a year.

Procedures

9. The Technical Committee shall elect its own chairman and shall establish its own procedures.
AGREEMENT ON PRESHIPMENT INSPECTION

Commentary

The main decision that needs to be taken is on the standard for price verification in Article 2.20(a) and (b).

A number of points have been agreed since the attached text was prepared:

Article 2.6 - Delete the penultimate sentence and insert:

"However, in emergency situations of the types addressed by Articles XX and XXI of the General Agreement, such additional requirements or changes may be applied to a shipment before the exporter has been informed."

Article 2.20 - Delete from the chapeau "other than for purposes of customs valuation," and insert footnote 1 to the words "price verification." This footnote reads:

"The obligations of user contracting parties with respect to the services of preshipment inspection entities in connection with customs valuation shall be the obligations which they have accepted in the General Agreement and related instruments."

Article 7.1 - Delete "not later than" and insert "at the end of".

It is understood that, for the purposes of this agreement, force majeure in Article 2:15 shall mean "irresistible compulsion or coercion, unforeseeable course of events excusing from fulfilment of contract."

It is also understood that technical assistance may be given on a bilateral, plurilateral or multilateral basis.

The International Chamber of Commerce and the International Federation of Inspection Agencies have expressed their willingness in principle to administer the Independent Review Entity referred to in Article 5:1 and consultations have been initiated on the arrangements that would be made to this end.

The legal form of this agreement remains to be examined. The wording of the attached text may need to be adapted in the light of the decision taken on this subject.
AGREEMENT ON PRESHIPMENT INSPECTION

PREAMBLE

NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of GATT and increase the responsiveness of the GATT system to the evolving international economic environment;

NOTING that a number of developing contracting parties have recourse to preshipment inspection;

RECOGNIZING the need of developing countries to do so for as long and insofar as it is necessary to verify the quality, quantity or price of imported goods;

MINDFUL that such programmes must be carried out without giving rise to unnecessary delays or unequal treatment;

NOTING that this inspection is by definition carried out on the territory of exporter contracting parties;

RECOGNIZING the need to establish an agreed international framework of rights and obligations of both user contracting parties and exporter contracting parties;

RECOGNIZING that the principles and obligations of the General Agreement apply to those activities of preshipment inspection entities that are mandated by governments that are Parties to the General Agreement;

RECOGNIZING that it is desirable to provide transparency of the operation of preshipment inspection entities and of laws and regulations relating to preshipment inspection;

DESIRING to provide for the speedy, effective and equitable resolution of disputes between exporters and preshipment inspection entities arising under this agreement;

The contracting parties hereby agree as follows:

ARTICLE 1

Coverage. Definitions

1.1. This agreement shall apply to all preshipment inspection activities carried out on the territory of contracting parties, whether such activities are contracted or mandated by the government, or any government body, of a contracting party (hereinafter referred to as user contracting party).
1.2. Preshipment inspection activities are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user contracting party.

1.3. The term "preshipment inspection entity" is any entity contracted or mandated by a contracting party to carry out preshipment inspection activities.\(^1\)

ARTICLE 2

Obligations of user contracting parties

Non-discrimination

2.1. User contracting parties shall ensure that preshipment inspection activities are carried out in a non-discriminatory manner, that the procedures and criteria employed in the conduct of these activities are objective and are applied on an equal basis to all exporters affected by such activities. They shall ensure uniform performance of inspection by all the inspectors of the preshipment inspection entities contracted or mandated by them.

Governmental requirements

2.2. User contracting parties shall ensure that in the course of preshipment activities relating to their laws, regulations and requirements, the provisions of Article III:4 of the General Agreement are respected to the extent that these are relevant.

Site of inspection

2.3. User contracting parties shall ensure that all preshipment inspection activities, including the issuance of a Clean Report of Findings or a note of non-issuance, are performed in the customs territory from which the goods are exported or, if the inspection cannot be carried out in that customs territory given the complex nature of the products involved, or if both parties agree, in the customs territory in which the goods are manufactured.

\(^1\)It is understood that this provision does not obligate contracting parties to allow government entities of other contracting parties to conduct preshipment inspection activities on their territory.
Standards

2.4. User contracting parties shall ensure that quantity and quality inspections are performed in accordance with the standards defined by the seller and the buyer in the purchase agreement and that, in the absence of such standards, relevant international standards\(^1\) apply.

Transparency

2.5. User contracting parties shall ensure that preshipment inspection activities are conducted in a transparent manner.

2.6. User contracting parties shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The preshipment inspection entities shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of the user contracting parties relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and currency exchange rate verification purposes, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under Article 2:21. Additional procedural requirements or changes in existing procedures shall not be applied to a shipment unless the exporter concerned is informed of these changes at the time the inspection date is arranged. However, in an emergency situation, such additional requirements or changes may be applied to a shipment before the exporter has been informed, provided that this does not affect contracts already entered into. The assistance shall not, however, relieve exporters from their obligations in respect of compliance with the import regulations of the user contracting parties.

2.7. User contracting parties shall ensure that the information referred to in Article 2:6 is made available to exporters in a convenient manner, and that the preshipment inspection offices maintained by preshipment inspection entities serve as information points where this information is available.

2.8. User contracting parties shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

\(^1\)An international standard is a standard adopted by a governmental or non-governmental body whose membership is open to all contracting parties, one of whose recognized activities is in the field of standardization.
Protection of confidential business information

2.9. User contracting parties shall ensure that preshipment inspection entities treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. User contracting parties shall ensure that preshipment inspection entities maintain procedures to this end.

2.10. User contracting parties shall provide information to contracting parties on request on the measures they are taking to give effect to Article 2:9. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would jeopardize the effectiveness of the preshipment inspection programmes or would prejudice the legitimate commercial interest of particular enterprises, public or private.

2.11. User contracting parties shall ensure that preshipment inspection entities do not divulge confidential business information to any third party, except that preshipment inspection entities may share this information with the government entities that have contracted or mandated them. User contracting parties shall ensure that confidential business information which they receive from preshipment inspection entities contracted or mandated by them is adequately safeguarded. Preshipment inspection entities shall share confidential business information with the governments contracting or mandating them only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

2.12. User contracting parties shall ensure that preshipment inspection entities do not request exporters to provide information regarding:

(a) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;

(b) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;

(c) internal pricing, including manufacturing costs;

(d) profit levels;

(e) the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the entity to conduct the inspection in question. In such cases, the entity shall only request the information necessary for this purpose.
2.13. The information referred to in Article 2:12, which preshipment inspection entities shall not otherwise request, may be released voluntarily by the exporter to illustrate a specific case.

Conflicts of interest

2.14. User contracting parties shall ensure that preshipment inspection entities, bearing in mind also the provisions on protection of confidential business information in Article 2:9-13, maintain procedures to avoid conflicts of interest:

(a) between preshipment inspection entities and any related entities of the preshipment inspection entities in question, including any entities in which the latter have a financial or commercial interest or any entities which have a financial interest in the preshipment inspection entities in question, and whose shipments the preshipment inspection entities are to inspect;

(b) between preshipment inspection entities and any other entities, including other entities subject to preshipment inspection, with the exception of the government entities contracting or mandating the inspections;

(c) with divisions of preshipment inspection entities engaged in activities other than those required to carry out the inspection process.

Delays

2.15. User contracting parties shall ensure that preshipment inspection entities avoid unreasonable delays in inspection of shipments. User contracting parties shall ensure that, once a preshipment inspection entity and an exporter agree on an inspection date, the preshipment inspection entity conducts the inspection on that date unless it is rescheduled on a mutually-agreed basis between the exporter and the preshipment inspection entity, or the preshipment inspection entity is prevented from doing so by the exporter or by force majeure.

2.16. User contracting parties shall ensure that, following receipt of the final documents and completion of the inspection, preshipment inspection entities, within five working days, either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance. User contracting parties shall ensure that, in the latter case, preshipment inspection entities give exporters the opportunity to present their views in writing and, if exporters so request, arrange for reinspection at the earliest mutually convenient date.
2.17. User contracting parties shall ensure that, whenever so requested by the exporters, preshipment inspection entities undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the pro forma invoice and, where applicable, the application for import authorization. User contracting parties shall ensure that a price or currency exchange rate that has been accepted by a preshipment inspection entity on the basis of such preliminary verification is not withdrawn, providing the goods conform to the import documentation and/or import licence. They shall ensure that, after a preliminary verification has taken place, preshipment inspection entities immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

2.18. User contracting parties shall ensure that, in order to avoid delays in payment, preshipment inspection entities send to exporters or to designated representatives of the exporters a Clean Report of Findings as expeditiously as possible.

2.19. User contracting parties shall ensure that, in the event of a clerical error in the Clean Report of Findings, preshipment inspection entities correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

Price verification

2.20. User contracting parties shall ensure that, in order to prevent over- and under-invoicing, preshipment inspection entities conduct price verification, other than for purposes of customs valuation, according to the following guidelines:

(a) preshipment inspection entities shall only reject a contract price agreed between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process which is in conformity with the criteria set out in Article 2:20(b)-(e) below [and indicate a breach of the laws and regulations of the user contracting party];

(b) price verification shall be based upon the prevailing export price, which is the price at which identical or similar goods are offered for export from the same country of exportation [to the same country of importation], at or about the same time under competitive conditions and comparable terms and conditions of sale, in conformity with customary commercial practice, and net of any applicable standard discounts. Appropriate adjustments shall be made for minor differences in the goods being compared, the time of exportation and/or the conditions of delivery;
(c) when conducting price verification, preshipment inspection entities shall make appropriate allowances for the terms of the sales contract and generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately; they shall also include certain elements relating to the exporter’s price, such as the contractual relationship between the exporter and importer;

(d) the verification of transportation charges shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;

(e) the following shall not be used for price verification purposes:

(i) the selling price in the country of importation of goods produced in such country;

(ii) the price of goods for export from a country other than the country of exportation;

(iii) the cost of production;

(iv) arbitrary or fictitious prices or values.

Appeals procedures

2.21. User contracting parties shall ensure that preshipment inspection entities establish procedures to receive, consider and render decisions concerning grievances raised by exporters, and that information concerning such procedures is made available to exporters in accordance with the provisions of Article 2:6-7. User contracting parties shall ensure that the procedures are developed and maintained in accordance with the following guidelines:

(a) preshipment inspection entities shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive, consider and render decisions on exporters’ appeals or grievances;

(b) exporters shall provide in writing to the designated official(s) the facts concerning the specific transaction in question, the nature of the grievance and a suggested solution;
(c) the designated official(s) shall afford sympathetic consideration to exporters' grievances and shall render a decision as soon as possible after receipt of the documentation referred to in (b) above.

**Derogation**

2.22. By derogation to the provisions of Article 2, user contracting parties shall provide that, with the exception of part shipments, shipments whose value is less than a minimum value applicable to such shipments as defined by the user contracting party shall not be inspected, except in exceptional circumstances. This minimum value shall form part of the information furnished to exporters under the provisions of Article 2:6 above.

**ARTICLE 3**

**Obligations of exporter contracting parties**

**Non-discrimination**

3.1. Exporter contracting parties shall ensure that their laws and regulations relating to preshipment inspection activities are applied in a non-discriminatory manner.

**Transparency**

3.2. Exporter contracting parties shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

**Technical assistance**

3.3. Exporter contracting parties shall offer to provide to user contracting parties, if requested, technical assistance directed towards the achievement of the objectives of this agreement on mutually agreed terms.

**ARTICLE 4**

**National laws and regulations**

4.1. All contracting parties shall ensure that any relevant domestic laws and regulations relating to preshipment inspection activities shall not in any way change, limit or inhibit the operation of the preshipment inspection programmes as adopted by the user contracting parties.]
ARTICLE 5

Independent review procedures

5.1. Contracting parties shall encourage preshipment inspection entities and exporters mutually to resolve their disputes. However, two working days after submission of the grievance in accordance with the provisions of Article 2:21, either party may refer the dispute to independent review. Contracting parties shall take such reasonable measures as may be available to them to ensure that the following procedures are established and maintained to this end:

(a) These procedures shall be administered by an independent entity constituted jointly by an organization representing preshipment inspection entities and an organization representing exporters for the purposes of this agreement;

(b) the independent entity referred to in Article 5:1(a) above shall establish a list of experts as follows:

(i) a section of members nominated by an organization representing preshipment inspection entities;

(ii) a section of members nominated by an organization representing exporters;

(iii) a section of independent trade experts, nominated by the independent entity referred to in Article 5:1(a) above.

The geographical distribution of the experts on this list shall be such as to enable any disputes raised under these procedures to be dealt with expeditiously. This list shall be drawn up within two months of the entry into force of this agreement and shall be updated annually. The list shall be publicly available. It shall be notified to the GATT secretariat and circulated to all contracting parties;

(c) an exporter or preshipment inspection entity wishing to raise a dispute shall contact the independent entity referred to in Article 5:1(a) above and request the formation of a panel. The independent entity shall be responsible for establishing a panel. This panel shall consist of three members. The members of the panel shall be chosen so as to avoid unnecessary costs and delays. The first member shall be chosen from section (i) of the above list by the preshipment inspection entity concerned, provided that this member is not affiliated to that entity. The second member shall be chosen from section (ii) of the above list by the exporter concerned, provided that this
member is not affiliated to that exporter. The third member shall be chosen from section (iii) of the above list by the independent entity referred to in Article 5:1(a) above. No objections shall be made to any independent trade expert drawn from section (iii) of the above list;

(d) the independent trade expert drawn from section (iii) of the above list shall serve as the chairman of the panel. He shall take the necessary decisions to ensure an expeditious settlement of the dispute by the panel, for instance, whether the facts of the case require the panelists to meet and, if so, where such a meeting shall take place, taking into account the site of the inspection in question;

(e) if the parties to the dispute so agree, one independent trade expert could be selected from section (iii) of the above list by the independent entity referred to in Article 5:1(a) above to review the dispute in question. This expert shall take the necessary decisions to ensure an expeditious settlement of the dispute, for instance taking into account the site of the inspection in question;

(f) the object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of this agreement. The procedures shall be expeditious and provide the opportunity for both parties to present their views in person or in writing;

(g) decisions by a three-member panel shall be taken by majority vote. The decision on the dispute shall be rendered within eight working days of the request for independent review and be communicated to the parties to the dispute. This time-limit could be extended upon agreement by the parties to the dispute. The panel or independent trade expert shall apportion the costs, based on the merits of the case;

(h) the decision of the panel shall be binding upon the parties to the dispute. [Exporter contracting parties shall reserve their rights to ensure compliance with the decision.] [The preshipment inspection entity may refer the dispute to the user contracting party which will decide whether the decision of the panel shall be given effect, and inform the independent entity accordingly.]
ARTICLE 6

Notification

6.1. Contracting parties shall submit to the GATT secretariat copies of their laws and regulations by which they put this agreement into force, as well as copies of any other laws and regulations relating to preshipment inspection when the agreement comes into force for the contracting party concerned. No changes in the laws and regulations relating to preshipment inspection shall be enforced before such changes have been officially published. They shall be notified to the GATT secretariat immediately after their publication. The GATT secretariat shall inform the contracting parties of the availability of this information.

ARTICLE 7

Review

7.1. Not later than the end of the second year from the entry into force of this agreement and every three years thereafter, the CONTRACTING PARTIES shall review its provisions, implementation and operation, taking into account the objectives thereof and experience gained in its operation. As a result of such review, the CONTRACTING PARTIES may amend the provisions of the agreement.

ARTICLE 8

Consultation

8.1. Contracting parties shall consult with other contracting parties upon request with respect to any matter affecting the operation of this agreement. In such cases, the provisions of Article XXII of the General Agreement, as amended by the Uruguay Round, shall apply.

ARTICLE 9

Dispute settlement

9.1. Any disputes among contracting parties regarding the operation of this agreement shall be subject to the provisions of Article XXIII of the General Agreement, as amended by the Uruguay Round.
ARTICLE 10

Final provisions

10.1. Contracting parties shall take the necessary measures for the implementation of the present agreement.

10.2. Contracting parties shall ensure that their laws and regulations shall not be contrary to the provisions of this agreement.
ANTI-DUMPING

Commentary

Negotiations have revealed that basic differences continue to exist regarding, inter alia, the following points:

1. What changes need to be made in the way dumping margins are calculated? In particular,
   - to what extent should actual data be used in establishing dumping margins?
   - if averaging is used to establish a home market price, should averaging also be used to establish the export market price in all cases?
   - in determining whether the home market price is below the cost of production, what is the appropriate period for cost recovery?

2. What changes need to be made in the way material injury is established? In particular, to what extent, if any, should small margins of dumping and small import quantities be ignored?

3. What anti-circumvention provisions are needed? In particular, to what extent, if any, should third-country manufacturing be covered?

Political decisions are needed to overcome differences on these questions, which have not been resolved in consultations and negotiations based on draft anti-dumping texts of 9 July, 14 August, 15 November and 23 November.
AGREEMENT (1990) ON TECHNICAL BARRIERS TO TRADE

Commentary

One issue remains to be decided:

Local government bodies (square brackets in Articles 3 and 7):

- A compromise needs to be found between the proposal that the text of the Agreement should continue to provide best endeavours obligation to ensure the compliance of local government bodies with the substantive obligations under the Agreement and exempt local government from the obligation of advance notification and the proposal that the text should place a "shall" obligation on Parties and that there should be no exemption from the notification obligation.

- Whether the proposed provisions of Article XXIV:12 of GATT can be used as a basis for the text relating to the obligations of Parties to ensure the compliance of local government bodies.

- Whether transparency of the regulatory activities of local government bodies can be improved through means that are less burdensome than notification procedures.

Since the text in brackets on Article 14 on consultation and dispute settlement was prepared, it has been agreed on an ad referendum basis that the general dispute settlement procedures of GATT shall apply mutatis mutandis to this Agreement and that there is an explicit reference in these procedures to the possibility that panel call on the expertise of a technical expert group on questions of a technical nature.

The relation of the TBT Agreement to the outcome of the negotiations on sanitary and phytosanitary measures under the Negotiating Group on Agriculture will also need to be addressed.

Article 15 concerning the final provisions and the legal form of this agreement will need to be reverted to in the light of the decision taken on this subject.
AGREEMENT (1990) ON TECHNICAL BARRIERS TO TRADE

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to the Agreement on Technical Barriers to Trade (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Recognizing the important contribution that international standards and conformity assessment systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and conformity assessment systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Hereby agree as follows:
Article 1

General provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

1.5 The relationship of this Agreement to the outcome of the negotiations on sanitary and phyto-sanitary measures in the Negotiating Group on Agriculture to be addressed.

1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

TECHNICAL REGULATIONS AND STANDARDS

Article 2

Preparation, adoption and application of technical regulations by central government bodies

With respect to their central government bodies:

2.1 Parties shall ensure that in respect of technical regulations, products imported from the territory of any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Parties shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical
regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*, available scientific and technical information, related processing technology or intended end uses of products.

2.3 Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Parties shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.5 A Party preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Parties shall, upon the request of another Party, explain the justification for that technical regulation in terms of the provisions of Article 2, paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in Article 2, paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Parties shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

2.7 Parties shall give positive consideration to accepting as equivalent technical regulations of other Parties, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

2.8 Wherever appropriate, Parties shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Parties, Parties shall:
2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Parties through the GATT secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale; such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Parties, particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.10 Subject to the provisions in the lead-in to Article 2, paragraph 9, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 2, paragraph 9 as it finds necessary provided that the Party, upon adoption of a technical regulation, shall:

2.10.1 notify immediately other Parties through the GATT secretariat of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

2.10.2 upon request, provide other Parties with copies of the technical regulation;

2.10.3 without discrimination, allow other Parties to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.11 Parties shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties to become acquainted with them.

2.12 Except in those urgent circumstances referred to in Article 2, paragraph 10, Parties shall allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to the requirements of the importing Party.
Article 3

Preparation, adoption and application of technical regulations by local government bodies and non-governmental bodies

[3.1 Parties shall ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 2, noting that:

3.1.1 notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Party concerned; and that

3.1.2 contacts with other Parties, including the notifications, provision of information, comments and discussion referred to in Article 2, paragraphs 9 and 10, may be required to take place through the Party concerned.]

Alternative text

[3.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 2, with the exception of the obligation to notify proposed technical regulations. Contacts with other Parties may be required to take place through the Party concerned. In addition, Parties shall not take measures which require or encourage such bodies to act in a manner inconsistent with the provisions of Article 2.]

Article 4

Preparation, adoption and application of standards

4.1 Parties shall ensure that their central government standardizing bodies accept and comply with the code of good practice for the preparation, adoption and application of standards in Annex 3 to this Agreement. They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this code of good practice. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner
inconsistent with the code of good practice in Annex 3. The obligations of Parties with respect to compliance of standardizing bodies with the provisions of the code of good practice shall apply irrespective of whether or not a standardizing body has accepted the code of good practice.

4.2 Standardizing bodies that have accepted and are complying with the code of good practice in Annex 3 shall be acknowledged by the Parties as complying with the principles of this Agreement.

CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS

Article 5

Procedures for assessment of conformity by central government bodies

5.1 Parties shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Parties:

5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Parties under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;

5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

5.2 When implementing the provisions of Article 5, paragraph 1, Parties shall ensure that:

5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Parties than for like domestic products;
5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body as soon as possible transmits the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;

5.2.4 the confidentiality of information about products originating in the territories of other Parties arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;

5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Parties are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;

5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;

5.2.7 whenever specifications of a product are changed subsequent to its determination of conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;

5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.
5.3 Nothing in Article 5, paragraphs 1 and 2 shall prevent Parties from carrying out reasonable spot checks within their territories.

5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Parties shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Parties concerned, for, inter alia such reasons as national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Parties shall play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.

5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Parties, Parties shall:

5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;

5.6.2 notify other Parties through the GATT secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

5.6.3 upon request, provide to other Parties particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;
5.6.4 without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.7 Where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 5, paragraph 6, as it finds necessary provided that the Party, upon adoption of the procedure, shall:

5.7.1 notify immediately other Parties through the GATT secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;

5.7.2 upon request, provide other Parties with copies of the rules of the procedure;

5.7.3 without discrimination, allow other Parties to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.8 Parties shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties to become acquainted with them.

5.9 Except in those urgent circumstances referred to in Article 5, paragraph 7, Parties shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to the requirements of the importing Party.

Article 6

Recognition of conformity assessment by central government bodies

With respect to their central government bodies:

6.1 Without prejudice to the provisions of Article 6, paragraphs 3 and 4, Parties shall ensure, whenever possible, that results of conformity assessment procedures in other Parties are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:
(a) adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Party, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;

(b) limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Party.

6.2 Parties shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in Article 6, paragraph 1.

6.3 Parties are encouraged, at the request of other Parties, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other’s conformity assessment procedures. Parties may require that such agreements fulfil the criteria of Article 6, paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

6.4 Parties are encouraged to permit participation of conformity assessment bodies located in the territories of other Parties in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.

Article 7

Procedures for assessment of conformity by local government bodies

[7.1 Parties shall ensure that local government bodies within their territories comply with the provisions of Articles 5 and 6, noting that:

7.1.1 notification shall not be required in cases where a local government body acts only as a sub-contractor for a central government body; and

7.1.2 contacts with other Parties including the notifications, provision of information, comments and discussion referred to in Article 5, paragraphs 6 and 7, may be required to take place through the Party concerned.]
Alternative text

[7.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. Contacts with other Parties may be required to take place through the Party concerned. In addition, Parties shall not take measures which require or encourage such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

7.2 Parties shall ensure that their central government bodies rely on conformity assessment procedures operated by local government bodies only if these bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.]

Article 8

Procedures for assessment of conformity by non-governmental bodies

8.1 Parties shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

8.2 Parties shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.

Article 9

International and regional systems

9.1 Where a positive assurance of conformity with a technical regulation or standard is required, Parties shall, wherever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein.
9.2 Parties shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment, in which relevant bodies within their territories are members or participants, comply with the provisions of Articles 5 and 6. In addition, Parties shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.

9.3 Parties shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.

INFORMATION AND ASSISTANCE

Article 10

Information about technical regulations, standards and conformity assessment procedures

10.1 Each Party shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Parties and interested parties in other Parties as well as to provide the relevant documents regarding:

10.1.1 any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;

10.1.2 any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;

10.1.3 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional bodies of which such bodies are members or participants;

10.1.4 the membership and participation of the Party, or of relevant central or local government bodies within its territory, in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements;
10.1.5 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and

10.1.6 the location of the enquiry points mentioned in Article 10, paragraph 3.

10.2 If, however, for legal or administrative reasons more than one enquiry point is established by a Party, that Party shall provide to the other Parties complete and unambiguous information on the scope of each of these enquiry points. In addition, that Party shall ensure that any enquiries addressed to an incorrect enquiry point shall promptly be conveyed to the correct enquiry point.

10.3 Each Party shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from other Parties and interested parties in other Parties as well as to provide the relevant documents or information as to where they can be obtained regarding:

10.3.1 any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and

10.3.2 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by non-governmental bodies, or by regional bodies of which such bodies are members or participants;

10.3.3 the membership and participation of relevant non-governmental bodies within its territory in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements.

10.4 Parties shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Parties, or by interested parties in other Parties, in accordance with the provisions of this Agreement, they are supplied at an equitable price (if any) which shall, apart from the real cost of delivery, be the same for the nationals of the Party concerned or of any other Party.

10.5 Developed country Parties shall, if requested by other Parties, provide, in English French or Spanish, translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.
10.6 The GATT secretariat will, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Parties and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Parties to any notifications relating to products of particular interest to them.

10.7 Whenever a Party has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures, which may have a significant effect on trade, at least one Party to the agreement shall notify other Parties through the GATT secretariat of the products to be covered by the agreement and include a brief description of the agreement. Parties concerned are encouraged to enter, upon request, into consultations with other Parties for the purposes of concluding similar agreements or of arranging for their participation in such agreements.

10.8 Nothing in this Agreement shall be construed as requiring:

10.8.1 the publication of texts other than in the language of the Party;

10.8.2 the provision of particulars or copies of drafts other than in the language of the Party except as stated in Article 10, paragraph 5; or

10.8.3 Parties to furnish any information, the disclosure of which they consider contrary to their essential security interests.

10.9 Notifications to the GATT secretariat shall be in English, French or Spanish.

10.10 Parties shall designate a single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures under this Agreement except those included in Annex 3.

10.11 If, however, for legal or administrative reasons the responsibility for notification procedures is divided among two or more central government authorities, the Party concerned shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each of these authorities.
Article 11

Technical assistance to other Parties

11.1 Parties shall, if requested, advise other Parties, especially the developing countries, on the preparation of technical regulations.

11.2 Parties shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

11.3 Parties shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

11.3.1 the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and

11.3.2 the methods by which their technical regulations can best be met.

11.4 Parties shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Parties, especially the developing countries, and shall grant them technical assistance, on mutually agreed terms and conditions, regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Party.

11.5 Parties shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance, on mutually agreed terms and conditions, regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Party receiving the request.

11.6 Parties which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance, on mutually agreed terms and conditions, regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.
11.7 Parties shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Parties, especially the developing countries, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

11.8 In providing advice and technical assistance to other Parties in terms of Article 11, paragraphs 1 to 7, Parties shall give priority to the needs of the least-developed countries.

Article 12
Special and differential treatment of developing countries

12.1 Parties shall provide differential and more favourable treatment to developing country Parties to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2 Parties shall give particular attention to the provisions of this Agreement concerning developing countries' rights and obligations and shall take into account the special development, financial and trade needs of developing countries in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.

12.3 Parties shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing countries, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing countries.

12.4 Parties recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing countries adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Parties therefore recognize that developing countries should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.
12.5 Parties shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Parties, taking into account the special problems of developing countries.

12.6 Parties shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing countries, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing countries.

12.7 Parties shall, in accordance with the provisions of Article 11, provide technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing countries. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting country and in particular of the least-developed countries.

12.8 It is recognized that developing countries may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing countries, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Parties, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing countries are able to comply with this Agreement, the Committee is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall in particular, take into account the special problems of the least-developed countries.

12.9 During consultations, developed countries shall bear in mind the special difficulties experienced by developing countries in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing countries with their efforts in this direction, developed countries shall take account of the special needs of the former in regard to financing, trade and development.

12.10 The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing countries on national and international levels.
INSTITUTIONS, CONSULTATION AND DISPUTE SETTLEMENT

Article 13

The Committee on Technical Barriers to Trade

There shall be established under this Agreement:

13.1 A Committee on Technical Barriers to Trade composed of representatives from each of the Parties (hereinafter referred to as "the Committee"). The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Parties.

13.2 Working parties, technical expert groups, panels or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.

[13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies, e.g. the Joint FAO/WHO Codex Alimentarius Commission. The Committee shall examine this problem with a view to minimizing such duplication. - This paragraph to be addressed subsequently.]

Article 14

Consultation and dispute settlement

[Article 14.1]

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the procedures of Articles XXII and XXIII of the GATT, including the Dispute Settlement Procedures as adopted by the CONTRACTING PARTIES, and shall take place under the auspices of the Committee on Technical Barriers to Trade.

Article 14.2

At the request of a Party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts. Technical expert groups shall make such findings as will assist the panel in its work, including inter alia and if appropriate, findings concerning the detailed scientific judgement involved.
Article 14.3
Technical expert groups shall be governed by the procedures of Annex 2.

Article 14.4
Levels of obligation
The dispute settlement provisions set out above can be invoked in cases where a Party considers that another Party has not achieved satisfactory results under Articles ... and ... and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Articles ... and ... as if the body in question were a Party.

Article 14.5
Retroactivity
To the extent that a Party considers that technical regulations, standards, conformity assessment procedures which exist at the time of entry into force of this Agreement are not consistent with the provisions of this Agreement, such regulations, standards, conformity assessment procedures shall be subject to the provisions in Articles 13 and 14 of this Agreement, insofar as they are applicable.]

FINAL PROVISIONS

Article 15
Final Provisions

[To be addressed subsequently.]
ANNEX 1

TERMS AND THEIR DEFINITIONS FOR THE PURPOSE OF THIS AGREEMENT

The terms presented in the fifth edition of the ISO/IEC Guide 2, General Terms and Their Definitions Concerning Standardization and Related Activities, and in the draft amendment sheet to this Guide, as it stood on 18 October 1990 shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide and in the amendment sheet thereto taking into account that services are excluded from the coverage of this Agreement.

For the purpose of this Agreement, however, the following definitions shall apply:

1. **Technical regulation**

   Document which lays down characteristics for products, processes and production methods including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

   **Explanatory note**

   The definition in ISO/IEC Guide 2 is not self-contained, but based on the so-called "building block" system.

2. **Standard**

   For the term "Standard" the following definition shall apply:

   Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products, processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

   **Explanatory note**

   The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This agreement deals only with technical regulations, standards and conformity assessment procedures related to products processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This agreement covers also documents that are not based on consensus.
3. **Conformity assessment procedures**

Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

**Explanatory note:** Conformity assessment procedures include, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

4. **International body or system**

Body or system whose membership is open to the relevant bodies of at least all Parties to this Agreement.

5. **Regional body or system**

Body or system whose membership is open to the relevant bodies of only some of the Parties.

6. **Central government body**

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

**Explanatory note:**

In the case of the European Economic Community the provisions governing central government bodies apply. However, regional bodies or conformity assessment systems may be established within the European Economic Community, and in such cases would be subject to the provisions of this Agreement on regional bodies or certification systems.

7. **Local government body**

Government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

8. **Non-governmental body**

Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.
ANNEX 2

TECHNICAL EXPERT GROUPS

[The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.]

1. Technical expert groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

4. The Parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.

5. The technical expert group should submit a draft report to the Parties concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report.]
ANNEX 3

CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS

GENERAL PROVISIONS

A. For the purposes of this code the definitions in Annex 1 of this Agreement shall apply.

B. This code is open to acceptance by any standardizing body within the territory of a Party to the GATT Agreement on Technical Barriers to Trade, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Party to the above Agreement; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Party to the above Agreement (hereafter collectively called "standardizing bodies" and individually "the standardizing body").

C. Standardizing bodies that have accepted or withdrawn from this code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

SUBSTANTIVE PROVISIONS

D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Party to the GATT Agreement on Technical Barriers to Trade no less favourable than that accorded to like products of national origin and to like products originating in any other country.

E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view, to or with the effect of, creating unnecessary obstacles to international trade.

F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.
G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part within the limits of its resources in the preparation by relevant international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Party, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

H. The standardizing body within the territory of a Party shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.

I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.

J. At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.

The work programme shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva.

The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.
K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.

L. Before adopting a standard, the standardizing body shall allow a period of at least sixty days for the submission of comments on the draft standard by interested parties in a Party to the GATT Agreement on Technical Barriers to Trade. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard it has submitted for comments. Any fees charged for this service shall be the same for domestic and foreign parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this code of good practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, the standardizing body shall promptly provide or arrange to provide a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real costs of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this code presented by standardizing bodies that have accepted this code of good practice. It shall make an objective effort to solve any complaints.
Recommendation of the Committee on Technical Barriers to Trade

The CONTRACTING PARTIES invite the Committee on Technical Barriers to Trade to recommend that the GATT secretariat reach an understanding with the ISO to establish an information system under which:

1. ISONET members shall transmit to the ISO/IEC Information Centre in Geneva the notifications referred to in paragraphs C and J of the code of good practice for the preparation, adoption and application of standards in Annex 3 to the GATT Agreement on Technical Barriers to Trade, in the manner indicated there;

2. the following (alpha)numeric classification systems shall be used in the work programmes mentioned above:
   (a) a standards classification system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the subject matter;
   (b) a stage code system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the stage of development of the standard; for this purpose, at least five stages of development should be distinguished: (1) the stage at which the decision to develop a standard has been taken, but technical work has not yet begun; (2) the stage at which technical work has begun, but the period for the submission of comments has not yet started; (3) the stage at which the period for the submission of comments has started, but has not yet been completed; (4) the stage at which the period for the submission of comments has been completed, but the standard has not yet been adopted; and (5) the stage at which the standard has been adopted;
   (c) an identification system covering all international standards which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the international standard(s) used as a basis;

3. the ISO/IEC Information Centre shall promptly convey to the GATT secretariat copies of any notifications referred to in paragraph C of the code of good practice;

4. the ISO/IEC Information Centre shall regularly publish the information received in the notifications made to it under paragraphs C and J of the code of good practice; this publication, for which a reasonable fee may be charged, shall be available to ISONET members and through the GATT secretariat, to the Parties to the Agreement on Technical Barriers to Trade.
**Decision of the Committee on Technical Barriers to Trade**

The CONTRACTING PARTIES invite the Committee on Technical Barriers to Trade to decide, without prejudice to provisions on consultation and dispute settlement, that, in conformity with Article 13, paragraph 1, it shall at least once a year review the publication provided by the ISO/IEC Information Centre on information received according to the code of good practice in Annex 3 of the Agreement, for the purpose of affording Parties opportunity of discussing any matters relating to the operation of that code.

In order to facilitate this discussion, the GATT secretariat is requested to provide a list by country of all standardizing bodies that have accepted the code of good practice, as well as a list of those standardizing bodies that have accepted or withdrawn from the code since the previous review.

The GATT secretariat is also requested to distribute promptly to the Parties copies of the notifications it receives from the ISO/IEC Information Centre.
AGREEMENT (1990) ON IMPORT LICENSING PROCEDURES

Commentary

The text of the revised Agreement is agreed *ad referendum*. However, one delegation maintains a reservation pending agreement that a GATT working party be established to develop rules in the area of export licensing procedures in the post-Uruguay Round period.
Preamble

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement on Import Licensing Procedures (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Taking into account the particular trade, development and financial needs of developing countries;

Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;

Recognizing the provisions of the GATT as they apply to import licensing procedures;

Desiring to ensure that import licensing procedures are not utilized in a manner contrary to GATT principles and obligations;

Recognizing that the flow of international trade could be impeded by the inappropriate use of import licensing procedures;

Convinced that import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner;

Recognizing that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure;

Desiring to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby agree as follows:
Article 1: General Provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Party.

2. The Parties shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of the GATT including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing countries.¹

3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

4. The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms, and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published in the sources notified to the Committee, in such a manner as to enable governments and traders to become acquainted with them. Such publication shall take place whenever practicable, twenty-one days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the GATT secretariat.

Parties who wish to make comments in writing shall be provided the opportunity to discuss these comments upon request. The concerned Party shall give due consideration to these comments and results of discussion.

5. Application forms and where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing régime may be required on application.

¹Those procedures referred to as 'licensing' as well as other similar administrative procedures.

²Nothing in this Agreement shall be taken as implying that the basis, scope or duration of a measure being implemented by a licensing procedure is subject to question under this Agreement.
6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall be allowed a reasonable period for the submission of license applications. Where there is a closing date, this period should be at least twenty-one days with provision for extension in circumstances where insufficient applications have been received within this period. Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies.

7. No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

8. Licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.

10. With regard to security exceptions, the provisions of Article XXI of the GATT apply.

11. The provisions of this Agreement shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
Article 2: Automatic Import Licensing

1. Automatic import licensing is defined as import licensing where approval of the application is granted in all cases, and in accordance with the requirements of Article 2.2(a).

2. The following provisions, in addition to those in paragraphs 1 to 11 of Article 1 and paragraph 1 of Article 2 above, shall apply to automatic import licensing procedures:

(a) Automatic licensing procedures shall not be administered in a manner so as to have restricting effects on imports subject to automatic licensing. Automatic licensing procedures shall be deemed to have trade restricting effects unless, inter alia:

(i) any person, firm or institution which fulfils the legal requirements of the importing Party for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licences;

(ii) applications for licences may be submitted on any working day prior to the customs clearance of the goods;

(iii) applications for licences when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten working days.

(b) Parties recognize that automatic import licensing may be necessary whenever other appropriate procedures are not available. Automatic import licensing may be maintained as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.

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¹Those import licensing procedures requiring a security which have no restrictive effects on imports, are to be considered as falling within the scope of paragraphs 1 and 2 of Article 2 below.

²A developing country Party, which has specific difficulties with the requirements of sub-paragraphs a(ii) and a(iii) below may, upon notification to the Committee referred to in paragraph 1 of Article 4, delay the application of these sub-paragraphs by not more than two years from the date of entry into force of this Agreement for such Party.
Article 3: Non-automatic Import Licensing

1. The following provisions, in addition to those in paragraphs 1 to 11 of Article 1 above, shall apply to non-automatic import licensing procedures. Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in Article 2.1 above.

2. Non-automatic licensing shall not have trade restrictive or distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Parties shall publish sufficient information for other Parties and traders to know the basis for granting and/or allocating licenses.

4. Where a Party provides the possibility for persons, firms, or institutions to request exceptions or derogations from a licensing requirement, it shall include this fact in the information published under Article 1.4 as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which requests would be considered.

5. (a) Parties shall provide, upon the request of any Party having an interest in the trade in the product concerned, all relevant information concerning:

   (i) the administration of the restrictions;
   (ii) the import licences granted over a recent period;
   (iii) the distribution of such licences among supplying countries;
   (iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. The developing countries would not be expected to take additional administrative or financial burdens on this account;

   (b) Parties administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof, within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

   (c) In the case of quotas allocated among supplying countries, the Party applying the restrictions shall promptly inform all other Parties having an interest in supplying the product concerned of the shares in the quota currently
allocated, by quantity or value, to the various supplying countries and shall publish this information within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

(d) Where situations arise which make it necessary to provide for an early opening date of quotas, the information referred to in Article 1.4 should be published within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

(e) Any person, firm or institution which fulfils the legal and administrative requirements of the importing Party shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing Party;

(f) The period for processing applications shall, except when not possible for reasons outside the control of the Party, not be longer than thirty days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than sixty days if all applications are considered simultaneously. In the latter case the period for processing applications shall be considered to begin on the day following the closing date of the announced application period.

(g) The period of licence validity shall be of reasonable duration and not be so short as to preclude imports. The period of licence validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements;

(h) When administering quotas, Parties shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of quotas;

(i) When issuing licences, Parties shall take into account the desirability of issuing licences for products in economic quantities;
(j) In allocating licences, the Party should consider the import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period. In cases where licenses have not been fully utilized, the Party shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing countries and, in particular, the least-developed countries.

(k) In the case of quotas administered through licences which are not allocated among supplying countries, licence holders (footnote sometimes referred to as "quota holders"), shall be free to choose the sources of imports. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries.

(l) In applying paragraph 8 of Article 1 above, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

**Article 4: Institutions**

1. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Parties (referred to in this Agreement as "the Committee"). The Committee shall elect its own Chairman and Vice Chairman and shall meet as necessary for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

**Article 5: Notification**

1. Parties which institute licensing procedures or changes in these procedures shall notify the Committee of such within sixty days of publication.

2. Notifications of the institution of import licensing procedures shall include the following information:
(a) list of products subject to licensing procedures;
(b) contact point for information on eligibility;
(c) administrative body(ies) for submission of applications;
(d) date and name of publication where licensing procedures are published;
(e) indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3;
(f) in the case of automatic import licensing procedures, their administrative purpose;
(g) in the case of non-automatic import licensing procedures, indication of the measure being implemented through the licensing procedure; and
(h) expected duration of the licensing procedure if this can be estimated with some probability, and if not, reason why this information cannot be provided.

3. Notifications of changes in import licensing procedures shall indicate the elements mentioned above, if changes in such occur.

4. Parties shall notify the Committee of the publication(s) in which the information required in Article 14 will be published.

5. Any interested Party which considers that another Party has not notified the institution of a licensing procedure or changes therein in accordance with the provisions of paragraphs 1 to 3 above, may bring the matter to the attention of such other Party. If notification is not made promptly thereafter, such Party may itself notify the licensing procedure or changes therein, including all relevant and available information.

Article 6: Consultation and Dispute Settlement

1. Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement, shall be subject to the procedures of Articles XXII and XXIII of the GATT, and the Dispute Settlement Procedures as adopted by the CONTRACTING PARTIES.

Article 7: Review

1. The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement, taking into account the objectives thereof, and the rights and obligations contained therein.
2. As a basis for the Committee review, the secretariat shall prepare a factual report based on information provided under Article 5, responses to the annual questionnaire on import licensing procedures and other relevant reliable information which is available to it. This report shall provide a synopsis of the aforementioned information, in particular indicating any changes or developments during the period of the review, and including any other information as agreed by the Committee.

3. Parties undertake to complete the annual questionnaire on import licensing procedures promptly and in full.

4. The Committee shall inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

Article 8: Final Provisions

1. Acceptance and accession

   (a) This Agreement shall be open for acceptance by signature or otherwise, by governments' contracting parties to the GATT and by the European Economic Community;

   (b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession;

   (c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed;

   (d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

2. Reservations

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

1Originally circulated as GATT document L/3515 of 23 March 1971.
3. Entry into Force

This Agreement shall enter into force on 1 January 1980 for the governments (footnote: For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Economic Community) which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

4. National Legislation

(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

5. Amendments

The Parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

6. Withdrawal

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.
AGREEMENT (1990) ON INTERPRETATION AND APPLICATION
OF ARTICLES VI, XVI AND XXIII OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

The text requires a number of drafting changes. These, however, can be done once major political problems have been resolved. Without establishing an exhaustive list of these problems, it seems that they relate, mostly, to the level of disciplines on the use of domestic subsidies (through establishing quantitative thresholds above which a subsidy shall be deemed to result in serious prejudice) versus the green category under which some subsidies (e.g. those used to correct existing distortions at the regional level) would be non-actionable. Furthermore, the product coverage of the Agreement remains to be decided, taking into account work in other areas.

1Communications from the delegations of the European Communities, Pakistan, Mexico and Brazil are contained in MTN.TNC/W/36, W/37, W/38 and W/40 respectively.
AGREEMENT (1990) ON INTERPRETATION AND APPLICATION
OF ARTICLES VI, XVI AND XXIII OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE

PART I: GENERAL

Article 1

Definition of a subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public
body within the territory of a signatory (hereinafter referred
 to as "government"), i.e. where:

(i) government practice involves a direct transfer of funds
(e.g. grants, loans, and equity infusion), potential
direct transfers or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due, is foregone or
not collected (e.g. fiscal incentives such as tax
credits)\(^1\);

(iii) a government provides goods or services other than
general infrastructure, or purchases goods or services;

(iv) a government makes payments to a funding mechanism, or
entrusts or directs a private body to carry out one or
more of the type of functions illustrated in (i) to (iii)
above which would normally be vested in the government
and the practice, in no real sense, differs from
practices normally followed by governments;

or

(a)(2) there is any form of income or price support in the sense of
Article XVI of the General Agreement;

and

(b) a benefit is thereby conferred.

\(^1\)In accordance with the provisions of Article XVI of the General
Agreement (Note to Article XVI), the exemption of an exported product from
duties or taxes borne by the like product when destined for domestic
consumption, or the remission of such duties or taxes in amount not in
excess of those which have accrued, shall not be deemed to be a subsidy.
1.2 A subsidy as defined in paragraph 1 above shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V of this Agreement only if such a subsidy is specific in accordance with the provisions of Article 2 below.

Article 1a

Definition of "so-called new practices"

Article 2

Specificity

2.1 In order to determine whether a subsidy, as defined in Article 1.1 above is specific to an enterprise or industry or group of enterprises or industries (hereinafter referred to as "certain enterprises"), and as such confers a benefit on certain enterprises over those available to other enterprises or industries, the following shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy would be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law or regulation and be capable of verification.

(c) Where discretion is exercised in the course of the administration of a subsidy, specificity shall not exist if there is a clear indication, substantiated on the basis of positive evidence, that discretion has not been exercised so as to limit access to the subsidy to certain enterprises or to award amounts of subsidy so as to direct the subsidy to certain enterprises. In this regard, information on the frequency with which applications for the subsidy are refused and the reasons for such refusal shall, in particular, be considered.

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1Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral and do not favour certain enterprises and which are economic in nature and horizontal in application; some examples might be levels of unemployment, average per capita income, number of employees, size of enterprise.
(d) A subsidy which is available to all enterprises located within a designated geographical region shall be specific irrespective of the nature of the granting authority. This provision shall not apply to regional subsidies non-actionable under Article 8 below.

2.2 Notwithstanding the provisions of sub-paragraphs (b) to (d) of paragraph 1 above, if the investigating authority determines that there is not sufficient evidence in certain cases to give adequate guidance for a finding of non-specificity, it may be necessary to look beyond any nominal non-specificity to determine whether the subsidy either is in fact obtainable predominantly by an industry or groups of industries, or accrues in disproportionately large amounts to an enterprise or group of enterprises within an industry, and thereby grants de facto a benefit to certain enterprises.

2.3 Any export subsidy shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

PART II: PROHIBITED SUBSIDIES

Article 3

Prohibition

3.1 Signatories agree that the following subsidies, within the meaning of Article 1 above, shall be considered as prohibited subsidies:

(a) subsidies contingent, in law or in fact\(^1\) whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 Signatories shall not grant subsidies referred to in paragraph 1.

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\(^1\)This standard is met whenever the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in practice tied to actual or anticipated exportation or export earnings.

\(^2\)Measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or any other provision of this Agreement.
Article 4

Remedies

4.1 Whenever a signatory has reason to believe that a prohibited subsidy is being granted or maintained by another signatory, such signatory may request consultation with such other signatory.

4.2 A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

4.3 Upon request for consultations under paragraph 1 above, the signatory believed to be granting or maintaining the subsidy in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

4.4 If no mutually acceptable solution has been reached within thirty days of the request for consultations, any signatory party to such consultations may request that the matter be reviewed by the Committee on Subsidies and Countervailing Measures.

4.5 Where a matter is referred to the Committee, the Committee shall immediately review the evidence with regard to the existence and nature of the subsidy in question and shall provide an opportunity for the other signatory to demonstrate that this measure is not a prohibited subsidy. The Committee may request the assistance of the Permanent Group of Experts with regard to the determination of whether the measure in question is a prohibited subsidy. The Permanent Group of Experts shall immediately review the matter and report back to the Committee. The Group's conclusions shall be deemed to be adopted by the Committee unless the Committee disapproves.

4.6 If, as a result of its review, the Committee concludes that the subsidy in question is a prohibited subsidy, it shall recommend that the subsidizing signatory withdraw this subsidy without delay. The subsidizing signatory shall promptly comply with this recommendation. In the event the recommendation is not followed within such period as the Committee shall state in its recommendation, the Committee shall authorize such signatory affected by the subsidy in question to take appropriate countermeasures.

4.7 Any review of a matter referred to the Committee under paragraph 4 above shall be completed within 90 days of the request for such a review.

\[\text{1}^{}\text{Any time periods mentioned in this Article and in Articles 7 and 9 may be extended by mutual agreement.}\]

\[\text{2}^{}\text{As established in Part VI of this Agreement and hereinafter referred to as "the Committee".}\]

\[\text{3}^{}\text{To be established by the Committee pursuant to Article 24.}\]
PART III: ACTIONABLE SUBSIDIES

Article 5

Trade effects

No signatory should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1 above, adverse effects to the interests of other signatories, i.e.:

(a) injury to the domestic industry of another signatory;¹

(b) nullification or impairment of benefits accruing directly or indirectly to other signatories under the General Agreement, in particular the benefits of concessions bound under Article II of the General Agreement;

(c) serious prejudice to the interests of another signatory.²

Article 6

Serious prejudice

6.1 Serious prejudice in the sense of Article 5(c) shall be deemed to exist in the case of:

(a) the total ad valorem subsidization³ of a product exceeding 5% per cent;

(b) subsidies to cover operating losses sustained by a specific industry;

(c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;

¹Injury to the domestic industry is used here in the same sense as it is used in Part V of this Agreement.

²Serious prejudice to the interests of another signatory is used in this Agreement in the same sense as it is used in Article XVI:1 of the General Agreement, and includes threat of serious prejudice.

³The total ad valorem subsidization shall be calculated in accordance with the provisions of Annex IV.
(d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment.

6.2 Notwithstanding the provisions of paragraph 1 above, serious prejudice shall not be found if the subsidizing signatory demonstrates that the subsidy in question has not resulted in any of the effects enumerated in paragraph 3 below.

6.3 Serious prejudice in the sense of Article 5(c) may arise in any case where one or several of the following apply:

(a) the effect of the subsidy is to displace or impede the imports of like product into the market of the subsidizing signatory;

(b) the effect of the subsidy is to displace or impede the exports of like product of another signatory from a third country market;

(c) the subsidy results in a significant price undercutting by the subsidized products as compared with the price of a like product of another signatory in the same market or the subsidized imports result in price suppression, price depression or lost sales in the same market;

(d) the subsidy results in an increase in the world market share of the subsidizing signatory in a particular subsidized product as compared to the share it had during the previous period of 3 years and this increase results from a consistent trend over a period when subsidies have been granted.

6.4 For the purpose of paragraph 3(a) above, displacing or impeding imports shall include any case in which it has been demonstrated to the Committee that a subsidy has been granted or significantly increased on a product which directly competes with the product on which a GATT concession as set out in the GATT schedule, or another GATT benefit has been granted.

6.5 For the purpose of paragraph 3(b) above, displacing or impeding exports shall include any case in which, subject to the provisions of paragraph 8 below, it has been demonstrated to the Committee that there has been a change in relative shares of the market to the disadvantage of the non-subsidized like product (over an appropriately representative period of, in normal circumstances, at least one year, sufficient to demonstrate clear trends in the development of the market for the product concerned). "Change in relative shares of the market" shall include any of the following situations: (i) there is an increase in the market share of the subsidized product; (ii) the market share of the subsidized product remains constant in circumstances in which, in the absence of the subsidy, it would have declined; (iii) the market share of the subsidized product declines, but at a slower rate than would have been the case in the absence of the subsidy.
6.6 For the purpose of paragraph 3(c) above, price undercutting should be demonstrated to the Committee through comparing prices of the subsidized product with prices of like non-subsidized products supplied to the same market. The comparison shall be made at the same level of trade and at comparable times. However, if such a direct comparison is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values.

6.7 Each signatory, in the market of which serious prejudice is alleged to have arisen, shall, subject to the provisions of paragraph 3 of Annex V, make available to the parties to a dispute and to the Committee all relevant information that can be obtained as to the changes in market shares of the disputing parties as well as concerning prices of the products involved.

6.8 Displacement or impedance resulting in serious prejudice shall not arise under paragraph 3 above where any of the following circumstances exist during the relevant period:

(a) prohibition or restriction on exports of the like product from the complaining signatory or on imports from the complaining signatory into the third market concerned;

(b) decision by an importing government operating a monopoly of trade or state trading in the product concerned to shift, for non-commercial reasons, imports from the complaining signatory to another country or countries;

(c) natural disasters, strikes, transport disruptions or other force majeure substantially affecting production, qualities, quantities or prices of the product available for exports from the complaining signatory;

(d) existence of arrangements limiting exports from the complaining signatory;

(e) voluntary decrease in the availability for export of the product concerned from the complaining signatory (including, inter alia, a situation where firms in the complaining signatory have been autonomously reallocating exports of this product to new markets);

(f) failure to conform to standards and other regulatory requirements in the importing country.

6.9 In the absence of circumstances referred to in paragraph 8 above, the existence of serious prejudice should be determined on the basis of the information submitted in accordance with the provisions of Annex V.

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The fact that certain circumstances are referred to in this paragraph does not, in itself, confer upon them any legal status in terms of either the General Agreement or this Agreement.
Article 7

Remedies

7.1 Whenever a signatory has reason to believe that any subsidy, referred to in Article 1, granted or maintained by another signatory results in injury to its domestic industry, nullification or impairment or serious prejudice to its trade and production interests, such signatory may request consultations with such other signatory.

7.2 A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to (a) the existence and the nature of the subsidy in question and (b) the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice caused to the interests of the signatory requesting consultations.

7.3 Upon request for consultations under paragraph 1 above the signatory believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

7.4 If a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee.

7.5 The Committee shall, upon request, review the matter referred to it and shall present its conclusions within 120 days.

7.6 In any case in which it is determined by the Committee that any subsidy has resulted in adverse effects to the interests of another signatory within the meaning of Article 5 of this Agreement, the signatory granting or maintaining such a subsidy shall take appropriate steps to remove such adverse effects or shall withdraw the subsidy. If no such steps are taken within a period of [6] months, and in the absence of agreement on compensation, the Committee shall authorize the affected signatory to take countermeasures, commensurate with the degree and nature of adverse effects determined to exist.

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1In the event that the request relates to a subsidy deemed to result in serious prejudice in terms of Article 6.1 above, the available evidence of serious prejudice may be limited to the available evidence as to whether the conditions of Article 6.1 have been met or not.
PART IV: NON-ACTIONABLE SUBSIDIES

Article 8

Identification of non-actionable subsidies

8.1 Signatories agree that the following shall be considered as non-actionable:

(a) subsidies which are, within the meaning of Article 2 above, de jure generally available and which are not deemed to be specific in fact;

(b) subsidies which are specific within the meaning of Article 2 above but which meet all of the conditions provided for in paragraphs 2 and 3 below.

8.2 Notwithstanding other provisions of this Agreement, a subsidy may be non-actionable if it is one of the following:

(a) assistance for research and development conducted by firms or by higher education or research establishments on a contract basis with firms if either:

(1) the results may be used without fee or restriction and are promptly made available to the public including through reports at not more than half-yearly intervals during the course of the research; or

(2) the assistance covers not more than [20] per cent of the costs of basic industrial research\(^1\) or [10] per cent of the costs of applied research and development\(^2\);

and provided that such assistance is limited exclusively to:

(i) personnel costs (researchers, technicians and other supporting staff employed exclusively in the research and development activity);

\(^1\) The term "basic industrial research" means original theoretical and experimental work whose objective is to achieve new or better understanding of the laws of science and engineering.

\(^2\) The term "applied research and development" means activity taking place prior to the industrial or commercial exploitation of a product.
(ii) costs of instruments, equipment, land and buildings used exclusively for the research and development activity;

(iii) consultancy and equivalent services used exclusively for the research and development activity, including bought-in research, technical knowledge, patents, etc.;

(iv) additional overhead costs incurred directly as a result of the research and development activity.

(b) structural adjustment assistance to reduce capacity provided that such assistance:

(i) is conditioned on the permanent and irreversible closing or reduction of capacity of a producer,

(ii) is given to a producer that has been engaged in production, the capacity of which is being reduced, during the four consecutive years preceding the assistance,

(iii) is given for a limited period of time up to a maximum of [five] years,

(iv) does not result, in the case of permanent closing, in the use of the producer's plant or equipment for subsequent production by any entity within the subsidizing signatory, and

(v) is limited to [X] per cent of the minimum costs necessary for orderly closing or reduction of capacity such as the costs for sustaining employment.

(c) assistance to promote:

(1) adaptation of existing facilities1 to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a one-time, non-recurring measure; and

(ii) is limited to [20] per cent of the cost of adaptation; and

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1The term "existing facilities" means facilities having been in operation for at least two years at the time when new environmental requirements are imposed.
(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms;

(iv) is directly linked to and proportional to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved;

(v) is available to all firms which can adopt the new equipment and/or production processes.

(2) adoption of new equipment and/or production processes which will avoid, reduce or eliminate nuisances and pollution even further than existing environmental requirements imposed by law and/or regulations, provided that such assistance is granted for the purpose of carrying out research and development activity with a view to evolving new products or production techniques which pollute less, or provided that such assistance:

(i) is granted for dissemination of production techniques which pollute less (i.e. to encourage firms to prefer such techniques); and

(ii) respects the conditions listed under (1) above.

(d) assistance to disadvantaged regions within the territory of a signatory given pursuant to a general framework of regional development and generally available within eligible regions provided that:

(i) disadvantaged region includes but is not necessarily limited to at least one clearly designated geographical region with definable economic and political identity,

(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria, clearly spelled out in law or regulation and capable of verification,

(iii) the criteria shall include a composite measurement of economic development which is at least [15] per cent below the national standard, and may include other factors such as gross migration rate;

(iv) the composite measurement of economic development must comprise the two following indicators:

- one of either income per capita or household income per capita,
- the inverse of the unemployment rate
(v) each of the indicators in (iv) above must be expressed as a percentage of the national average and be given equal weight in the composite measurement of economic development.

8.3 A subsidy granted pursuant to the provisions of paragraph 2 above shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII of this Agreement. Any such notification shall be sufficiently specific to enable other signatories to evaluate the consistency of the subsidy with the conditions and criteria provided for in the relevant provisions of paragraph 2 above.

8.4 The Committee shall, upon request, promptly review any of the subsidies notified under the provisions of paragraph 3 above, with a view to determining whether the conditions and criteria laid down in paragraph 2 above have not been met.

8.5 If certain enterprises benefit from several programmes referred to in paragraph 2 above, only [one] such programme[s] may be considered as non-actionable.

Article 9

Special "safeguard" procedures

9.1 If, in the course of implementation of a programme referred to in Article 8.1(b) above, a signatory has reasons to believe that this programme has resulted in serious and long-lasting adverse effects to its trade or production interests, such signatory may request consultations with such other signatory.

9.2 A request for consultations under paragraph 1 above shall include (a) a statement of evidence with regard to the injury caused by the non-actionable subsidy to the domestic industry or serious prejudice to the interests of the signatory requesting consultations and (b) an explanation as to why the adverse effects are of a serious and long-lasting nature. Such adverse effects shall be demonstrated by positive evidence, through an economic examination of the impact on trade or production of the requesting signatory.

9.3 Upon request for consultations under paragraph 1 above, the signatory maintaining the subsidy programme in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.
9.4 If, as a result of consultations, no mutually acceptable solution has been reached within 60 days of the request for consultations, the requesting signatory may refer the matter to the Committee.

9.5 Where a matter is referred to the Committee, the Committee shall immediately review the facts involved and the evidence of serious and long-lasting adverse effects. If the Committee determines that the non-actionable subsidy has resulted in serious and long-lasting adverse effects, it may recommend to the subsidizing signatory to modify this programme in such a way as to remove those effects. In the event the recommendation is not followed, the Committee shall authorize the requesting signatory to take appropriate countermeasures commensurate with the nature and degree of the long-lasting adverse effects determined to exist. The Committee shall not authorize countermeasures which would clearly go beyond what is necessary to offset such adverse effects. The decision shall be taken not later than 120 days after the matter has been referred to the Committee.
PART V: COUNTERVAILING MEASURES

Article 10

Application of Article VI of the General Agreement

Signatories shall take all necessary steps to ensure that the imposition of a countervailing duty on any product of the territory of any signatory imported into the territory of another signatory is in accordance with the provisions of Article VI of the General Agreement and the terms of this Agreement.

Article 11

Initiation and subsequent investigation

11.1 Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement. An investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request by or on behalf of the industry affected. The request shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of the General Agreement.

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1 The provisions of Parts II or III may be invoked in parallel with the provisions of Part V of this Agreement; however, with regard to the effects of a particular subsidy in the domestic market of the importing country, only one form of relief (either a countervailing duty, if other requirements of Part V are met, or a countermeasure under Articles 4 or 7 of this Agreement) shall be available. The provisions of Parts III and V may not be invoked regarding measures considered non-actionable in accordance with the provisions of Part IV of this Agreement. However, measures referred to in Article 8.1(a) above may be investigated in order to determine whether they are generally available within the meaning of Article 2 above.

2 The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of off-setting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in Article VI:3 of the General Agreement.

3 The term "initiated" as used hereinafter means procedural action by which a signatory formally commences an investigation as provided in paragraph 4 of this Article.

4 As defined in Article 16
Agreement as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. Before initiating an investigation, the authorities concerned shall satisfy themselves on the basis of positive evidence that the request is supported by the domestic industry. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) through (c) above.

11.2 A request within the meaning of paragraph 1 shall in particular contain such evidence which can reasonably be expected to be available to the complainant on the following: (a) identity of the complainant and of the domestic industry on whose behalf the complaint is lodged, (b) evidence that the request is supported by the domestic industry, (c) evidence with regard to the existence, amount and nature of the subsidy in question, (d) volume and prices of the allegedly subsidized imports and their effect on the affected domestic industry, as demonstrated by developments in production, capacity utilization, sales, sales prices, stocks, consumption, market shares, profits or losses, and employment, and (e) evidence that any alleged material injury to a domestic industry is caused by subsidized imports, through the effects of subsidies, and not by other factors.

11.3 Each signatory shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in this Article and (b) its domestic procedures governing the initiation and conduct of such investigations.

11.4 The competent authorities shall review the adequacy of the evidence provided in the request for the initiation of an investigation in light of any relevant and readily available information and determine whether the evidence is sufficient to justify the opening of an investigation.

11.5 Upon initiation of an investigation and thereafter, the evidence referred to in paragraph 1(a)-(c) above should be considered simultaneously. In any event the evidence of points (a) through (c) shall be considered simultaneously (a) in the decision whether or not to initiate an investigation and (b) thereafter during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

11.6 In cases where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation.

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1Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of Article 15.
11.7 An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There should be immediate termination in cases where the amount of a subsidy or the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be negligible if the subsidy is less than [X] per cent ad valorem. The volume of the subsidized imports shall be considered negligible if this volume represents less than [X] per cent of the domestic market for the like product in the importing country, unless imports from countries whose individual market shares represent less than [X] per cent collectively account for more than [X] per cent of the domestic market for the like product in the importing country.

11.8 An investigation shall not hinder the procedure of customs clearance.

11.9 Investigations shall, except in special circumstances, be concluded within one year after their initiation.

Article 12

Evidence

12.1 Interested signatories and interested parties\(^1\)\(^2\) shall be given ample opportunity to present in writing all information and argument that they consider relevant in respect of the investigation in question. Taking account of the need to protect confidential information, written information and argument submitted by one interested signatory or interested party shall be made available promptly to other interested signatories or interested parties participating in the investigation. Interested signatories and interested parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested parties subsequently shall be required to reduce such submissions to writing. Any decision of the investigating authorities can only be based on such information and arguments as were on the written record of this authority and which were available to interested signatories and interested parties participating in the investigation, due account having been given to the need to protect confidential information.

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\(^1\)For the purpose of this Agreement "party" means any natural or juridical person resident in the territory of any signatory.

\(^2\)Any "interested signatory" or "interested party" shall refer to a signatory or a party economically affected by the subsidy in question.
12.2 Respondents to a countervailing duty questionnaire shall be given at least thirty days for reply. As a general rule, the time-limit for exporters should be counted from the date of receipt of the questionnaire which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting country. Due consideration should be given to any request for an extension of the thirty day period and, upon course shown, such an extension should be granted whenever possible.

12.3 Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an investigation shall upon good cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it. Investigating authorities shall either require persons providing confidential information to furnish non-confidential summaries thereof or shall prepare such summaries. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In the event such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible must be provided.

12.4 However, if the investigating authorities find that a request for confidentiality is not warranted and if the supplier of the information is unwilling to make the information public, the authorities may disregard such information.

12.5 The investigating authorities may carry out investigations in the territory of other signatories as required, provided that they have notified in good time the signatory in question and unless the latter objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (a) the firm so agrees and (b) the signatory in question is notified and does not object. The procedures set forth in Annex VI to this Agreement shall apply to investigations on the premises of a firm.

1Signatories are aware that in the territory of certain signatories disclosure pursuant to a narrowly-drawn protective order may be required.

2Signatories agree that requests for confidentiality should not be arbitrarily rejected. Signatories further agree that the investigating authority may request the waiving of confidentiality only regarding information relevant to the proceedings.
12.6 In cases in which any interested party or signatory refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations\(^1\), affirmative or negative, may be made on the basis of the facts available.

12.7 Before final determinations are made, investigating authorities shall inform all interested parties of the essential facts and considerations on the basis of which it is intended to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

12.8 The procedures set out above are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 13

Consultations

13.1 As soon as possible after a request for initiation of an investigation is accepted, and in any event before the initiation of any investigation, signatories the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in Article 11:1 above and arriving at a mutually agreed solution.

13.2 Furthermore, throughout the period of investigation, signatories the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.\(^2\)

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\(^1\)Because of different terms used under different systems in various countries the term "determination" is hereinafter used to mean a formal decision or finding.

\(^2\)It is particularly important, in accordance with the provisions of this paragraph, that no affirmative determination whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Parts I and II of this Agreement.
13.3 Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

13.4 The signatory which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the signatory or signatories the products of which are subject to such investigation access to non-confidential evidence including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 14

Calculation of the amount of a subsidy

For the purpose of Part V of this Agreement, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to Article 1.1 above has to be provided for in the national legislation or implementing regulations of the signatory concerned and its application to each particular case has to be transparent and adequately explained. Furthermore any such method shall be consistent with the following guidelines:

(a) Government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that signatory.

(b) A loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and a comparable commercial loan which the firm could obtain on the market. In this case the benefit shall be the difference between these two amounts.

(c) A loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts.

(d) The provision or purchase of goods or services by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or
service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

(e) When the government is the sole provider or purchaser of the good or service in question, the provision or purchase of such good or service shall not be considered as conferring a benefit, unless the government discriminates among users or providers of the good or service. Discrimination shall not include differences in treatment between users or providers of such goods or services due to normal commercial considerations.

Article 15

Determination of injury

15.1 A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both (a) the volume of subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic industry concerned.

15.2 With regard to the volume of subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing signatory. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether there has been significant price undercutting by the subsidized imports as compared with prices of the like domestic product, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, that otherwise would have occurred to a significant degree. No one or several of these factors can necessarily give decisive guidance.

15.3 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authorities may cumulatively assess effects of such imports only if they determine that (1) the amount of subsidization established in relation to the imports from each country is more than de minimis and that the volume of imports from each country is not negligible as defined in Article 11.7 and (2) that a cumulative assessment of the effects of the

¹Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product which although not alike in all respects, has (a) physical, technical and/or chemical characteristics and (b) applications or uses closely resembling those of the product under consideration.
imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product.

15.4 The examination of the impact on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment and, in the case of agriculture, whether there has been an increased burden on Government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

15.5 It must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury within the meaning of this Agreement. The authorities shall consider whether there are other factors which at the same time are injuring the domestic industry and the injuries caused by other factors must not be attributed to the subsidized imports. Determinations of injury shall contain explanations of how the authorities have considered such other factors.

15.6 A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding threat of material injury, the investigating authorities should consider, inter alia, such factors as: nature of subsidy in question and the trade effects likely to rise therefrom; a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importations thereof; sufficient freely disposable capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing country's market taking into account the availability of other export markets to absorb any additional exports; whether exports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further exports; and inventories in the importing country of the product being investigated. It is understood that no one of these factors by itself can necessarily

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1 As set forth in paragraphs 2 and 4 of this Article.

2 Such factors can include inter alia, the volume and prices of non-subsidized imports of the product in question, contraction in demand or changes in the pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.
give decisive guidance but that the totality of factors considered must lead to the conclusion that further subsidized imports are imminent and that unless protective action is taken, material injury would occur.

15.7 The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realization, profits. When the domestic production of the like product has no separate identity in these terms the effects of subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Article 16

Domestic industry

16.1 For the purposes of this Agreement, the term "domestic industry" shall, except as provided in paragraph 2 below, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related¹ to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, "domestic industry" may be interpreted as referring to the rest of the producers. The term "major proportion" shall be interpreted as meaning at least \( x \) per cent by value of the total domestic production of the like product.

16.2 In exceptional circumstances the territory of a signatory may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such

¹For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.
circumstances injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

16.3 When the industry has been interpreted as referring to the producers in a certain area, as defined in paragraph 2 above, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing signatory does not permit the levying of countervailing duties on such a basis, the importing signatory may levy the countervailing duties without limitation, only if (a) the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurances pursuant to Article 19 of this Agreement, and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.

16.4 Where two or more countries have reached under the provisions of Article XXIV:8(a) of the General Agreement such a level of integration that they have the characteristics of a single, unified market the industry in the entire area of integration shall be taken to be the industry referred to in paragraphs 1 and 2 above.

Article 17

Imposition of countervailing duties

17.1 The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less are decisions to be made by the authorities of the importing signatory. It is desirable that the imposition should be permissive in the territory of all signatories, that the duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove injury to the domestic industry, and that procedures should be established which would allow the authorities concerned to take due account of representations made by domestic interested parties whose interests might be adversely affected by the imposition of a countervailing duty.

¹For the purpose of this paragraph, the term "domestic interested parties" shall include consumers and industrial users of the imported product subject to investigation.
17.2 No countervailing duty shall be levied\(^1\) on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

17.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and to be causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to co-operate, shall be entitled to an expedited investigation in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter or exempt the exporter from the application of such duty. Any such expedited investigation shall be concluded within [X] months after the date on which a request for such investigation was made.

17.4 If, after reasonable efforts have been made to complete consultations, a signatory makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this section unless the subsidy is withdrawn.

**Article 18**

**Provisional measures and retroactivity**

18.1 Provisional measures shall not be applied unless a formal investigation has been initiated and a notice published to that effect and interested signatories and interested parties have been given adequate opportunities to submit information and make comments. Provisional measures may be taken only after a preliminary affirmative determination has been made that a subsidy exists and that there is material injury or threat thereof, to a domestic industry caused by subsidized imports. Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation. Provisional measures shall normally not be applied sooner than [X] days from the date of the initiation of the investigation.

\(^1\)As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax. This definition is without prejudice to the meaning of the term "levy" in Article VI of the General Agreement.
18.2 Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

18.3 The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months.

18.4 The relevant provisions of Article 17 shall be followed in the imposition of provisional measures.

18.5 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or in the case of a final determination of threat of injury where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

18.6 If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

18.7 Except as provided in paragraph 5 above, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

18.8 Where a final determination is negative any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

18.9 In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of the General Agreement and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than ninety days prior to the date of application of provisional measures.
Article 19

Undertakings

19.1 (a) Proceedings may be suspended or terminated without the imposition of provisional measures or countervailing duties, if undertakings are accepted under which:

(i) the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(ii) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under undertakings shall not be higher than necessary to eliminate the amount of the subsidy. Price undertakings shall not be sought or accepted from exporters unless the importing signatory has first (1) initiated an investigation in accordance with the provisions of Article 11 of this Agreement, (2) made preliminary determinations of subsidy and injury resulting therefrom based on sufficient evidence resulting from such an investigation and (3) obtained the consent of the exporting signatory. Undertakings offered need not be accepted if the authorities of the importing signatory consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons.

(b) If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporting signatory so desires or the importing signatory so decides. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse, except in cases where a determination of no threat of injury is due in large part to the existence of an undertaking; in such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement.

(c) Price undertakings may be suggested by the authorities of the importing signatory, but no exporter shall be forced to enter into such an undertaking. The fact that governments or exporters do not offer such undertakings or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

¹The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings, except as provided in paragraph (b) of this Article.
19.2 Authorities of an importing signatory may require any government or exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing signatory may take expeditious actions under this Agreement in conformity with its provisions which may constitute immediate application of provisional measures using the best information available. In such cases definitive duties may be levied in accordance with this Agreement on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

19.3 Undertakings shall not remain in force any longer than countervailing duties could remain in force under this Agreement. The authorities of an importing signatory shall review the need for the continuation of any undertaking, where warranted, on their own initiative, or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review.

Article 20

Duration of countervailing duties

20.1 A countervailing duty shall remain in force only as long as, and to the extent necessary to counteract the subsidization which is causing injury. The investigating authorities shall review the need for continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

20.2 Notwithstanding the provisions of paragraph 1 above, every countervailing duty shall be terminated within 5 years of its imposition unless the investigating authorities determine on the basis of a review that there is "good cause" for the continuation of the duty, after all interested parties have had a full opportunity to present their views.

Article 21

Measures to prevent circumvention

21.1 Where, following the entry into force of a countervailing duty imposed in accordance with this Agreement:

(i) parts and components are shipped from the country covered by the countervailing duty finding to the importing country for assembly or completion into a product covered by the countervailing duty finding, and the value of the parts and components imported from
the country subject to the countervailing duty finding is equal to or exceeds [X] per cent of the total value of the assembled or finished product; or

(ii) parts and components are shipped from the country covered by the countervailing duty finding to a third country for assembly or completion into the product covered by the countervailing duty finding, which is then exported to the importing country, and the value of the parts and components imported from the country subject to the countervailing duty finding is equal to or exceeds [X] per cent of the total value of the assembled or finished product;

Signatories may apply the measures specified in paragraphs 4 and 5 below, subject to the conditions set forth in paragraphs 2 and 3 of this Article.

21.2 In the case referred to in subparagraph 1(i) above investigating authorities should satisfy themselves that: (i) imports of the parts or components have increased since the issuance of the countervailing duty measure; (ii) the exporter of the parts or components, the producer covered by the countervailing duty measure, and the assembler in the importing country are related parties; (iii) the most significant parts or components are being shipped to the importing country for assembly or completion, and (iv) the assembly or completion process was started or substantially expanded since the issuance of the countervailing duty measure.

21.3 In the case referred to in subparagraph 1(ii) above investigating authorities should satisfy themselves that: (i) shipments of the parts or components to the third country have increased since the issuance of the countervailing duty measure; (ii) exports to the importing country of the merchandise assembled or completed in the third country have increased since the issuance of the countervailing duty measure; (iii) the exporter of the parts or components, the producer covered by the countervailing duty measure, and the assembler or finisher in the third country are related parties; (iv) the most significant parts or components are being shipped to the third country for assembly or completion, and (v) the assembly or completion process was started or substantially expanded since the issuance of the countervailing duty measure.

21.4 In a situation as described in subparagraph 1(i) above the authorities concerned may, if the conditions set forth in paragraph 2 are fulfilled ...
21.5 In a situation as described in subparagraph 1(ii) above, the authorities concerned may, if the conditions set forth in paragraph 3 are fulfilled...

21.6 For the purpose of calculation of the rate and amount of duties which may be applied pursuant to paragraphs 4 and 5, the following rules shall apply...

21.7 For the purpose of this Article the term "related parties" shall be interpreted to mean...

21.8 Measures authorized under this Article shall be taken only if the authorities concerned have carried out formal investigations. The provisions of this Agreement concerning initiation of investigations, rights of interested parties and public notice shall apply mutatis mutandis to investigations carried out under this Article.

Article 22

Public Notice and Explanation of Countervailing Duty Determinations

22.1 When the investigating authorities are satisfied that there is sufficient evidence to justify initiating an investigation, the signatory or signatories, the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given.

22.2 Investigating authorities shall provide the full text of the complaint to the exporters¹ and to the authorities of the exporting country and make it available, upon request, to the importers and other interested parties involved as soon as a decision has been made to open an investigation, due regard being paid to the requirement for the protection of confidential information. In cases where confidential information is provided in the complaint, investigating authorities shall require a non-confidential summary of such information in the non-confidential copy. The possibility of not providing a summary of confidential information shall be confined to extremely exceptional cases and in such cases the parties providing confidential information shall fully explain the reasons therefor. Investigating authorities shall avoid, unless a decision has been made to open an investigation, any publicizing of the complaint or its release.

¹It being understood that where there are numerous exporters, the full text of the complaint should instead be provided only to the authorities of the exporting country or to the relevant trade association who then should forward copies to the exporters concerned.
22.3 A public notice of the initiation of an investigation shall contain adequate information on the following: (i) the name of the exporting country and the product involved, (ii) the date of initiation of the investigation, (iii) a description of the subsidy practice or practices to be investigated, (iv) a summary of the factors on which the allegation of injury is based, (v) the address to which representations by interested parties should be directed and (vi) the time-limits allowed to interested parties for making their views known.

22.4 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, or any decision to accept an undertaking pursuant to Article 19, of the termination of such an undertaking, and of the revocation of a determination. Each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities in sufficient detail. All such notices shall be forwarded to the signatory or signatories the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

22.5 A public notice of the imposition of provisional measures shall set forth adequate reasons for the preliminary determinations on the existence of a subsidy and injury (insofar as there is no separate preliminary injury determination and a notice thereof) and shall refer to the matters of fact and law which have led to arguments being accepted or rejected, due regard being paid to the requirement for the protection of confidential information, and in particular: (i) the names of the suppliers or when this is impracticable, the supplying countries involved; (ii) a description of the product which is sufficient for customs purposes; (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined; (iv) factors which have led to the injury determination including factors other than subsidized imports which have been taken into account when the injury determination is made, insofar as there is no separate notice concerning such injury determination and including such information; (v) the main reasons leading to the determination.

22.6 A notice of suspension or conclusion of an investigation in the case of an affirmative determination involving the imposition of a definitive duty or the acceptance of an undertaking shall contain all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or to the acceptance of an undertaking, due regard being paid to the requirement for the protection of confidential information, and in particular: (i) the names of the suppliers or when this is impracticable, the supplying countries involved; (ii) a description of the product, which is sufficient for customs purposes; (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined; (iv) factors which have led to the injury determination including information on factors other than dumping which have been taken into account when the injury determination is
made, insofar as there is no separate notice concerning such injury determination and including such information; (v) the main reasons leading to the determination, (vi) the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers.

22.7 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 19 shall include the non-confidential part of the undertaking.

22.8 The provisions of this Article concerning publication and notification of interested parties shall apply mutatis mutandis to the initiation and completion of administrative reviews pursuant to Article 20 and to decisions under Article 18 to apply duties retroactively.

Article 23

Judicial Review

Each signatory shall maintain juridical, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative action relating to initiation and final determinations and reviews of determinations within the meaning of Articles 11, 17 and 20 of this Agreement. Such tribunals or procedures shall be independent of the authority responsible for the determination or review in question, and shall provide all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative action with access to review.
PART VI

Article 24

Committee on Subsidies and Countervailing Measures and other subsidiary bodies

24.1 There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the signatories to this Agreement. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the signatories and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

24.2 The Committee may set up subsidiary bodies as appropriate.

24.3 The Committee shall establish a Permanent Group of Experts composed of five independent persons, highly qualified in the fields of subsidies and trade relations. The experts will be elected by the Committee and one of them will rotate every year. The Committee may request the Group of Experts to prepare a proposed ruling on the existence of a prohibited subsidy, as provided for in Article 4.5 above. The Committee may also seek an advisory opinion on the existence and nature of any subsidy.

24.4 The Group of Experts may be consulted by any signatory and give advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that signatory. Such advisory opinions will be confidential and may not be invoked in proceedings under Article 7 of this Agreement.

24.5 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a signatory, it shall inform the signatory involved.
PART VII
NOTIFICATION AND SURVEILLANCE

Article 25

Notifications

25.1 Signatories agree that, without prejudice to the provision of Article XVI:1 of the General Agreement, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 through 6 below.

25.2 Signatories shall notify any subsidy as defined in paragraphs 1 and 2 of Article 1 above, granted or maintained within their territory.

25.3 The content of notifications should be sufficiently specific to enable other signatories to evaluate the trade effects and to understand the operation of notified subsidies programmes. In this connection and without prejudice to the contents and form of the questionnaire on subsidies¹, signatories shall ensure that their notifications contain the following information:

(i) form of a subsidy (i.e. grant, loan, tax concession, etc.);

(ii) subsidy per unit or, in cases where it is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);

(iii) policy objective and/or purpose of a subsidy;

(iv) duration of a subsidy and/or any other time-limits attached to it;

(v) statistical data permitting an assessment of the trade effects of a subsidy.

25.4 Where specific points in paragraph 3 above have not been addressed in a notification, an explanation shall be provided in the notification itself.

25.5 If subsidies are granted to specific products or sectors, the notifications should be organized by product or sectors.

¹BISD, 9S/193-194 and BISD, 11S/58.

*The Group may wish to address the contents and form of the questionnaire.
25.6 Signatories which consider that there are not measures or schemes in their countries requiring notification under Article XVI:1 shall so inform the GATT secretariat in writing.

25.7 Signatories recognize that notification of a measure does not prejudge either its legal status under the General Agreement and this Agreement, the effects under this Agreement, or the nature of the measure itself.

25.8 Any signatory may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another signatory (including any subsidy referred to in Part IV above), or for explanation of the reasons for which a specific measure has been considered as not notifiable.

25.9 Signatories so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting signatory. In particular they shall provide sufficient details to enable the other signatory to assess their compliance with the terms of this Agreement. Any signatory which considers that such information has not been provided may bring the matter to the attention of the Committee.

25.10 Any interested signatory which considers that any practice of another signatory having the effects of a subsidy has not been notified in accordance with the provisions of Article XVI:1 of the General Agreement and this Article may bring the matter to the attention of such other signatory. If the alleged subsidy is not thereafter notified promptly, such signatory may itself bring the alleged subsidy in question to the notice of the Committee.

25.11 Signatories shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports will be available in the GATT secretariat for inspection by government representatives. The signatories shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months.

Article 26

Surveillance

26.1 The Committee shall examine new and full notifications submitted under Article XVI:1 of the General Agreement and Article 25:1 of this Agreement at special sessions held every third year. Notifications submitted in the intervening years (updating notifications) shall be examined at each regular meeting of the Committee.

26.2 The Committee shall examine reports submitted under Article 25.11 above at each regular meeting of the Committee. The semi-annual reports shall be submitted on an agreed standard form.
PART VIII: DEVELOPING COUNTRIES

Article 27

Special and differential treatment for developing countries

27.1 Signatories recognize that subsidies may play an important rôle in economic development programmes of developing countries.

27.2 Accordingly, this Agreement shall not prevent developing country signatories from adopting measures and policies to assist their industries, including those in the export sector. In particular, the commitment of Article 3.1(a) shall not apply to developing country signatories referred to in:

(a) Annex VII;

(b) Annex VIII, which have undertaken not to grant export subsidies in a manner which results in the overall level of export subsidies granted or bestowed on any product exceeding the level set forth in that Annex/calculated on a per unit basis/.

27.3 Provisions of Article 4 shall not apply to developing country signatories in the case of export subsidies which are in conformity with the terms set forth in Annex VIII. The relevant provisions in such a case shall be those of Article 7.

27.4 There shall be no presumption that a subsidy not inconsistent with this and other Articles of this Agreement (including those referred to in Article 6.1) granted by developing country signatories results in serious prejudice, as defined in this Agreement, to the trade or production of another signatory. Such serious prejudice, where applicable under the terms of paragraph 5 below, shall be demonstrated by positive evidence, in accordance with the provisions of Article 6.2 through 6.9.

27.5 With respect to any actionable subsidy, other than those referred to in Article 6.1, granted by a developing country signatory, action may not be authorized or taken under Article 7 of this Agreement, unless nullification or impairment of tariff concessions or other obligations under the General Agreement is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of like products into the market of the subsidizing country or unless injury to domestic industry in the importing market of a signatory occurs in terms of Article 15 of this Agreement.

27.6 No countervailing duty action shall be taken against any product originating in signatories referred to in Annex VII and VIII if:

(a) the overall level of subsidies granted or bestowed upon the product in question does not exceed [X] per cent of its value/calculated on a per unit basis/;
(b) the volume of the subsidized imports represents less than [X] per cent of the domestic market for the like product in the importing signatory, unless imports from countries whose individual market shares represent less than [X] per cent collectively account for more than [X] per cent of the domestic market for the like product in the importing country.

27.7 The Committee shall, upon request by an interested signatory, undertake a review of a specific export subsidy practice of a developing country signatory to examine the extent to which the practice is in conformity with the terms set forth in Annex VIII.

27.8 The Committee shall, upon request by an interested developing country signatory, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraph 6 above.

PART IX: TRANSITIONAL ARRANGEMENTS

Article 28

Existing programmes

Subsidy programmes that have been established by any signatory before 1 November 1990 and which are inconsistent with the provisions of this Agreement shall be:

(i) notified to the Committee by 1 January 1991 or the earliest practicable date thereafter;

(ii) brought into conformity with the provisions of this Agreement within [5] years of the date of entry into force of this Agreement for such signatory.

No signatory shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiration at a date earlier than 1 January 199.
Article 29

Transformation into a market economy

Without prejudice to other specific arrangements under the General Agreement, signatories in the process of transformation from a state-trading system into a market, free enterprise economy may be granted, by the Committee, time-limited waivers\(^1\) for programmes inconsistent with other provisions of this Agreement but necessary for such a transformation.

PART X: DISPUTE SETTLEMENT

Without prejudice to the provisions of Articles 4, 7 and 9 above, the provisions governing the settlement of disputes under the General Agreement shall apply, mutatis mutandis, to the settlement of disputes under this Agreement.

PART XI: FINAL PROVISIONS

\(^{1}\)Under such a waiver an actionable programme may become non-actionable for an agreed period.
ANNEX I

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises.

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product. This item shall be interpreted in accordance with the guidelines on physical incorporation contained in Annex II.
(i) The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on physical incorporation contained in Annex 2 and the guidelines in the determination of substitution drawback systems as export subsidies, contained in Annex III.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least twelve original signatories to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the General Agreement.
NOTES

¹The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

²For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

"Remission" of taxes includes the refund or rebate of taxes.

"Remission or drawback" includes the full or partial exemption or deferral of import charges.

³The signatories recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The signatories reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any signatory may draw the attention of another signatory to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the signatories shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of signatories under the General Agreement, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a signatory from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another signatory.

⁴Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).
ANNEX II

GUIDELINES ON PHYSICAL INCORPORATION

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior stage cumulative indirect taxes levied on goods that are physically incorporated (making normal allowance for waste) in the exported product. Similarly, drawback schemes can allow for the remission or drawback of import charges levied on goods which are physically incorporated (making normal allowance for waste) in the exported product.

2. The Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement (the Code) makes reference to the term "physically incorporated" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior stage cumulative indirect taxes in excess of the amount of such taxes actually levied on goods physically incorporated in the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on goods that are physically incorporated in the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding physical incorporation. Paragraph (i) also provides for substitution, where appropriate.

II

In examining whether inputs are physically incorporated, as part of a countervailing duty investigation pursuant to the Code, investigating authorities should proceed on the following basis:

1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs physically incorporated, the investigating authorities should first determine whether the government of the exporting country has in place and applies a system or procedure to confirm which inputs are physically incorporated and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with Article 2:8 of the Code, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.
2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting country based on the actual products involved would need to be carried out in the context of determining whether an excess payment occurred. If the importing country deemed it necessary, a further examination would be carried out in accordance with paragraph 1 above.

3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The signatories note that an input need not be present in the final product in the same form in which it entered the production process.

4. In determining the amount of a particular input which is physically incorporated, a "normal allowance for waste" should be taken into account, and such waste should be treated as physically incorporated. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not physically present in the final product (for reasons such as inefficiencies) and is not recovered, used nor sold by the same manufacturer.

5. The investigating authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an important question is whether the authorities in the exporting country have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

*With respect to inputs, such as catalysts, which are consumed in the course of their use to obtain the exported product and which are not mere aids to manufacture, the relationship between signatories rights to grant remission or drawback of import charges in accordance with the rules laid down in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) and its annexes and paragraphs 3 and 4 of these guidelines was not decided.
ANNEX III

Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies

I

Drawback systems can allow for the refund or drawback of import charges on goods which are incorporated into another product and where the export of this latter product contains domestic goods having the same quality and characteristics as those substituted for the imported goods. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Code) substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported goods for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to the Code, investigating authorities should proceed on the following basis:

1. Paragraph (i) of the Illustrative List stipulates that home market goods may be substituted for imported goods in the production of a product for export provided such goods are equal in quantity to, and have the same quality and characteristics as, the imported goods being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting country to ensure and demonstrate that the quantity of goods for which drawback is claimed does not exceed the quantity of similar goods exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported goods in question.

2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with Article 2:8 of the Code, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.
3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting country based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the importing country deemed it necessary a further examination would be carried out in accordance with paragraph 2 above.

4. The existence of a substitution drawback provision where in exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.
ANNEX IV

Calculation of the total ad valorem subsidization
(Article 6.1(a))

1. Any calculation of the amount of a subsidy for the purpose of Article 6.1 above shall be done in terms of the cost to the granting government.

2. Except as provided in paragraphs 3-5, 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 twelve-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 twelve-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, the overall rate of subsidization shall not exceed [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, 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 twelve 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 signatory shall be aggregated.

7. Subsidies granted prior to the entry into force of this Agreement, 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 Article 6.1 above.

¹The recipient firm is a firm in the subsidizing country.

²In 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.

³Start-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.
ANNEX V

Procedures for developing information concerning serious prejudice

1. Every signatory shall co-operate in the development of evidence to be examined by the Committee or its subsidiary bodies in procedures under Article 7 above, paragraphs 4 through 6. The parties to the dispute and any third signatory concerned shall notify the Committee, as soon as the provisions of Article 7.4 has been invoked, the organization responsible for administration of this provision within its territory and the procedures to be used to comply with requests for information.

2. In cases where matters are referred to in the Committee under Article 7.4 above, the Committee shall upon request, initiate the procedure to obtain such information from the government of the subsidizing signatory as necessary to establish the existence and amount of subsidizations, the value of total sales of the subsidized firms, as well as information necessary to analyse the adverse effects caused by the subsidized product.¹ This process may include, where appropriate, presentation of questions to the government of the subsidizing country and of the complaining country to collect information, as well as to clarify and obtain elaboration of information available to the parties to a dispute through the notification procedures set forth in Part VII above.²

3. In the case of effects in third country markets, a signatory party to a dispute may collect information, including through the use of questions to the government of the third country, necessary to analyse adverse effects, which is not otherwise reasonably available from the complaining signatory or the subsidizing signatory. This requirement should be administered in such a way as not to impose an unreasonable burden on the third country signatory. In particular, such a signatory is not expected to make a market or price analysis specially for that purpose. The information to be supplied is that which is already available or can be readily obtained by this signatory (e.g. that most recent statistics which have already been gathered by relevant statistical services but which have not yet been published, customs data concerning imports and declared values of the products concerned, etc.). However, if a signatory party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the authorities of the third country signatory and such a person or firm shall be given access to all information which is not normally maintained confidential by the government.

¹ In cases where the existence of serious prejudice has to be demonstrated.

² The information gathering process by the Committee shall take into account the need to protect information which is by nature confidential or which is provided on a confidential basis by any signatory involved in this process.
4. The Committee shall designate a representative to serve the function of facilitating the information-gathering process. The sole purpose of the representative shall be to ensure the timely development of the information necessary to facilitate expeditions subsequent to multilateral review of the dispute. In particular, the representative may suggest ways to most efficiently solicit necessary information as well as encourage the co-operation of the parties.

5. The information-gathering process outlined in paragraphs 2-4 above shall be completed within 60 days of the date on which the matter has been referred to the Committee under Article 7.4 above. The information obtained during this process shall be submitted to the Committee or to a panel established by the Committee in accordance with the provisions of Part X above. This information should include, inter alia, data concerning the amount of the subsidy in question (and, where appropriate, the value of total sales of the subsidized firms), prices of the subsidized product, prices of the non-subsidized product, prices of other suppliers to the market, changes in the supply of the subsidized product to the market in question and changes in market shares. It should also include rebuttal evidence, as well as such supplemental information as the Committee or the panel deems relevant in the course of reaching its conclusions.

6. If the subsidizing and/or third country signatory fail to co-operate in the information-gathering process, the complaining signatory will present its case of serious prejudice, based on evidence available to it, together with facts and circumstances of the non co-operation of the subsidizing and/or third country signatory. Where information is unavailable due to non co-operation by the subsidizing and/or third country signatory, the Committee or the panel may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the Committee or the panel should draw adverse inferences from instances of non co-operation by any party involved in the information-gathering process.

8. In making a determination to use either best information available or adverse inferences, the Committee or the panel shall consider the advice of the Committee representative nominated under paragraph 4 above as to the reasonableness of any requests for information and the efforts made by parties to comply with these requests in a co-operative and timely manner.

9. Nothing in the information-gathering process shall limit the ability of the Committee or the panel to seek such additional information it deems essential to a proper resolution to the dispute, and which was not adequately sought or developed during that process. However, ordinarily a panel should not request additional information to complete the record where the information would support a particular party's position and the absence of that information in the record is the result of unreasonable non co-operation by that party in the information-gathering process.
ANNEX VI

Procedures for on-the-spot investigations pursuant to Article 12.5

(a) upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations;

(b) if in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting country should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

(c) it should be standard practice to obtain explicit agreement of the firms concerned in the exporting country before the visit is finally scheduled;

(d) as soon as the agreement of the firms concerned has been obtained the investigating authorities should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

(e) sufficient advance notice should be given to the firms in question before the visit is made;

(f) visits to explain the questionnaire should only be made at the request of an exporting firm. In case of such a request the investigating authorities may place themselves at the disposal of the firm; such a visit may only be made, provided the authorities of the importing country notify the representatives of the government of the country in question and unless the latter do not object to the visit;

(g) as the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting country is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained;

(h) enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.
The following least-developed countries are contracting parties to GATT: Bangladesh, Benin, Botswana, Burkina Faso, Burundi, Chad, Central African Republic, Gambia, Haiti, Lesotho, Malawi, Maldives, Mauritania, Niger, Rwanda, Sierra Leone, Togo, United Republic of Tanzania, Uganda, Union of Myanmar. Least-developed countries applying the GATT on a de facto basis are: Cape Verde Islands, Equatorial Guinea, Guinea-Bissau, Kiribati, Mali, Mozambique, Sao Tomé and Principe, Yemen Democratic Republic and Tuvalu.
### Annex VIII

**List of Countries Undertaking Commitments in Accordance with Article 27(2)(b)**¹

<table>
<thead>
<tr>
<th>Initial export subsidy (percentage)</th>
<th>Time period</th>
<th>Level of permitted export subsidy rate per period as a percentage of initial export subsidy rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Period 1</td>
<td>Period 2</td>
</tr>
<tr>
<td>Argentina</td>
<td>[x]</td>
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</tr>
<tr>
<td>Bolivia</td>
<td>See Note 1</td>
<td>3 years</td>
</tr>
<tr>
<td>Brazil</td>
<td>[x]</td>
<td>3 years</td>
</tr>
<tr>
<td>Cameroon</td>
<td>See Note 1</td>
<td>5 years</td>
</tr>
<tr>
<td>Chile</td>
<td>[x]</td>
<td>5 years</td>
</tr>
<tr>
<td>Colombia</td>
<td>[x]</td>
<td>5 years</td>
</tr>
<tr>
<td>Congo</td>
<td>See Note 1</td>
<td>5 years</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>[x]</td>
<td>5 years</td>
</tr>
<tr>
<td>Côte d'Ivoire</td>
<td>See Note 1</td>
<td>5 years</td>
</tr>
<tr>
<td>Dominican Rep.</td>
<td>See Note 1</td>
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</tr>
<tr>
<td>Egypt</td>
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<tr>
<td>Indonesia</td>
<td>See Note 1</td>
<td>3 years</td>
</tr>
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<tr>
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<td>5 years</td>
</tr>
<tr>
<td>Kenya</td>
<td>See Note 1</td>
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<td>Madagascar</td>
<td>See Note 1</td>
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<tr>
<td>Malaysia</td>
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<tr>
<td>Mauritius</td>
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</tr>
<tr>
<td>Mexico</td>
<td>[x]</td>
<td>5 years</td>
</tr>
<tr>
<td>Morocco</td>
<td>See Note 1</td>
<td>5 years</td>
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<tr>
<td>Nigeria</td>
<td>See Note 1</td>
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<tr>
<td>Pakistan</td>
<td>See Note 1</td>
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<tr>
<td>Peru</td>
<td>[x]</td>
<td>5 years</td>
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<tr>
<td>Philippines</td>
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<tr>
<td>Senegal</td>
<td>See Note 1</td>
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<tr>
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<tr>
<td>Sri Lanka</td>
<td>See Note 1</td>
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<tr>
<td>Thailand</td>
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<td>Trinidad and Tobago</td>
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<td>Tunisia</td>
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<td>Uruguay</td>
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<tr>
<td>Yugoslavia</td>
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<tr>
<td>Zaire</td>
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<tr>
<td>Zambia</td>
<td>See Note 1</td>
<td>5 years</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>See Note 1</td>
<td>5 years</td>
</tr>
</tbody>
</table>

¹The methodology used in establishing the list is used only for the purpose of establishing the length of time periods and the level of permitted export subsidy per period as a percentage of the initial export subsidy rate for the countries included therein.

The initial export subsidy rate is used only for the purpose of establishing the length of time periods and the level of permitted export subsidy per period as a percentage of the initial export subsidy rate for the countries included therein.
Note 1: A country shall undertake commitments consistent with the above criteria when GNP per capita (adjusted for other indicators, e.g. life expectancy at birth) has reached $1,000 per annum.

Note 2: It is recognized that a country that has reached export competitiveness in products shall be bound by the provisions of Article 3.1(a) for those products. Export competitiveness in a product consists of a country's exports of that product having reached a share of at least [4] per cent in world exports of that product. Export competitiveness shall exist either (a) on the basis of notification by the country having reached export competitiveness, or (b) on the basis of a computation undertaken by the secretariat at the request of any signatory.¹ For a country to which Note 1 above is applicable and which has reached export competitiveness in one or more products, export subsidies shall be progressively reduced over a period of [10] years. For the purpose of Annex VIII, a product is defined as a Section heading of the Harmonized System nomenclature.

Note 3: At the expiry of each period, if a country believes that it cannot immediately undertake the percentage reduction in the export subsidy rate prescribed for the following period, its situation will be examined annually by the Committee with a view to deciding on possible extension of the expiring period. Such extension shall be granted in any case where it can be shown that a country's development situation has not improved sufficiently as to warrant treatment different from that granted to it for that period. Evidence considered shall consist of the average annual rate of change of per capita GNP (adjusted for other indicators) as follows: an extension shall be granted if the rate of change of adjusted per capita GNP in the preceding five years is less than an average rate of 1.5 per cent per annum.²

¹A country's share of a particular product will be computed on the basis of the value of a country's exports of that product and world exports of that product measured in United States dollars. All data are for the latest available year and are obtained by the secretariat.

²The average annual percentage change over a five-year period is computed using the least squares regression method. Data are obtained from World Bank sources and are for the latest available years.
AGREEMENT ON IMPLEMENTATION OF ARTICLE VII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

The attached Decision Regarding Cases Where Customs Administrations Have Reasons To Doubt The Truth Or Accuracy Of The Declared Value; and texts contained in the Statement made by the Chairman of the Group on MTN Agreements and Arrangements on: (i) valuation of goods by some developing countries on the basis of officially established minimum values, and (ii) possible problems related to the valuation of importations into developing countries by sole agents, sole distributors and sole concessionaires have been agreed on an ad referendum basis.

Before the adoption of the above texts, the Chairman of the Negotiating Group on MTN Agreements and Arrangements made the following statement:

"It is my understanding that the Decision and texts contained in the Statement have been agreed in the expectation that consideration of accession to the Customs Valuation Code will be facilitated and therefore participation in the Code will be increased. It is desirable that those contracting parties which are in a position to do so, would give an indication of intent to accede to the Code as soon as possible."
DECISION REGARDING CASES WHERE CUSTOMS ADMINISTRATIONS HAVE REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

The CONTRACTING PARTIES invite the Committee on Customs Valuation to take the following decision:

Reaffirming that the transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement);

Recognizing that the Customs Administration may have to address cases where it has reason to doubt the truth or accuracy of the particulars or of documents produced by traders in support of a declared value;

Emphasizing that in so doing the Customs Administration should not prejudice the legitimate commercial interests of traders;

Taking into account Article 17 of the Agreement, paragraph 7 of the Protocol to the Agreement, and the relevant decisions of the Technical Committee on Customs Valuation;

The Committee on Customs Valuation decides as follows:

1. When a declaration has been presented and where the Customs Administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the Customs Administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, Customs still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the Customs Administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the Customs Administration shall communicate to the importer in writing its decision and the grounds therefor.

2. It is entirely appropriate in applying the Agreement for one signatory to assist another signatory on mutually agreed terms.
STATEMENT MADE BY THE CHAIRMAN OF THE
NEGOTIATING GROUP ON MTN AGREEMENTS AND ARRANGEMENTS

The Negotiating Group on MTN Agreements and Arrangements invites the CONTRACTING PARTIES to refer the following texts to the GATT Committee on Customs Valuation for adoption:

***

Where a developing country makes a reservation to retain officially established minimum values within the terms of paragraph 3 of the Protocol and shows good cause, the Committee shall give the request for the reservation sympathetic consideration.

Where a reservation is consented to, the terms and conditions referred to in paragraph 3 of the Protocol shall take full account of the development, financial and trade needs of the country concerned.

***

A number of developing countries considering accession to the Agreement have expressed concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under Article 21.1, developing countries have a period of delay of up to five years prior to the application of the Agreement. In this context, countries availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.

In consideration of this, the Committee recommends that the Customs Cooperation Council assist developing countries, in accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.
AGREEMENT ON IMPLEMENTATION OF ARTICLE IX:1(b)
OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

1. The CONTRACTING PARTIES invite the GATT Committee on Government Procurement to clarify that:

   (i) a contracting party interested in accession according to Article IX:1(b) would communicate its interest to the Director-General, submitting relevant information, including an offer by way of a list of entities having regard to the relevant provisions of the Agreement, in particular Article I and, where appropriate, Article III;

   (ii) the communication would be circulated to Parties to the Agreement;

   (iii) the contracting party interested in accession would hold consultations with the Parties on the terms for its accession to the Agreement;

   (iv) with a view to facilitating accession, the Committee would establish a working party if the contracting party in question, or any of the Parties to the Agreement, so requests. The working party should examine: (a) the offer made by the applicant country; and (b) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant country, and export opportunities for the Parties in the market of the applicant country;

   (v) upon a decision by the Committee agreeing to the terms of accession including the list of entities, the acceding contracting party would deposit with the Director-General to the CONTRACTING PARTIES to the GATT an instrument of accession which states the terms so agreed. The text of the acceding contracting party’s list of entities in English, French and Spanish would be annexed to the Agreement.

2. It is noted that the Committee decisions are arrived at on the basis of consensus. It is also noted that the non-application clause of Article IX:9 is available to any Party.
AGRICULTURE

Commentary

1. The principal issues which need to be considered by Ministers for decision are set out in Appendix A. They have been derived from a thorough analysis of a survey of the offers (Appendix B).

2. In July 1990 the attached draft text (Appendix C) was considered in the Negotiating Group on Agriculture. Participants agreed that it should be used "as a means to intensify the negotiations".

3. From October 1990 to 21 November 1990 participants have tabled their agricultural offers.

4. In the area of sanitary and phytosanitary measures, the Working Group was able to establish a draft text representing a common negotiating basis (MTN.GNG/NGS/WGSP/7). This draft text is attached (Appendix D).
APPENDIX A

PRINCIPAL ISSUES FOR DECISION

Note by the Chairman of the TNC

1. Can the commitment taken at the Mid-Term Review in April 1989 not to exceed the levels of domestic and export support and protection then current be taken as the individual and collective starting point of the agricultural reform process?

2. As one of the elements in the reform process, can the commitment in respect of the substantial and progressive reduction of domestic support to agriculture take as its base the level of support subject to the Mid-Term Review commitment? In addition:
   - what will be the rate and duration of the reduction?
   - how will it be expressed and implemented (AMS or specific policy measures or a combination of both)?
   - what scope and specificity of product coverage is to be agreed?
   - what criteria are to be used to govern the exemption of certain support policies from reduction?
   - what exemptions are needed for developing countries?

3. As one of the elements in the reform process, can the commitment to substantially and progressively reduce border protection be separately undertaken and take as its base the level of protection subject to the Mid-Term Review commitment? How should this commitment be expressed in concrete terms? In particular:
   - what will be the rate and duration of the reduction, and its product coverage?
   - what are to be the modalities of reducing protection: tariffication, reduction based on existing measures, or a combination of both? Reduction on the basis of strengthened and more operationally effective GATT rules? Formula and/or request-offer? Improvement of existing access?
   - special safeguard provisions?

4. As one of the elements in the reform process, can the commitment to substantially and progressively reduce direct assistance to exports be separately undertaken and take as its base the level of export support subject to the Mid-Term Review commitment? What, then, will be:
   - the rate and duration of the reduction?
- the modalities of reduction: through commitments on quantities, aggregate budgetary expenditure, or both?
- additional disciplines on export subsidies?

5. Can participants agree that special and differential treatment for developing countries should be given effect through, in particular, lesser commitments and longer implementation periods?

6. Can participants agree that the volume of food aid currently available will not be reduced as a result of the commitments to be undertaken? Furthermore, do they agree that specific provision will be made for net food-importing developing countries in order to alleviate possible effects on them of the reform process?

7. The main issues which remain to be resolved in respect of sanitary and phytosanitary barriers and regulations are the following (see MTN.GNG/NG5/WGSP/7):
   - scope of the disciplines
   - conditions of departure from international standards, guidelines or recommendations
   - control, inspection and approval procedures.

8. What form of surveillance by an appropriate GATT body should be provided in respect of the commitments undertaken?

9. Can participants agree it should be understood that the commitments are aimed at initiating a continuing process of reform in agricultural trade in line with the agreed objectives of progressive and substantial reduction of support and protection to agriculture?

10. ...
**APPENDIX B**

**AGRICULTURE - SURVEY OF OFFERS**

This survey has been prepared by the secretariat on its own responsibility.

**Internal support**

1. In the area of internal support the Cairns Group, the EC, Finland, Mexico, Norway, Sweden and Switzerland have in their offers an overall ceiling on support (on the total of the "amber" and "green" categories). Austria and Korea are specifically opposed to an overall ceiling. Other countries do not make a direct reference to the issue. Among those countries in favour of an overall ceiling, different base years have been proposed: the EC, Finland and Sweden propose 1986, and the Cairns Group, Mexico and Norway propose 1988.

2. Concerning the policies subject to reduction, the range of offers is as follows:

   - **Austria:** 20 per cent in real terms over 10 years, base year 1988;
   - **Cairns Group:** no less than 75 per cent over 10 years from 1991-92, base year 1988;
   - **Canada:** up to 50 per cent over 10 years, base year 1988;
   - **EC:** for AMS products, 30 per cent over 10 years from the base year 1986, for other products 10 per cent over the same period;
   - **Finland:** 20 to 30 per cent over 10 years from the base year 1986 as a result of reductions in export subsidies and other means;
   - **Iceland:** 25 per cent in real terms over 8 years from base year 1988;
   - **India:** commitments in relation to the level of economic development;
   - **Japan:** 30 per cent in real terms over 10 years from base year 1986;
   - **Korea:** up to 30 per cent over a 10-year period commencing 1997;
   - **Mexico:** 75 per cent over 10 years from 1991-92, base year 1986;
Norway: 20 per cent in real terms over 8 years from base year 1988;

Poland: not less than 75 per cent over a 10-year period;

Romania: a progressive reduction in real terms;

South Africa: a reduction in line with other participants over 10 years from 1986 commensurate with its development needs, by way of more market-oriented policy measures;

Sweden: 30 per cent in real terms over a 10-year period from 1986 (prepared to increase the reduction to 40 or 50 per cent and consider different time periods as appropriate);

Switzerland: 20 per cent in real terms over 10 years from 1991, base 1989 or 1990;

United States: no less than 75 per cent over 10 years from 1991-92 on a 1986 to 1988 average base period for commodity-specific support, and for non-commodity-specific support, a 30 per cent reduction over the same period.

Some countries explicitly link to their chosen base period of the reform commitment the concept of credit for measures that have contributed positively to the reform programme since the Punta del Este Declaration.

3. In addition, most countries agree on the need for flexibility to be available to developing countries concerning both the magnitude (for example, Cairns Group (reduce commitment by up to 50 per cent), India (dependent on level of economic development), Mexico (function of the ratio of the total AMS value over total value agricultural production), Romania, Sweden, United States) and time-frame (for example, Austria, Cairns Group (extend by up to 5 years), Finland, India (dependent on level of economic development), Korea (a grace period for structural adjustment), Mexico, Romania (extend by 5 years), Sweden, United States) for implementing reduction commitments. Mexico also proposes the exclusion from the reduction commitments of products of fundamental interest to developing countries, in their case, maize, beans and dairy products.

4. The use of an Aggregate Measurement of Support (AMS) is a point on which there are differing views. Austria, the EC, Iceland, Japan, Korea, Mexico, Norway and others offer commitments on the basis of the AMS, while the Cairns Group, Canada, Poland, Sweden, Switzerland and the United States offer commitments on specific policies in addition to, or instead of, on the AMS. Finland notes that reductions in internal support will result from reductions in export subsidies and other means and South Africa notes that reductions will result from the introduction of more market-related policy measures.
5. Insofar as the AMS is used for commitments, it is generally accepted that equivalent commitments should be made for products where the calculation of an AMS is not practicable. The Cairns Group and United States offer commitments based on producer price support and budgetary outlays. The EC offers, as a basis for equivalent commitments, production aid for certain products and border measures for others. Sweden offers mainly tariff reductions on these products, while Norway offers reductions in budgetary outlays. Japan offers commitments on tariffs for some products for which AMS commitments are not offered. Austria also offers product-related specific commitments where an AMS is not practicable.

6. Concerning policy coverage of the reduction commitments, whether under the AMS or equivalent commitments, there is a difference between the offers concerning whether the "amber" category (policies to be reduced) is a residual of the "green" (or exempt) category or vice versa. Japan and Korea favour the latter approach while other offers adopt the former.

7. The Cairns Group, Canada, Mexico, Sweden and the United States propose some criteria to help govern the allocation of present and future support policies to either the green or amber category. In addition, there are certain policies that most participants agree should be exempt from reduction commitments. These include general services, disaster relief, domestic food aid, and resource retirement programmes. Where specific criteria are proposed, they have in most cases reflected this recognition. However, the question remains whether derogations from a general set of criteria are necessary in order to enable countries to exempt from reduction certain policies which may otherwise fall into the amber box. In particular, more flexible conditions for exempting support given as part of environmental or regional programmes have been advanced by Austria, Finland, Iceland, Japan, Korea, Norway, Sweden and Switzerland.

8. On the other hand, the Cairns Group, Mexico and the United States use a similar set of proposed criteria for exempting policies from reductions and do not propose any departure from the generally applicable conditions, other than in respect of developing countries. Canada links policy categories to countervailability.

9. Further examples of the different treatment of policies between green and amber by different participants include: income supports or safety nets which the EC places in the amber box while the Cairns Group, Canada and the United States place them in the green box; and investment subsidies which, conversely, the EC exempts from reduction while the Cairns Group and United States offer to place them in the amber box.

10. The policy coverage aspect is also important to establish a means for special and differential treatment for developing countries. The Cairns Group, India, Korea, Mexico, Romania and the United States explicitly recognize that the "green box" for developing countries should be wider than that for developed countries to allow the continuation and initiation of programmes to further development in these countries. The Cairns Group, India, Korea, Mexico and the United States propose different specific provisions to implement special and differential treatment for developing countries.
There are many other issues under internal support that remain outstanding. These include:

- the use of an AMS per unit (offered by Japan and Korea for certain products), versus a total AMS (favoured by most other participants);

- whether the AMS is to be on a commodity-specific basis (offered by Austria, the Cairns Group, Mexico and the United States) or a product sector basis (as offered, at least as an alternative, by Canada, the EC, Japan, Korea, Norway, Poland and Sweden);

- the use of a sector-wide non-commodity-specific AMS for generally available 'amber' policies (offered by the Cairns Group, Mexico and the United States). Austria offers an aggregate value for non-product-related support measures;

- the use of an annual or moving average reference price in those cases where domestic prices are directly linked to world prices (proposed by the Cairns Group);

- the use of a fixed reference price for the calculation of the value of direct payments based on support prices, in addition to the calculation of market price support (offered by the United States);

- the exclusion of the effects of border measures from the AMS (offered by the Cairns Group, Mexico and the United States);

- the adjustment of the AMS to take account of supply controls, including set-aside (offered by Canada, the EC, Japan, Norway, Switzerland and the United States), and import ratios and production restriction ratios for basic foodstuffs (offered by Japan);

- a de minimis approach to commitments where AMSs or equivalent policies are of only a limited size (offered by the Cairns Group);

- a means of taking inflation into account to ensure equitable commitments (offered by Austria, the Cairns Group, Finland, Iceland, Japan, Korea, Mexico, Norway, Sweden, Switzerland and the United States).

Market Access

11. In the area of market access, issues include both the modalities for reform, and of course the reduction amount. Most participants include tariffication in their offers. India and Japan do not; nor does Poland, where border protection is already tariff based, and Romania, which has notified a programme of liberalization of non-tariff measures. However of those who offer tariffication, a number of countries limit the scope to certain products. Offers are made to tariffify:
Austria: specified products excluding those subject to supply control measures covered by an improved Article XI:2(c)(i);

Cairns Group: all products;

Canada: all products except those subject to non-tariff measures explicitly allowed by the new or revised GATT rules;

EC: AMS products plus table wine, dried grapes, processed cherries and some fruit and vegetables;

Finland: all products except certain supply-controlled products and others for which variable levies or policies with similar effects will continue to be applied (details are still to be provided);

Iceland: all products except milk and meat products and live animals;

Korea: all products except those which are essential to maintain stable levels of farm income, products essential for the maintenance of the level of agricultural production necessary to meet non-trade objectives, and those products covered by Article XI:2(c)(i) - (i.e., tariffy all products except rice, barley, soybeans, maize, red peppers, garlic, onions, sesame seeds, white potatoes, sweet potatoes, citrus fruits, beef, pork, chicken, milk and dairy products). Non-tariff measures will be converted over a seven-year period beginning in 1991;

Mexico: all products with non-tariff measures in 1986 not resulting from previous GATT negotiations. Conversion into tariff equivalents, independently from the level of current duties, of all non-tariff measures removed since 1986.

Norway: all products except milk and some milk products (based on Article XI:2(c)(i)), meat from reindeer, deer and elk, and products with unbound tariff rates - (i.e., live animals, primary and processed meat products, eggs and potatoes);

South Africa: all products where possible;

Sweden: all products;
Switzerland: all products except those necessary for the maintenance of Swiss agriculture, the achievement of non-trade objectives, products subject to supply controls and those products for which tariffication would be technically impossible - (i.e., tariffy all products except milk products, beef and veal, pork, sheep and goat meat, sugar, fruit and vegetables, cereals for human consumption, potatoes and white wine);

United States: all products.

12. Several participants (Austria, the EC, Iceland, Norway, Sweden and Switzerland) have incorporated in their tariffication offer a corrective factor or stabilizer that compensates for at least part of world price and currency fluctuations. The Cairns Group and United States offers do not include a corrective factor. They propose a special safeguard provision based on price fluctuations and import surges allowing temporary recourse to defined tariff surcharges subject to notification but without compensation. Mexico offers a special safeguard that would allow a temporary suspension of the reduction commitment subject to notification. Switzerland offers, in addition to the corrective element, a volume-based safeguard. Finland and Korea offer safeguards allowing recourse to quantitative restrictions (on a temporary basis in Finland's case). In many offers, the duration of the corrective factor or safeguard is unclear. In Korea's case however, it is to be on a permanent basis, and for the Cairns Group and United States it is to be available for the transitional period only. Finland, Iceland and Norway propose to introduce variable levies for some products not included in tariffication. Of the above countries, all limit the use of the corrective factor or special safeguard to some or all of the products for which tariff equivalents or fixed components have replaced non-tariff measures except Finland, Korea, Switzerland and the United States who do not specify the coverage of such provisions.

13. Support for maintaining quantitative import restrictions under defined conditions mainly using Article XI:2(c)(i) (in some cases revised) has been expressed in the offers of a number of participants including: Austria, Canada, Finland, Iceland, Japan, Korea, Norway and Switzerland. Some of these countries have provided proposed redrafts of part or all of the Article or have indicated that they are willing to negotiate revisions. The continuation of Article XI:2(c)(i) is not an element in the offers of the Cairns Group, Mexico or the United States. In addition, Japan has proposed establishing a rule for border adjustment measures concerning the basic foodstuffs.
14. The concept of maintaining current access opportunities on current terms is part of the offers of the Cairns Group, Canada, the EC, Korea (for products subject to tariffication), Mexico, Switzerland (for those products where non-tariff measures apply) and the United States. Japan has offered to consider the maintenance of current access opportunities taking into account other factors. There is less agreement on the setting of a minimum access level to apply across the board. Access levels from 1 per cent of domestic consumption (Austria and Korea), through 3 per cent (the United States) to 5 per cent (the Cairns Group) have been offered, and Canada offers 1 per cent or 5 per cent of production (depending on previous import levels) for Article XI:2(c)(i) products. Finland offers minimum access under the current or revised Article XI:2(c)(i). Mexico offers minimum access at a level to be negotiated. Minimum access offers are also sometimes subject to exceptions for particular products or groups of products, such as basic foodstuffs in the case of Korea. Among participants who have offered the maintenance of existing, or the establishment of new minimum access, the Cairns Group, Canada (for tariffified products), Mexico and the United States have offered to expand this access over the implementation period. The use of tariff rate quotas to implement current or minimum access undertakings is proposed in many of the above offers.

15. The EC has drawn the linkage between tariffication and "rebalancing" which involves introducing tariff equivalents and tariff quotas for some products to reduce current serious disequilibria in support and protection. Other participants have noted that should rebalancing be agreed, it should be available to all participants (Austria and Sweden). Rebalancing is not an element in other offers.

16. The commitments offered on tariff equivalents and existing tariffs include:

Austria: for tariff equivalents, a linear 20 per cent over 10 years; for most other tariffs, a weighted average reduction of 19.65 per cent over the same period;

Cairns Group: the binding and trade weighted 75 per cent reduction over 10 years with a minimum of 50 per cent reduction per tariff line and a ceiling binding of 50 per cent at the end of the transition period;

Canada: existing tariffs reduced using a harmonizing formula over 10 years by a maximum reduction of 38 per cent per tariff line, tariff equivalents reduced using a harmonizing formula for a 50 per cent reduction or to a ceiling binding of 20 per cent (whichever is the greater) over the same period (or longer if negotiated);
EC: binding and annual reduction in tariff equivalents (fixed components) by an absolute amount reflecting the incidence of the internal support reduction;

Finland: to be shown in the specific offer - varying product to product, resulting in a 5 to 10 per cent reduction in border protection by 1996;

Iceland: up to 25 per cent reduction in tariff equivalents by 1996;

India: obligations depending on development level;

Japan: for those products for which an AMS commitment is not made and for which import restrictions are not applied, a target tariff reduction rate via request/offer equivalent to the reduction rate for all agricultural products implemented by Japan in the Tokyo Round;

Korea: tariff equivalents by up to 30 per cent over a 10-year period commencing 1991 (expansion of the scope of tariff bindings);

Mexico: for tariff equivalents, a negotiated elimination, for normal tariffs, the Mid-Term Review target on tariffs and consequent binding of all agricultural products;

Norway: for fixed elements resulting from tariffication 10 per cent reduction by 1996 for milk products, grains, seed grains and feed concentrates, 20 per cent reduction for remaining products for which a tariff equivalent with a corrective factor is established. Thirty per cent for tariff equivalents with no corrective factor - i.e., honey, plants and parts thereof, and other primary and processed products formerly subject to quantitative restrictions;

Poland: in line with other participants and development needs;

Romania: specific tariff offers;

South Africa: a reduction in line with other participants over 10 years from 1986 and commensurate with development needs;
Sweden: binding and reduction of the fixed component by an amount corresponding to internal support commitments (i.e., a 30 per cent reduction in internal support implies an estimated reduction in border protection of 10 to 15 per cent), for normal tariffs 30 per cent;

Switzerland: reduction of tariff equivalents reduced by an amount proportional to reductions in internal support over 10 years from 1991, for tariff-only products, 20 per cent over 10 years (some additional bindings);

United States: binding and reduction on a formula basis of no less than 75 per cent over 10 years commencing 1991-92 for all tariffs and tariff equivalents with a 50 per cent ad valorem equivalent ceiling following the implementation period.

17. Most offers (including those of Austria, the Cairns Group, Finland, India, Korea, Mexico, Romania, Sweden and the United States) include some flexibility for developing countries in the implementation of commitments (especially in terms of longer time-frames where an additional 5 years is proposed by the Cairns Group, Mexico and Romania). In addition the Cairns Group proposes that, for developing countries, the depth of cut in tariffs and tariff equivalents should be no less than 45 per cent of that applying to developed countries.

18. The offers also indicate other market access issues where participants differ significantly, such as:

- modalities of tariffication, i.e., the means by which tariff equivalents or fixed components are calculated. The EC offers to calculate tariff equivalents using the difference between their intervention price plus 10 per cent and the world market or import price, while most other participants use the difference between the average price ruling in the domestic market price and the c.i.f. or other world price. In addition, the EC proposes to convert part of their deficiency payments into tariff equivalents. Of those that specify base years in their offers, the EC and United States use the 1986 to 1988 average and Mexico uses the most recent period for which data are available;

- those offers that make specific proposals on the treatment of processed products in tariffication include: the EC (replacing the import charge with a fixed component derived from the basic commodities) and Finland (a reduction of processed product tariff equivalents at same rate as industrial products).
Export competition

19. In terms of the definition of export subsidies, the Cairns Group, Mexico and United States have offered similar lists of programmes to be covered although the Cairns Group and Mexico include payments to producers of a product which result in the price or return to the producers of that product when exported being higher than world market prices or returns (including deficiency payments) while the United States excludes these. Finland and Sweden exclude compensation for agricultural raw materials in processed products from their commitments.

20. Offers include the following commitments on export subsidies:

Austria: reduction of total budgetary outlay, from 1989 base year, to the extent which will result from reductions of internal measures, taking into account exchange rate fluctuations;

Cairns Group: reduction of budgetary outlays, per unit export assistance and quantities of subsidized exports by no less than 90 per cent over 10 years from 1991-92 on an average 1987 to 1989 base;

Canada: phase-out of existing government-funded export subsidies over 10 years;

EC: the proposed reduction of support and protection will lead to a considerable reduction of export subsidies in global expenditure as well as in unit terms on the assumption that world prices remain stable. The EC is ready to quantify these and other elements in its offer;

Finland: reduction of 60 per cent over 5 years from 1986 level (with further reductions to be agreed);

Iceland: reduction of up to 65 per cent of budgetary outlays and revenue foregone by 1996 based on a 1986 to 1989 average (prepared to continue further reductions after 1996 with the aim of abolition);

India: possible appropriate disciplines once developed country production and export subsidies are eliminated;

Mexico: total and immediate elimination of export subsidies;
eliminate all budgetary outlays on export subsidies by 1996;

Poland: eliminate all budgetary assistance of exports over a period not exceeding 5 years;

Romania: 30 per cent progressive reduction in budgetary outlays;

South Africa: a reduction in line with other participants and commensurate with development needs and political developments;

Sweden: eliminate all export subsidies except compensation for agricultural raw materials in processed products and food aid;

Switzerland: reduction by 30 per cent in real terms of budgetary outlays over a period of 10 years from a 1989 or 1990 base except compensation for agricultural raw materials in processed product exports which will be reduced in line with internal prices;

United States: reduction of both budgetary outlays and quantities exported by at least 90 per cent over 10 years from 1991-92 on a 1986 to 1988 base. Export subsidies on processed products to be eliminated over 6 years. Producer-financed export subsidies to be subject to the reduction commitment.

In addition to the above commitments, many participants propose additional disciplines on the use of export subsidies:

- rules and disciplines to be negotiated (Austria);

- targeted export subsidies to be progressively eliminated (the Cairns Group);

- no provision of export subsidies to products or markets in respect of which export subsidies were not provided in the 1987 to 1989 period (the Cairns Group);

- new government-funded export subsidies to be prohibited (Canada);

- export subsidies should have an upper limit and not be used to increase trade share for particular commodities from those shares held in the 1986 to 1988 period (Canada);
- limit on export subsidies to the difference between the exporter's domestic price and the world market price (the EC);
- limit on export subsidies to the level of the import charge applied on the same product when imported into the exporting country (the EC);
- enforcement of the notion of "equitable" market share in Article XVI:3 (the EC);
- limit on subsidies applied to exports of agricultural commodities incorporated in processed products to the difference between the exporter's domestic price and the world market price of the agricultural products concerned (the EC);
- extension of the OECD "Consensus" on export credits to agricultural products and its incorporation into the GATT (the EC);
- no provision of export subsidies to commodities in respect of which export subsidies were not provided in the past (the EC);
- development of clearer rules on policies that equalize the difference between world market and domestic prices on raw material components of the food processing industry (Finland);
- producer-financed export subsidies should be tightly circumscribed (Sweden);
- no provision of export subsidies to basic products not already receiving them (Switzerland);
- export subsidies on processed products will be reduced in line with reductions of internal prices (Switzerland).

21. The issue of food aid is also important in terms of export subsidies - in terms of the potential for the circumvention of commitments, but more importantly in terms of continuing to provide assistance to developing countries, especially net food-importing developing countries, in meeting the food needs of their people. The Cairns Group and the United States have offered disciplines to ensure these objectives such as seeking to assure a sufficient level of food aid to ensure that any increase in the prices of essential food imports does not affect access to food supplies (Cairns Group and the United States). The United States has also offered the provision of food aid in accordance with the FAO Committee on Surplus Disposal "usual marketing requirements" system (and other countries also note the need for commitments or improved rules on concessional sales and food aid).
22. Another issue on which agreement needs to be reached is that of measures necessary to help net food-importing developing countries maintain their supplies of basic foodstuffs should world prices rise significantly during the implementation period. This is recognized in the offers including those of the Cairns Group and the United States. The United States proposes an agreement to recognize that countries concerned may be eligible to draw on the resources of international financial institutions under certain conditions.

Other


Implementation of Commitments

24. Some offers propose means of implementing the commitments made. These include:

- **Cairns Group:** commitments on internal support, border protection and export competition will be bound in country schedules annexed to Article II of the General Agreement;

- **Japan:** the establishment of rules to ensure the fulfilment of commitments and to allow consultation where commitments are not met;

- **Sweden:** annual implementation plans showing how generally applicable rates of reduction can be operationalized in country reforms. These plans will be monitored in a body to be established in order to follow up the Uruguay Round reform in agriculture;

- **Switzerland:** mechanism of surveillance and review must be introduced so as to ensure the respect of commitments taken by participants;

- **United States:** country plans submitted in advance will constitute a binding commitment for each participant.
APPENDIX C

FRAMEWORK AGREEMENT ON AGRICULTURE REFORM PROGRAMME

DRAFT TEXT BY THE CHAIRMAN

(MTN.GNG/NG5/W/170)

Introduction

1. In line with the requirements set out by the Chairman of the TNC at its eleventh meeting (MTN.TNC/14 refers) the following text outlines a framework of modalities for negotiation leading to agreement on the Reform Programme which has been adopted by participants in the Negotiating Group on Agriculture on ........... Its purpose is to establish a basis for initiating the reform process in line with the objectives of the negotiations as set out in the Punta del Este Declaration and the Mid-Term Review Agreement. Participants note that their agreement to this text is conditional both on the satisfactory negotiation of certain issues within it and on the overall balance of agreements in the Round as a whole. The framework covers the following: internal support, border protection, export competition, reduction targets, sanitary/phytosanitary regulations and barriers, rules, surveillance, and provides a basis for taking account in the negotiation of non-trade concerns, special and differential treatment for developing countries, and the situation of net food-importing developing countries.

A. INTERNAL SUPPORT

2. Participants agree that a substantial and progressive reduction of internal support to agriculture shall be implemented so as to minimize trade distortion and increase the market orientation of production, while maintaining the possibility for contracting parties to pursue national policy goals affecting agriculture through policies with minimal trade effects.

3. Accordingly, the Mid-Term Review commitment by developed countries not to exceed current levels of support per commodity (MTN.TNC/11, paragraph 14 refers) shall continue in force for the duration of the implementation period to be agreed for the results of these negotiations. Furthermore, all internal support with the exception of policies which meet certain agreed criteria shall be reduced from 1991-92 over an agreed number of years at a rate to be negotiated in line with paragraph 2 above, using an Aggregate Measure of Support as described below.
4. The progressive and substantial reduction of all internal support to agriculture other than that whose exemption is agreed under paragraphs 9-11 below shall apply at national and sub-national level. This commitment shall encompass market price support, including any measure which acts to maintain producer prices at levels above those prevailing in international trade for the same or comparable products, and taking account of levies or fees paid by producers; direct payments to producers other than those which may be exempted on the basis of the agreed criteria, including deficiency payments and taking account of levies or fees paid by producers; and input and marketing cost reduction measures available only in respect of agricultural production, including credit and other financial input assistance and taking account of input taxes.

5. Participants agree that an Aggregate Measure of Support (AMS) shall be used in the expression and implementation of the commitments to substantial and progressive reduction set out above, with equivalent commitments for products where an AMS cannot be calculated. The AMS will be expressed by total monetary value per commodity using the base year 1988 and a fixed reference price based on 1986-88 data. It will be applied for a negotiated period. The fixed reference price may be subject to periodic reassessment. The policy coverage of the AMS for the purpose of commitments shall include the policy categories noted in paragraph 4 above as well as any other policies not qualifying for exemption on the basis of the agreed criteria (see paragraph 9 below).

6. Participants will submit, no later than 1 October 1990, country lists drawn up according to the following parameters:

(a) the level of support per commodity which is proposed to be bound as an overall ceiling;

(b) the policies proposed for exclusion from the commitment to substantial and progressive reduction on grounds of their conformity with the criteria outlined below;

(c) the products for which an AMS can be calculated;

(d) for each of the above products, the AMS base level to be subject to reduction.

7. Participants also agree that, where the calculation of an AMS is not practicable, the products concerned shall be subject to equivalent commitments which are to be specified in conjunction with the country lists.

8. The policies which may be excluded from the commitment to progressive and substantial reduction, but which will remain subject to the overall ceiling on support as well as to surveillance and review on a basis to be
agreed, shall include programmes aimed at providing general services of a generally beneficial public nature to agriculture and the rural community; environmental and conservation programmes; resource diversion and retirement programmes; bona fide disaster relief, crop insurance and domestic food aid; public stockholding for food security purposes; regional development and income safety-net programmes. Such policies must conform to criteria which are to be based on the following elements:

(a) the assistance must be provided through a taxpayer-funded government programme not involving transfers from consumers;

(b) it must not be linked to current or future levels of production or factors of production, except to remove factors from production;

(c) it must not be restricted to any specific agricultural product or product sector;

(d) it must not have the effect of providing price support to producers;

(e) in the case of income safety-net programmes, it must not maintain producer incomes at more than \([x]\) per cent of the most recent three-year average.

The condition in (c) above shall not apply to general services.

9. The formulation as necessary of more specific criteria based on the elements above shall take account of the proposals in the country lists. This process will also allow for the possibility of negotiating additional requirements where justified. The criteria thus agreed will continue in force as part of the result of the negotiation.

10. In conjunction with the arrangements for monitoring and surveillance, a basis will be agreed for review of the initial assignment of a specific policy or policies to the category exempt from substantial and progressive reduction. Where in the course of such review a policy cannot be shown to have satisfied the agreed criteria for inclusion in this category, it shall be placed under the commitment to substantial and progressive reduction. The treatment of any new policies, including the modification of current policies, shall be decided on a similar basis following their prior notification. The review process will also provide the means of taking account of excessive rates of inflation in relation to the implementation of commitments.

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*Including: research, advisory and training programmes; inspection; pest and disease control; marketing and promotion.
11. Flexibility concerning the nature and extent of commitments and the timing of their implementation may be accorded to developing countries, on a basis to be agreed, in keeping with the recognition in the Mid-Term Review Agreement that assistance to agriculture to encourage agricultural and rural development is an integral part of the development programmes of these countries. In particular, developing countries' assistance to agriculture in pursuit of development objectives shall be exempt from the reduction commitments set out above, provided that (i) it has no, or a minimal, effect on trade and that (ii) it does not act to maintain domestic prices higher than free-at-frontier prices for like products.

B. BORDER PROTECTION

12. Participants agree that, in order to foster the market orientation of domestic policies which should result from commitments on internal support, market access opportunities will be improved in line with substantial and progressive reductions of support and protection. Accordingly, participants agree to negotiate commitments on all border measures on the basis of country lists covering all products subject to these measures. Relevant non-trade concerns shall be accommodated to the maximum possible extent within this approach. These country lists shall be tabled by 1 October 1990 and built on the following parameters:

(a) conversion of all border measures other than normal custom duties into tariff equivalents, irrespective of the level of existing tariffs; the modalities of such a conversion should be based on the existing gap between external and internal prices as close as possible to actual prices and following the guidelines contained in Annex I;

(b) binding of these tariff equivalents;

(c) maintenance of current access opportunities on terms at least equivalent to those existing through, inter alia, tariff quotas;

(d) in the case of absence of significant imports, establishment of a minimum level of access from 1991-92, also on the basis of tariff quotas at low or zero rate and representing at least [x] per cent of current domestic consumption of the product concerned;

(e) for products subject to normal custom duties only, current access opportunities shall be maintained on terms at least equivalent to those existing; in particular, all existing tariff rates shall be bound.

13. Participants also agree that the tabling of these country lists shall be without prejudice to the possibility of negotiating specific solutions in case of particular situations which may exist for some products.
14. All tariffs and tariff equivalents as agreed on the basis of the country lists shall be substantially and progressively reduced from 1991-92 at an average rate and over a number of years to be negotiated in line with paragraph 2 above. Tariff quotas as agreed on the basis of the country lists shall be expanded at an average rate and over a number of years to be negotiated as above. This would allow for the possibility of negotiating specific rates of reduction of tariff equivalents and/or specific rates of expansion of tariff quotas in case of particular situations which may exist for some products. All access opportunities over and above existing levels shall be on an m.f.n. basis.

15. Participants further agree that in implementing the commitments on market access, the particular needs and conditions of developing countries shall be fully taken into account by providing, inter alia, for a faster rate of reduction of tariffs and tariff equivalents and/or a faster rate or expansion of tariff quotas for products of particular interest to these countries. Developing countries shall also be allowed, where necessary, to give effect to the implementation of their commitments in a way commensurate with their development needs.

16. With respect to the implementation of the above commitments, participants agree that special safeguard provisions will be negotiated which should enable recourse to tariff increases, subject to notification requirements but without compensation, and which will become operative in case of import surges or world price movements, expressed in terms of domestic currencies, which exceed limits to be agreed. Such tariff increases would only remain in force as long as the conditions for their implementation continue to exist. Tariffs will then return to levels consistent with the commitments undertaken.

C. EXPORT COMPETITION

17. Participants agree that, in line with the objective of establishing a fair and market-oriented agricultural trading system, direct budgetary assistance to exports, other payments on products exported and other forms of export assistance are to be substantially and progressively reduced and that the use of permitted export assistance will be subject to strengthened and more operationally effective GATT rules and disciplines.

18. Participants agree that the commitments to reduce export assistance shall result in such assistance being reduced effectively more than other forms of support and protection and that these commitments may take the form of commitments to progressively reduce aggregate budgetary outlays on export assistance, per unit export assistance, the total quantity of a product in respect of which export assistance may be provided, or some combination of such commitments.

19. The annual average for the three most recent financial or marketing years in respect of budgetary outlays, per unit export assistance and quantities of subsidized exports shall constitute the base for negotiating an agreed percentage reduction in export assistance over an implementation period of [y] years.
20. Accordingly by 1 October 1990 participants shall table country lists for each of the three most recent financial or marketing years providing data on financial outlays or revenue foregone at the national and sub-national level in respect of:

(a) direct financial assistance to exporters to compensate for the difference between the internal market price in the exporting country and world market prices;

(b) payments to producers of a product which result in the price or return to the producers of that product when exported being higher than world market prices or returns;

(c) costs related to the sale for export of publicly owned or financed stocks;

(d) assistance to reduce the cost of transporting or marketing exports;

(e) export credits provided by governments or their agencies on less than fully commercial terms;

(f) the provision of financial assistance in any form by governments and their agencies to export income or price stabilization schemes operated by producers, marketing boards or other entities which play de facto a dominant role in the marketing and export of an agricultural product;

(g) export performance-related taxation concessions or incentives;

(h) subsidies on agricultural commodities incorporated in processed product exports.

21. Corresponding data for the base period shall also be tabled on the quantities of subsidized exports and on related per unit export subsidies.

22. Concurrently negotiations shall proceed on disciplines to govern the use of export assistance including, inter alia: (i) conditions designed to eliminate targeted export subsidy practices; (ii) conditions governing government participation in the operation of producer-financed export subsidy schemes; (iii) disciplines relating to subsidies on agricultural commodities incorporated in exported products; (iv) disciplines on export credits; and (v) disciplines on food aid and concessional sales.

23. The disciplines to be negotiated on food aid and concessional sales shall ensure that supplies of basic foodstuffs are available to least developed and net food-importing developing countries on appropriate terms and conditions.
D. **REDUCTION TARGETS**

24. Participants will negotiate the amount and duration of the substantial and progressive reductions in support and protection as soon as the country lists are tabled as agreed above.

E. **SANITARY AND PHYTOSANITARY REGULATIONS AND BARRIERS**

25. Participants agree to conduct negotiations on sanitary and phytosanitary regulations and barriers on the basis of the text contained in Annex II.

F. **RULES AND DISCIPLINES**

26. Participants agree that concurrently with the negotiation of the commitments outlined above, they will undertake negotiations aimed at strengthening GATT rules and disciplines and making them more operationally effective in line with the long-term objective of the agricultural negotiations as agreed in the Mid-Term Review (MTN.TNC/II, paragraph 5 refers).

G. **SURVEILLANCE**

27. Arrangements for the surveillance of the implementation of the commitments negotiated on the basis of this framework shall be agreed by the end of the negotiation. Similar arrangements will also be agreed to provide as necessary for review of certain aspects of commitments as indicated in the preceding chapters.

*Document MTN.GNG/NG5/WGSP/7 refers.*
ANNEX I

Guidelines for tariffication

The calculation involved in the conversion of border measures other than normal customs duties into tariff equivalents must be carried out in a transparent manner using data, data sources and definitions that are made available to all contracting parties. Following the estimation of initial tariff equivalents, their rates will be subject to scrutiny and negotiation by interested contracting parties.

The calculation of the initial tariff equivalents will use the following guidelines:

(a) data used will be for the most recent period available;

(b) calculations will be carried out for all principal products traded. This implies that:

(i) for major commodities, calculation would generally be made at the four-digit level of the HS;

(ii) for other products, including for individual fruits and vegetables, calculation would be made up to the six-digit level of the HS;

(c) in all cases initial tariff equivalents for products derived from principal products would be calculated by multiplying the initial tariff equivalents for the principal product(s) by the proportion of principal product(s) in the derived product;

(d) the initial tariff equivalent calculation for the principal product should be adjusted as necessary to take account of differences in quality or variety using an appropriate coefficient;

(e) external prices would be, in general, actual c.i.f. unit values for the importing country;

(f) where c.i.f. unit values are neither available nor appropriate, external prices would be either: (i) appropriate c.i.f. values of a near country; or (ii) estimated from f.o.b. values of an appropriate major exporter adjusted by adding an estimate of c.i.f. costs;

(g) in all cases external prices would be converted to domestic currencies using the annual average market exchange rate for the same periods as the price data;

(h) the internal price would be the average price ruling in the domestic market;

(i) initial tariff equivalents would be expressed as ad valorem or specific rates.
The attached text is being submitted on the sole responsibility of the chairman of the Working Group on Sanitary and Phytosanitary Measures. Nonetheless it does, in the chairman's view, accurately reflect the widespread consensus of participants of the Working Group with respect to most of its provisions. Brackets identify the principal issues where disagreement remains, and, when appropriate, alternative phrases have been provided.

Many of the brackets are interlinked and in such cases a single decision will suffice to determine the retention or elimination of several bracketed phrases. In this regard, the first set of brackets in paragraph 4, the brackets in paragraphs 16 and 21, and the brackets in the note to definition 1 and in definition 4 (Annex A) are all linked to the question of whether or not this agreement should apply to measures taken for the protection of animal welfare and of the environment, as well as of consumer interests and concerns (see Note to definition 1). The brackets in paragraph 6 are linked to the decision with respect to sub-national obligations in paragraph 46. On the other hand, the alternatives in paragraphs 10, 18 and 29 represent different positions, with some participants maintaining that if alternative 2 for paragraph 10 is finally retained, the text which appears in the second set of brackets in paragraph 4 would also be necessary.

The brackets of paragraphs 36 and 37 are, as indicated by the note to these paragraphs dependent on the final form of the agreement, whereas the brackets of paragraphs 42, 44 and 45 indicate an apparent lack of consensus with respect to the proposed monitoring procedure. Finally, provisions for the entry into force of the agreement and its subsequent review, paragraphs 48 and 49, respectively, are also bracketed pending decisions in this regard.

Given the desire of participants for the application of the proposed disciplines to all contracting parties, this draft has been presented in the form of a Decision by the CONTRACTING PARTIES on the Application of Sanitary and Phytosanitary Measures. This is, however, without prejudice to the final form the agreement might take.

This draft text may subsequently be reproduced as part of the text prepared in respect of the agricultural negotiations as a whole.
DECISION BY CONTRACTING PARTIES ON THE APPLICATION
OF SANITARY AND PHYTOSANITARY MEASURES

The CONTRACTING PARTIES,

Reaffirming that no contracting party should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

Desiring to improve the human health, animal health and phytosanitary situation in all contracting parties;

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the adoption, development and the enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between contracting parties, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention;

Recognizing that developing contracting parties may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing contracting parties, and as a consequence, in access to markets, and also in the formulation and application of sanitary or phytosanitary measures in their own territories, and desiring to assist them in their endeavours in this regard;

Desiring therefore to elaborate rules for the application of the provisions of the General Agreement which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b);

*In this decision, reference to Article XX(b) includes also the chapeau of that Article.
Decide as follows:

1. This decision applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this decision.

2. For the purposes of this decision, the definitions provided in Annex A shall apply.

3. The annexes are an integral part of this decision.

Basic Rights and Obligations

4. Contracting parties have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health [within their territories], [including, when appropriate, measures more stringent than required by international standards, guidelines or recommendations,] provided that such measures are not inconsistent with the provisions of this decision.

5. Contracting parties shall ensure that sanitary and phytosanitary measures are applied only to the extent necessary to protect human, animal or plant life or health, are based on scientific principles and are not maintained against available scientific evidence.

6. Contracting parties shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between contracting parties where identical or similar conditions prevail, including between their own territory [or parts thereof] and other contracting parties. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

7. Sanitary or phytosanitary measures which conform to the relevant provisions of this decision shall be presumed to be in accordance with the obligations of the contracting parties under the provisions of the General Agreement which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Harmonization

8. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, contracting parties shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this decision.

9. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this decision and of the General Agreement.
10. **Alternative 1:**

[Contracting parties may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of protection a contracting party determines to be appropriate in accordance with paragraph 19. Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not otherwise be inconsistent with the provisions of this decision.]

**Alternative 2:**

[Contracting parties shall not introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standard, guideline or recommendation, where such exist, without reasonable scientific justification.]

11. Contracting parties shall play a full part within the limits of their resources in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and in the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

12. The Committee on Sanitary and Phytosanitary Measures shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

**Equivalence**

13. Contracting parties shall accept the sanitary or phytosanitary measures of other contracting parties as equivalent, even if these measures differ from their own or from those used by other contracting parties trading in the same commodity, if the exporting contracting party objectively demonstrates to the importing contracting party that its measures achieve the importing contracting party's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing contracting party for inspection, testing and other relevant procedures.
14. Contracting parties shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

15. Contracting parties shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

16. In the assessment of risks, contracting parties shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; ecological [and environmental] conditions; and quarantine or other treatment.

17. In assessing the risk and determining the appropriate level of sanitary or phytosanitary protection, contracting parties shall take into account as relevant economic factors the potential damage in terms of loss of production or sales in the event of the establishment or spread of a pest or disease, the costs of control or eradication in the importing contracting party, and the relative cost effectiveness of alternative approaches to limiting risks.

18. Alternative 1:

[Contracting parties shall, in the determination of the appropriate level of sanitary or phytosanitary protection, take into account the desirability of maximizing trade opportunities while ensuring the legitimate and necessary protection of human, animal or plant life or health.]

Alternative 2:

[In cases of dispute settlement, the impact on the production or sales of an exporting contracting party because of the adoption of sanitary or phytosanitary measures more stringent than necessary according to verifiable scientific evidence, or relevant economic considerations, or an acceptable level of risk, should also be taken into account.]

19. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary and phytosanitary protection against risks to human life or health, or to animal and plant life or health, each contracting party shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.
20. Contracting parties shall co-operate in the Committee on Sanitary and Phytosanitary Measures in accordance with paragraphs 40 and 41 of this decision, to develop guidelines to further the practical implementation of this provision. In developing the guidelines the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

21. Without prejudice to paragraph 9, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, contracting parties shall ensure that such measures are the least restrictive to trade, taking into account technical and economic feasibility [and other economic considerations and genuine consumer concerns].

22. In cases where relevant scientific evidence is insufficient, a contracting party may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other contracting parties. In such circumstances, contracting parties shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

23. When a contracting party has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another contracting party is constraining or has the potential to constrain its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the contracting party maintaining the measure.

Adaptation to Regional Conditions, including Disease-Free Areas and Areas of Low Pest or Disease Prevalence

24. Contracting parties shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether a country, part of a country, or areas of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, contracting parties shall take into account, inter alia, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.
25. Contracting parties shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

26. Exporting contracting parties claiming that areas within their territories are pest- or disease-free or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing contracting party that such areas are, and are likely to remain, pest- or disease-free or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing contracting party for inspection, testing and other relevant procedures.

Transparency

27. Contracting parties shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

Control, Inspection and Approval Procedures

28. Contracting parties shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this decision.

29. Alternative 1:

[ ] - no provisions necessary.

Alternative 2:

[Contracting parties shall ensure that systems for approval of the use of food additives or tolerances for contaminants in food, feedstuffs, or beverages: (a) are based on sound scientific principles; (b) are operated in a manner that is transparent (as provided in Annex B) and non-discriminatory (as provided in Annex C); and (c) result in timely approval decisions (as provided in Annex C). Notwithstanding any other provision of this decision, a contracting party operating such a system may prohibit or restrict access to its domestic markets for imported products, based on the absence of an approval required by the importing contracting party.]
Alternative 3:

[Contracting parties shall ensure that systems for approval of the use of food additives or tolerances for contaminants in food, feedstuffs, or beverages: (a) are based on sound scientific principles; (b) are operated in a manner that is transparent (as provided in Annex B) and non-discriminatory (as provided in Annex C); and (c) result in timely approval decisions (as provided in Annex C). Notwithstanding any other provision of this decision, a contracting party operating such a system may prohibit or restrict access to its domestic markets for imported products, based on the absence of an approval required by the importing contracting party. However, a contracting party shall not impose such prohibition or restriction based solely on the absence of an approval if: (a) there is an applicable international standard adopted after [the entry into force of this decision]; (b) the product conforms to the applicable international standard; and (c) at least nine months have elapsed since: (i) the relevant international standard was adopted; (ii) the data considered in developing the standard were provided to the contracting parties by the Committee on Sanitary and Phytosanitary Measures; and (iii) a complete application for the required approval has been submitted.]

Alternative 4:

[A contracting party operating any procedure for approval of food additives or tolerances for contaminants in food, feedstuffs or beverages, may not prohibit or restrict the access of imported products to its markets because its approval procedure has not been completed, unless it operates that procedure in a manner consistent with the disciplines outlined in this agreement. However, when a relevant international standard exists, the importing contracting party shall not prohibit or restrict access for products that conform to that standard for longer than 4 months after receiving an application for approval, unless during that time the importing contracting party introduces a standard that differs from the applicable international standard in accordance with paragraph 10.]

Technical Assistance

30. Contracting parties agree to facilitate the provision of technical assistance to other contracting parties, especially developing contracting parties, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.
31. Where substantial investments are required in order for an exporting developing contracting party to fulfil the sanitary or phytosanitary requirements of an importing contracting party, the latter shall consider providing such technical assistance as will permit the developing contracting party to maintain and expand its market access opportunities for the product involved.

Special and Differential Treatment

32. In the preparation and application of sanitary or phytosanitary measures, contracting parties shall take account of the special needs of developing contracting parties, and in particular of the least-developed ones.

33. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing contracting parties so as to maintain opportunities for their exports.

34. With a view to ensuring that developing contracting parties are able to comply with the provisions of this decision, the Committee on Sanitary and Phytosanitary Measures is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this decision, taking into account their financial, trade and development needs.

35. Contracting parties should encourage and facilitate the active participation of developing countries in the relevant international organizations.

Consultations and Dispute Settlement

[Note: Depending on the form of this agreement, it may be necessary to make specific provisions with respect to dispute settlement. If the agreement takes the form of a Decision by CONTRACTING PARTIES, the following provisions would be appropriate.]

36. This decision shall be subject to the provisions of Articles XXII and XXIII and the dispute settlement procedures applicable to those articles as adopted by the CONTRACTING PARTIES.

37. In a dispute under this decision involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.]
38. Nothing in this decision shall impair the rights of contracting parties under other international agreements, including the rights to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

39. In cases where a developing contracting party is involved in dispute settlement on sanitary or phytosanitary issues, the GATT Secretariat shall facilitate the provision of technical and legal advice and information to it.

**Administration**

40. A Committee on Sanitary and Phytosanitary Measures shall be established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this decision and the furtherance of its objectives, in particular with respect to harmonization. To this end, the Committee shall encourage the use of international standards, guidelines or recommendations by all contracting parties. It shall also encourage and facilitate ad hoc consultations or negotiations among its members on specific sanitary or phytosanitary issues. The Committee shall reach its decisions by consensus.

41. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this decision and in order to ensure that unnecessary duplication of effort is avoided.

42. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. [For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by contracting parties of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a contracting party does not apply an international standard, guideline or recommendation as a condition for import, the contracting party should provide an indication of the reason thereof, and, in particular, if it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection.]

43. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the existing procedures, particularly for notification, which are in operation in the relevant international organizations.
44. [If a contracting party revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the GATT as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.]

45. The Committee may, on the basis of an initiative from one of the contracting parties, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, [including the basis of explanations for non-use given according to paragraph 44 above].

Implementation

46. [Contracting parties shall ensure that governmental authorities within their territories comply with the relevant provisions of this decision.] [Contracting parties shall ensure the observance of the provisions of this decision by the regional and local governments and authorities within its territory in accordance with Article XXIV:12 of the General Agreement.] Contracting parties shall also take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this decision. In addition, contracting parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities to act in a manner inconsistent with the provisions of this decision.

Final Provisions

47. Nothing in this decision shall affect the rights of parties to the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this decision.

48. [With respect to existing mandatory legislation inconsistent with this decision, this decision shall enter into force on [plus 2 years]. With respect to all other sanitary or phytosanitary measures, this decision shall enter into force on [plus 6 months]. Developing contracting parties may delay application of this decision until [plus 2 years] with respect to their sanitary or phytosanitary measures affecting importation or imported products.]

49. [The provisions of the decision shall be reviewed and revised as appropriate 5 years after its entry into force.]
ANNEX A
Definitions *

For the purposes of this decision, the following definitions shall apply:

1. **Sanitary or phytosanitary measure** - Any measure applied:
   - to protect animal or plant life or health within the territory of a contracting party from risks arising from the establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
   - to protect human or animal life or health within the territory of a contracting party from risks arising from additives, contaminants, toxins or disease-causing organisms, in foods, beverages or feedstuffs;
   - to protect human life or health within the territory of a contracting party from risks arising from diseases carried by animals, plants or products thereof or from the establishment or spread of pests; or
   - to prevent or limit other damage within the territory of a contracting party arising from the establishment or spread of pests;

**NOTE:** Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processing and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; packaging and labelling requirements directly related to food safety; [measures for the protection of animal welfare and of the environment, as well as of consumer interests and concerns]. Requirements concerning quality, composition, grading, [consumer preferences, consumer information, animal welfare, the

*For the purpose of these definitions "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticide and veterinary drug residues and extraneous matter.*
2. **Harmonization** - The establishment, recognition and application of common sanitary and phytosanitary measures by different contracting parties.

3. **International standards, guidelines and recommendations**
   - for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;
   - for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;
   - for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in co-operation with regional organizations operating within the framework of the International Plant Protection Convention;

   and, for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all contracting parties, as identified by the Committee on Sanitary and Phytosanitary Measures.

4. **Risk assessment** - The evaluation of the likelihood of establishment or spread of pests or diseases [within the territory of the importing contracting party and the relevant potential biological and economic consequences,] [and the relevant potential biological, environmental and economic consequences,] or the evaluation of the potential adverse effects on human or animal health arising from additives, contaminants, toxins or disease-causing organisms in foods, feedstuffs and beverages.

5. **Appropriate Level of Sanitary or Phytosanitary Protection** - The level of protection deemed appropriate by the contracting party establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory. (Note: Many parties otherwise refer to this concept as the "acceptable level of risk".)

6. **Pest-or Disease-Free Area** - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.

**NOTE:** A pest- or disease-free area may surround, be surrounded by, or be adjacent to an area - whether within part of a country or in a geographic region which includes parts of or all of several countries - in which a
specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

7. **Area of low pest or disease prevalence** - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels and which are subject to effective surveillance, control or eradication measures.
ANNEX B

Transparency of Sanitary and Phytosanitary Regulations

1. Publication of regulations

1.1 Contracting parties shall ensure that all sanitary and phytosanitary regulations which have been adopted are published promptly in such a manner as to enable interested contracting parties to become acquainted with them.

1.2 Except in urgent circumstances, contracting parties shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting countries, and particularly in developing countries, to adapt their products and methods of production to the requirements of the importing country.

2. Enquiry points

2.1 Each contracting party shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested contracting parties as well as for the provision of relevant documents regarding:

- (a) any sanitary or phytosanitary regulations adopted or proposed within its territory;
- (b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;
- (c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary and phytosanitary protection;
- (d) the membership and participation of the contracting party, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this decision, and copies of the texts of such agreements and arrangements.

2.2 Contracting parties shall ensure that where copies of documents are requested by interested contracting parties, they are supplied at the same

*Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally.
price (if any), apart from the real cost of delivery, as to the nationals of the contracting party concerned.

3. Notification procedures

3.1 Whenever an international standard, recommendation or guideline does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, recommendation or guideline, and if the regulation may have a significant effect on trade of other contracting parties, contracting parties shall:

   (a) publish a notice at an early stage, in such a manner as to enable interested contracting parties to become acquainted with the proposal to introduce a particular regulation;

   (b) notify other contracting parties, through the GATT Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;

   (c) provide upon request to other contracting parties copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, recommendations or guidelines;

   (d) without discrimination, allow reasonable time for other contracting parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

3.2 However, where urgent problems of health protection arise or threaten to arise for a contracting party, that contracting party may omit such of the steps enumerated in paragraph 3.1 of this Annex as it finds necessary, provided that the contracting party:

   (a) immediately notify other contracting parties, through the GATT Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);

   (b) provide upon request to other contracting parties copies of the regulation;

   (c) allow other contracting parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.
3.3 Notifications to the GATT Secretariat shall be either in English, French or Spanish.

3.4 Developed contracting parties shall, if requested by other contracting parties, provide copies of the documents or, in case of voluminous documents, summaries of the documents covered by a specific notification in either English, French or Spanish.

3.5 The GATT Secretariat shall promptly circulate copies of the notifications to all contracting parties and interested international organizations and draw the attention of developing contracting parties to any notifications relating to products of particular interest to them.

3.6 Contracting parties shall designate one single central government authority as responsible for the implementation, on the national level, of the provisions concerning notification procedures according to paragraphs 3.1, 3.2, 3.3 and 3.4 of this Annex.

4. General reservations

4.1 Nothing in this decision shall be construed as requiring:

   (a) the provision of particulars or copies of drafts or the publication of texts other than in the language of the contracting party except as stated in paragraph 3.4 of this Annex; or

   (b) contracting parties to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.
ANNEX C

Control, Inspection and Approval Procedures *

1. Contracting parties shall ensure, with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, that:

(a) such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;

(b) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body as soon as possible transmits the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and that upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(c) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances;

(d) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;

(e) any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;

(f) any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other country and should be no higher than the actual cost of the service;

*Control, inspection and approval procedures include, inter alia, procedures for sampling, testing and certification.
(g) the same criteria should be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;  

(h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned;  

(i) a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.

2. Where a sanitary or phytosanitary measure specifies control at the level of production, the contracting party in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.  

3. Nothing in this decision shall prevent contracting parties from carrying out reasonable inspection within their own territories.
AGREEMENT ON SAFEGUARDS

Commentary

The main questions requiring an answer include:

Should selective exceptions to the normal application of Article XIX be permitted in exceptional circumstances and subject to specific conditions or should it be confirmed that Article XIX action can only be taken on an m.f.n. basis? (Paragraphs 5, [8] and [10a].)

Should incentives be provided for governments to act within the rules of Article XIX e.g. by waiving retaliation in specific circumstances, and, if so, what are those circumstances? (Paragraph 19.)

Should "grey-area" measures be phased out or brought into conformity with this agreement? (Paragraph 24.) If so, what are the conditions and time-tables for such actions? (Paragraph 25.)

Should adjustment assistance measures be adopted as a form of safeguard measure? (Paragraphs 15 and 16.) Put in another way, should Safeguards provisions provide for an exemption from GATT disciplines governing subsidies if these subsidies are for structural adjustment purposes?

What room is there for special and differential treatment for developing and least-developed countries in this area? (Paragraphs 20, 21 and 22.)

What time periods should be included in paragraphs 9, 11, 13, or 23?

What should be the obligations of a customs union in relation to safeguard actions? (Footnote 1 to paragraph 2).
AGREEMENT ON SAFEGUARDS

PREAMBLE

The CONTRACTING PARTIES:

Having in mind the overall objective of the contracting parties to improve and strengthen the international trading system based on the General Agreement on Tariffs and Trade;

Recognizing the need to clarify and reinforce the disciplines of the General Agreement, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all contracting parties and based on the basic principles of the General Agreement, is called for;

Hereby agree as follows:

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1Specific drafting amendments proposed by delegations at the last meeting of the Negotiating Group on Safeguards are contained in the Annex of MTN.GNG/NG9/21.
I

GENERAL

1. This agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of the General Agreement.

II

CONDITIONS

2. A contracting party may apply a safeguard measure to a product only if the importing contracting party has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

3. (a) A contracting party may apply a safeguard measure only following an investigation by the competent authorities of the importing contracting party pursuant to procedures previously established and made public in consonance with Article X of the General Agreement. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

A customs union may apply a safeguard measure as a single unit or on behalf of a member state. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member state, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member state and the measure shall be limited to that member state. It is understood that when a safeguard measure is applied by a customs union on behalf of a member state, [any injury attributable to competition from producers established in other member states in the customs union shall not be attributed to increased imports, in conformity with the provisions of sub-paragraph 7(b)] [such a measure shall be applied to imports from other member states of the customs union].
(b) Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof and, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

4. In critical circumstances where delay would cause damage which it would be difficult to repair, a provisional safeguard measure may be taken pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of this Section and Section VIII shall be met. Such measures should take the form of tariff increases. They shall be promptly refunded if the subsequent investigation referred to in paragraph 7 below does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall count towards the initial period and any extension referred to in paragraphs 9, 10 and 11 below.

5. Safeguard measures shall be applied to a product being imported irrespective of its source[, subject to the provisions of paragraphs 20 and 21 below]. [In exceptional circumstances, an importing country may apply a safeguard measure selectively against imports from a limited number of sources. Such exceptional circumstances exist only if the competent authorities in the importing country have determined that (a) serious injury was primarily due to a sharp and substantial increase from a limited number of countries, and (b) these imports account for a significant proportion of total imports. Selective measures shall not be applied to imports from suppliers that represent less than a minimum share (x%) of total imports.]

6. For the purposes of this agreement:

(a) serious injury shall be understood to mean a significant overall impairment in the position of a domestic industry;

(b) a domestic industry shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a contracting party, or those whose collective output of the like or directly competitive products constitutes a major proportion [, i.e. normally 50 per cent or more but in no case less than 33 per cent,] of the total domestic production of those products; and
threat of serious injury shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 7 below. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

7. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(b) The determination referred to in sub-paragraph 7(a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

(c) The competent authorities shall publish promptly, in accordance with the provisions of paragraph 3 above, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

8. Safeguard measures shall be applied only to the extent as may be necessary to prevent or remedy serious injury and to facilitate adjustment. They should take the form of tariff increases [or adjustment assistance measures], but may also take the form of quantitative restrictions. No quantitative restriction shall reduce the quantity of imports below the level of a recent representative period which shall normally be the average of imports in the last three representative years for which statistics are available.

[8. Contracting parties shall apply safeguard measures only to the extent as may be necessary to prevent or remedy serious injury and to facilitate adjustment. Preference should be given to the application of tariff increases. When quantitative restrictions are applied, these shall not have the effect of reducing the total quantity of imports below the level of the most recent three years' average preceding the initiation of an investigation into injury for which data are available, provided that this is sufficient to remedy injury. In cases in which a quota is allocated among supplying countries, and in the absence of agreement with the suppliers concerned, the importing contracting party may allot quota shares proportionately to the quantities supplied during the previous
representative period, subject to the possibility of taking into account to what extent the single suppliers have contributed to the assessed global injury, provided that any reduction in individual quota allotments necessary to remedy injury may not exceed \( x \) percentage points of the proportion supplied during the representative period. When a safeguard measure takes a form different to a quantitative restriction, the authorities of the importing contracting party shall examine all relevant factors (e.g. prices, price elasticity, market share) so as to seek to ensure that, to the extent feasible, the effect of the measure does not result in a cutback of imports to a level below the above representative period, provided this is sufficient to remedy injury. Whenever a safeguard measure has the effect of reducing imports at a level below the representative period, the importing contracting party shall provide justification as to the reasons why such a reduction is necessary to remedy injury.]

9. Safeguard measures shall be applied only for a period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. It shall not exceed [three] [five] years, unless this is extended under paragraph 10 below.

10. The period mentioned in paragraph 9 above may be extended provided that the competent authorities of the importing contracting party have determined, in conformity with the procedures set out in this Section, that: the safeguard measure continues to be necessary to prevent or remedy serious injury; that there is evidence that the industry is adjusting; and that the pertinent provisions of Sections IV and VIII below are observed.

[10a. Safeguard measures limited to specific sources may not exceed a maximum duration of three years. If, at any time during the period of application of such measures, it appears that products being imported from non-restrained suppliers are increasing significantly, a safeguard measure may be applied to all sources of imports. In cases in which the extension of safeguard measures is justified under the provisions of paragraph 10, a safeguard measure shall be made applicable to all sources of imports.]

11. The total period of a safeguard measure including the period of application of any provisional measure, the period of initial application, and any extension thereof shall not exceed [five] [eight] years.

12. In order to facilitate adjustment, if the expected duration of a safeguard measure as notified under the provisions of paragraph 27 is over [one] [two] year[s], it shall be progressively liberalized at regular intervals during the period of application. If the duration of the measure exceeds three years, the contracting party applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 10 above shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.
13. After the date of entry into force of this agreement, no safeguard measure shall be applied again to the import of a product which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least [two] years.

14. Notwithstanding the provisions of paragraph 13 above, no safeguard measure with a duration of 180 days or less may be applied again to the import of a product unless:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

III

ADJUSTMENT

[15. Upon a finding of serious injury in conformity with the relevant provisions of Section II of this agreement, a contracting party may adopt, as an alternative to a border measure, adjustment assistance measures in order to support adjustment by firms or workers. Any adjustment assistance measures adopted on such a basis shall be in conformity with the provisions of paragraphs 8 to 13 of this agreement.]

[16. Adjustment assistance measures shall not take the form of export subsidies.]

IV

LEVEL OF CONCESSIONS AND OTHER OBLIGATIONS

17. A contracting party proposing to apply a safeguard measure or seeking an extension shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing between it and the exporting contracting parties which would be affected by such a measure under the General Agreement, in accordance with the provisions of paragraph 29 below. To achieve this objective, the contracting parties concerned may agree on any means of trade compensation for the adverse effects of the measure on their trade.
18. If no agreement is reached within 30 days in the consultations under paragraph 29 below, then the affected exporting contracting parties are free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application of substantially equivalent concessions or other obligations under the General Agreement, to the trade of the contracting party applying the safeguard measure, the suspension of which the CONTRACTING PARTIES do not disapprove.

19. The right of suspension referred to in paragraph 18 above shall not be exercised if the duration of the measure does not exceed three years, provided such a measure conforms to this agreement.

V

DEVELOPING COUNTRIES

[20. Safeguard measures shall not be applied to exports of the least-developed contracting parties irrespective of whether these countries, individually or collectively, are principal suppliers or not.]

[21. Safeguard measures shall not be applied against a product originating in a less-developed contracting party whose market share in the product concerned does not exceed one per cent, or the share of the product under consideration in the total exports of the less-developed contracting party concerned, in a recent representative period, is more than (x) per cent.]

[22. Less-developed and least-developed contracting parties shall have the flexibility in the conditions defined by the provisions of this agreement to apply safeguard measures which their individual development, financial or trade situation requires, especially as regards the duration or extension of safeguard measures (in paragraphs 9, 10 and 11) or the reapplication of safeguard measures (paragraphs 13 and 14). The provisions of paragraphs 17, 18 and 19 do not apply to these contracting parties.]

VI

EXISTING ARTICLE XIX MEASURES

23. Contracting parties shall terminate all existing safeguard measures taken pursuant to Article XIX of the General Agreement not later than [eight] years after the date on which they were first applied or [five] years after the date of entry into force of this agreement, whichever comes later.
VII

PROHIBITION AND ELIMINATION OF CERTAIN MEASURES

[24. No trade-restrictive measure shall be sought or taken by a contracting party unless it conforms with the provisions of Article XIX as interpreted by the provisions of this agreement, or is consistent with other provisions of the General Agreement, or protocols and agreements or arrangements concluded within the framework of the General Agreement. These include actions taken by a single contracting party as well as actions under agreements, arrangements and understandings entered into by two or more contracting parties. Any such measure in effect at the time of entry into force of this agreement shall either be brought into conformity with the provisions of Article XIX and this agreement or phased out in accordance with paragraph 25 below.]

[25. The provisions of paragraph 24 above shall be carried out according to timetables to be presented to the Safeguards Committee by the contracting parties concerned not later than 180 days after the date of entry into force of this agreement. These timetables shall provide for all measures referred to in paragraph 24 above to be phased out or brought into conformity with this agreement within a period not exceeding [three] years, after the date of entry into force of this agreement.]

26. Contracting parties shall not encourage nor support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 24 above.

VIII

NOTIFICATION AND CONSULTATION

27. A contracting party shall immediately notify the CONTRACTING PARTIES upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

28. In making the notifications referred to in sub-paragraphs 27(b) and (c) above, the contracting party proposing to apply or extend a safeguard measure shall provide the CONTRACTING PARTIES with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting
shall also be provided. The CONTRACTING PARTIES or the Safeguards Committee may request such additional information as they may consider necessary from the contracting party proposing to apply or extend the measure.

29. A contracting party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those contracting parties having a substantial interest as exporters of the product concerned, with a view to, inter alia, reviewing the information provided under paragraph 28 above, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 17 above.

30. A contracting party shall make a notification before taking a provisional safeguard measure referred to in paragraph 4 above. Consultations shall be initiated immediately after the measure is taken.

31. The results of the consultations referred to in this Section, as well as the results of mid-term reviews referred to in paragraph 12, any form of compensation referred to in paragraph 17, and proposed suspensions of concessions and other obligations referred to in paragraph 18, shall be notified immediately to the CONTRACTING PARTIES by the contracting parties concerned.

32. Adjustment assistance measures taken by contracting parties under paragraph 15 shall be notified immediately to the CONTRACTING PARTIES.

33. Contracting parties shall notify promptly the CONTRACTING PARTIES of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

34. Contracting parties maintaining measures described in paragraphs 23 and 24 above which exist at the date on which this agreement enters into force shall notify such measures to the CONTRACTING PARTIES, not later than 60 days after the entry into force of this agreement.

35. Any contracting party may notify the CONTRACTING PARTIES of all laws, regulations, administrative procedures and any measure or action dealt with in this agreement that has not been notified by other contracting parties that are required by this agreement to make such notifications.

36. Any contracting party may notify the CONTRACTING PARTIES of any non-governmental measures referred to in paragraph 26 above.

37. All notifications to the CONTRACTING PARTIES referred to in this agreement shall normally be made through the Safeguards Committee.

38. The provisions on notification in this agreement shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
IX

SURVEILLANCE

39. There shall be a Safeguards Committee under the authority of the CONTRACTING PARTIES, which shall be open to the participation of any contracting party indicating its wish to serve on it. The Committee will have the following functions:

(a) to monitor, and report annually to the CONTRACTING PARTIES on, the general implementation of this agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected contracting party, whether or not the procedural requirements of this agreement have been complied with in connection with a safeguard measure, and report its findings to the CONTRACTING PARTIES;

(c) to assist contracting parties, if they so request, in their consultations under the provisions of this agreement;

(d) to examine measures covered by paragraphs 23 and 24, monitor the phase-out of such measures and report as appropriate to the CONTRACTING PARTIES;

(e) to review, at the request of the contracting party taking a safeguard action, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the CONTRACTING PARTIES;

(f) to receive and review all notifications provided for in this agreement and report as appropriate to the CONTRACTING PARTIES; and

(g) to perform any other function connected with this agreement that the CONTRACTING PARTIES may determine.

40. To assist the Committee in carrying out its surveillance function, the secretariat shall prepare annually a factual report on the operation of the agreement based on notifications and other reliable information available to it.

X

DISPUTE SETTLEMENT

41. Contracting parties which consider that their rights under this agreement are being nullified or impaired have recourse to the dispute settlement provisions of the General Agreement.
The attached texts contain the results of the negotiations on trade-related aspects of intellectual property rights, including trade in counterfeit goods, as of 22 November 1990. They are put forward by the Chairman on his own responsibility, but have been used by the Negotiating Group as the basis for negotiations. The purpose of this note is to explain the status of the texts and to indicate the main issues on which agreement has still to be reached.

No point in this draft is put forward as having been agreed by all participants. Square brackets have been used to identify specific points on which further negotiation is necessary, but their absence from a particular provision cannot be taken as indicating that there is general agreement on it. Participants are therefore not committed to any provision and a number of participants have in addition made it clear that on certain provisions their positions are reserved pending further consideration in capitals.

The presentation of two draft agreements, the first on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods and the second on Trade in Counterfeit and Pirated Goods, is a reflection of two basically different approaches to the question of the relationship of the eventual results to the GATT. Some participants, whose positions are identified in the draft by the letter A, envisage a single TRIPS agreement encompassing all the areas of negotiation; this agreement would be implemented as an integral part of the General Agreement. Other participants, whose positions are identified by the letter B, envisage two separate agreements, one on Trade in Counterfeit and Pirated Goods, to be implemented in GATT, and the second on standards and principles concerning the availability, scope and use of intellectual property rights. The latter agreement would be implemented in the "relevant international organisation, account being taken of the multidisciplinary and overall aspects of the issues involved". It was agreed in the Mid-Term Review that the institutional aspects of the international implementation of the results of the negotiations on TRIPS would be decided by Ministers pursuant to the final paragraph of the Punta del Este Declaration.

There are thus a number of outstanding issues which can be settled only in the light of the decision on the institutional aspects of the international implementation of the results. These issues include not only

1Cf. paragraph 1 of the Final Act.
2See also Annex III of this document.
that of structure referred to above but also the arrangements for dispute settlement and a number of specific issues concerning final provisions on such matters as acceptance and accession, deposit, withdrawal, non-application and reservations.

Turning to the major outstanding issues on points of substance, there is, in Part I on General Provisions and Basic Principles, a need for further work on Article 4 on Most-Favoured-Nation Treatment, in particular sub-paragraph (d).

In regard to Section I of Part II, concerning Copyright and Related Rights, decisions are needed on the protection of computer programs (Articles 10.1 and 12), rental rights (Articles 11 and 16.4), the rights of performers and broadcasters (Article 16), the term of protection of phonograms (Article 16.5), moral rights (Article 9), limitations and exemptions (Article 13.2) and the definition of "public" (Article 14).

In Section 2 of Part II on Trademarks, there is an outstanding issue concerning special requirements regarding the use of a mark (Article 22). In regard to Section 3 of Part II on Geographical Indications, it should be made clear that there are still considerable differences on Articles 25, 26 and 27. On Industrial Designs (Section 4 of Part II), a decision needs to be taken on the criteria for design protection (Article 28.1).

In the patent area (Section 5 of Part II), basic decisions need to be taken in the complex of issues concerning patentable subject matter and exclusions therefrom (Article 30), the term of protection (Article 36) and non-voluntary licensing and government use (sub-paragraphs (g), (k), (h), (n) and (o) of Article 34 and related provisions of Article 32). Decisions are also needed on non-discrimination as to the place of invention (Article 30.1), rights conferred by process patents (Article 31) and reversal of the burden of proof (Article 37).

In Section 6 of Part II, on Layout-Designs of Integrated Circuits, a decision has to be taken on the appropriateness of some of the so-called "plus elements" to the provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits.

Further basic issues needing to be resolved are the inclusion of provisions on protection of Undisclosed Information (Section 7 of Part II), and the content of the provisions on the Control of Abusive or Anti-Competitive Practices in Contractual Licences (Section 8 of Part II).

In regard to transitional arrangements, including provisions on least-developed countries, decisions have to be taken on the length of transition periods and on the extent of obligations to be assumed during that period. A number of developing countries have also stated that the texts should contain greater recognition of the constraints on their administrative capacity and of their development needs, in the light of the provisions in the Declaration of Punta del Este on differential and more favourable treatment of developing countries.
A number of more technical points, for example those contained in paragraphs 4 and 5 of Article 65 and in Article 73, are still under study and therefore may need further work.

There has not been sufficient time to give consideration to a proposal for the establishment of a dispute prevention system in respect of the transfer of technologies which was put forward earlier this month. It may be that this matter could be tabled in the committee set up to administer the results of these negotiations.
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Agreement on Trade in Counterfeit and Pirated Goods
The PARTIES to this Agreement (hereinafter referred to as "PARTIES"),

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

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

(a) the applicability of the basic principles of the GATT and of relevant international intellectual property agreements or conventions;
(b) the provision of adequate standards and principles concerning the availability, scope and use of trade related intellectual property rights;
(c) the provision of effective and appropriate means for the enforcement of trade related intellectual property rights, taking into account differences in national legal systems;
(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

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

Recognising that intellectual property rights are private rights;

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

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

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

Desiring to establish a mutually supportive relationship between GATT and WIPO as well as other relevant international organisations;

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

Article 1: Nature and Scope of Obligations

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

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

3. PARTIES shall accord the treatment provided for in this Agreement to the nationals of other PARTIES. In respect of the relevant intellectual property right, the nationals of other PARTIES shall be understood as those natural or legal persons meeting the criteria for eligibility for protection under the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits. Any PARTY availing itself of the possibilities provided in Articles 5.3 or 6.2 of the Rome Convention shall make a notification as foreseen in those provisions to the Committee established under Part VII below.

Article 2: Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, PARTIES shall not depart from the relevant provisions of the Paris Convention (1967).

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

Article 3: National Treatment

1. Each PARTY shall accord to the nationals of other PARTIES treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already

¹When a PARTY gives effect to the provisions of this Agreement through participation in an intergovernmental arrangement, it shall take all reasonable measures as may be available to it to ensure consistency between this Agreement and the arrangement.

²When the term "national" is used in this Agreement, it shall be deemed, in the case of Hong Kong, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in Hong Kong.
provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits. Any Party availing itself of the possibilities provided in Article 6 of the Berne Convention and Article 16.1(a)(iii) or (iv) or Article 16.1(b) of the Rome Convention shall make a notification as foreseen in those provisions to the Committee established under Part VII below.

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

Article 4: Most-Favoured-Nation Treatment

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

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

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

(c) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of this agreement, provided that such agreements are notified to the Committee established under Part VII below and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Parties;

(d) exceeding the requirements of this Agreement and provided in an international agreement to which the Party belongs, provided that such agreement is open for accession by all Parties to this Agreement, or provided that such Party shall be ready to extend such advantage, favour, privilege or immunity, on terms equivalent to those under the agreement, to the nationals of any other Party so requesting and to enter into good faith negotiations to this end.]
Article 5: Multilateral Agreements on Acquisition or Maintenance of Protection

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

Article 6: Exhaustion¹

Subject to the provisions of Articles 3 and 4 above, nothing in this Agreement imposes any obligation on, or limits the freedom of, PARTIES with respect to the determination of their respective regimes regarding the exhaustion of any intellectual property rights conferred in respect of the use, sale, importation or other distribution of goods once those goods have been put on the market by or with the consent of the right holder.

Article 7: Objectives

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

Article 8: Principles

1. Provided that PARTIES do not derogate from the obligations arising under this Agreement, they may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development.

2. Appropriate measures, provided that they do not derogate from the obligations arising under this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

¹ For the purposes of exhaustion, the European Communities shall be considered a single PARTY.
PART II: STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9: Relation to Berne Convention

PARTIES shall comply with the substantive provisions [on economic rights] of the Berne Convention (1971). [However, PARTIES shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom].

Article 10: Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as [literary] works under the Berne Convention (1971). [Such protection shall not extend to ideas, procedures, methods of operation or mathematical concepts.] [This shall not prevent PARTIES from requiring, as a condition of protection of computer programs, compliance with procedures and formalities consistent with the principles of Part IV of this Agreement or from making adjustments to the rights of reproduction and adaptation and to moral rights necessary to permit normal exploitation of a computer program, provided that this does not unreasonably prejudice the legitimate interests of the right holder.]

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

Article 11: Rental Rights

In respect of at least computer programs and cinematographic works, a PARTY shall provide authors and their successors in title the right to authorise or prohibit the commercial rental to the public of originals or copies of their copyright works [, or alternatively the right to obtain an equitable remuneration corresponding to the economic value of such use] [, where circumstances arise by which the commercial rental of originals or copies of copyright works has led to [unauthorised] copying of such works which is materially impairing the exclusive right of reproduction conferred in that PARTY on authors and their successors in title].
Article 12: Term of Protection

Whenever the term of protection of a work, other than a photographic work, a work of applied art (or a computer program), is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13: Limitations and Exemptions

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

[2. Translation and reproduction licences permitted under the Appendix to the Berne Convention (1971) shall not be granted where the legitimate local needs of a PARTY could be met by voluntary actions of right holders but for obstacles resulting from measures taken by the government of that PARTY.]

[Article 14: Definition of Public

The term "public" shall not be defined in the domestic law of PARTIES in a manner that conflicts with a normal commercial exploitation of a work and unreasonably prejudices the legitimate interests of right holders.]

Article 15: Protection of Works Existing at Time of Entry into Force

The provisions of the Berne Convention (1971) concerning the protection of works existing at the time of entry into force shall apply in respect of the rights secured under that Convention.

Article 16: Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasts

[1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing: the fixation of their unfixed performance; and the reproduction of such fixation. Performers shall also have the possibility of preventing the broadcasting by wireless means and the communication to the public of their live performance.]

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

[3. Broadcasting organisations shall have the right to authorise or prohibit the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where PARTIES do not grant such rights to broadcasting organisations, they shall provide right holders in the subject matter of broadcasts with the possibility of preventing the above acts.]
4. The provisions of Article 11 shall apply *mutatis mutandis* to right holders in phonograms.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of [50] years computed from the end of the calendar year in which the fixation was made or the performance or broadcast took place. The term of protection granted pursuant to paragraph 3 above shall last for at least [25] years from the end of the calendar year in which the broadcast took place.

6. Any PARTY to this Agreement may, in relation to the rights conferred under paragraphs 1-3 above, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. [However, the provisions of Article 15 of this Section shall also apply *mutatis mutandis* to the rights of performers and producers of phonograms in phonograms].

**SECTION 2: TRADEMARKS**

**Article 17: Protectable Subject Matter**

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

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

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

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

5. PARTIES shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, PARTIES may afford an opportunity for the registration of a trademark to be opposed.
Article 18: Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having his consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

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

3. Article 6bis of the Paris Convention shall apply, mutatis mutandis, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would unfairly indicate a connection between those goods or services and the owner of the registered trademark.

Article 19: Exceptions

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

Article 20: Term of Protection

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

Article 21: Requirement of Use

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

2. When subject to the control of its owner, use of a trademark by another person shall be recognised as use of the trademark for the purpose of maintaining the registration.
Article 22: Other Requirements

[A. The use of a trademark in commerce shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.]

[B. It shall be a matter for national legislation to determine the conditions for the use of a mark.]

Article 23: Licensing and Assignment

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

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 24: Protection of Geographical Indications

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

2. In respect of geographical indications, PARTIES shall provide in their domestic law the legal means for interested parties to prevent:

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

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

3. A PARTY shall, at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that PARTY is of such a nature as to mislead the public as to the true place of origin.
4. The provisions of the preceding paragraphs of this Article shall apply to a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

**Article 25: Additional Protection for Geographical Indications for Wines**

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

[2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines shall be refused or invalidated at the request of an interested party with respect to such wines not having this origin.]

3. In the case of homonymous geographical indications [for wine], protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 24 above. Each PARTY shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

**Article 26: Exceptions**

[1. Where a geographical indication of a PARTY has been used with regard to goods originating outside the territory of that PARTY in good faith and in a widespread and continuous manner by nationals or domiciliaries of another PARTY, including use as a trademark, before the date of application of these provisions in the other PARTY as defined in Article 68 below, nothing in this Agreement shall prevent such continued use of the geographical indication by those nationals or domiciliaries of the said other PARTY.]

[2. A PARTY shall not take action to refuse or invalidate registration of a trademark first applied for or registered:

(a) before the date of application of these provisions in that PARTY as defined in Article 68 below;

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

on the basis that the trademark is identical with, or similar to, a geographical indication.]
3. No PARTY shall [be required to] apply the provisions of this Article in respect of a geographical indication of any other PARTY with respect to goods for which the relevant indication is identical with the term customary in common language as the common name for such goods [or of the process for their production] in the territory of that PARTY, or where the goods are products of the vine, is the name of a grape variety.

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

5. [On the request of a PARTY, each PARTY shall be willing to enter into good faith negotiations aimed at] [The provisions of the preceding paragraphs shall not prevent PARTIES from] concluding bilateral and multilateral agreements concerning the protection under this Section, with a view to increasing the protection for specific geographical indications.

Article 27: Notification of Geographical Indications

In order to facilitate the protection of geographical indications, the Committee shall [examine the establishment of] [establish] a multilateral system of notification and registration of geographical indications eligible for protection in the PARTIES participating in the system.

SECTION 4: INDUSTRIAL DESIGNS

Article 28: Requirements for Protection

1. PARTIES shall provide for the protection of industrial designs which are new [and] [or] original. PARTIES may provide that designs are not new [and] [or] original if they do not significantly differ from known designs or combinations of known design features. PARTIES may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

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

Article 29: Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
2. PARTIES may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

[3B. With respect to the obligations of the owner of a protected industrial design, the provisions set forth in paragraph 3(b) of Article 32 below shall apply.]

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

SECTION 5: PATENTS

Article 30: Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3 below, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. [Patents shall be available without discrimination as to where the inventions were made.]

2. PARTIES may exclude from patentability inventions, the prevention within their territory of the publication or any exploitation of which is necessary: to protect public morality or order, including to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement; or to protect human, animal or plant life or health.

3. PARTIES may also exclude from patentability:

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

   [(b)A Animal varieties [and other animal inventions] and essentially biological processes for the production of animals, other than microbiological processes or the products thereof. PARTIES shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. This provision shall be reviewed [...] years after the entry into force of this Agreement.]

¹For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a PARTY to be synonymous with the terms "non-obvious" and "useful" respectively.
[[(b)] Plants and animals, including microorganisms, and parts thereof and processes for their production. As regards biotechnological inventions, further limitations should be allowed under national law.]

[[(c)] Certain products, and processes for the manufacture of those products, on grounds of public interest, national security, public health or nutrition, including food, chemical and pharmaceutical products and processes for the manufacture of pharmaceutical products.]

[[(d)] Inventions relating to nuclear or fissionable material.]

Article 31: Rights Conferred

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

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

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

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

Article 32: Conditions and Obligations on Patent Applicants and Owners

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

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

¹This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6 above.
3. PARTIES may provide that a patent owner shall have the following obligations:

(a) To ensure the [working] [exploitation] of the patented invention in order to satisfy the reasonable requirements of the public. [For the purposes of this Agreement the term "working" may be deemed by PARTIES normally to mean manufacture of a patented product or industrial application of a patented process and to exclude importation.]

(b) In respect of licensing contracts and contracts assigning patents, to refrain from engaging in abusive or anti-competitive practices adversely affecting the transfer of technology.

4. PARTIES may adopt the measures referred to in Articles 34, 35 and 43 below to remedy the non-fulfilment of the obligations mentioned in paragraph 3 above.

Article 33: Exceptions to Rights Conferred

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

Article 34: Other Use Without Authorisation of the Right Holder

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

(a) Each case of such use shall be considered on its individual merits.

(b) Such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorisation from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a PARTY in the case of a national emergency or other circumstances of extreme urgency. In such situations, the right holder shall, nevertheless, be notified as soon as is reasonably practicable.

(c) The scope and duration of such use shall be limited to the purpose for which it was authorised.

¹"Other use" refers to use other than that allowed under Article 33.
(d) Such use shall be non-exclusive.

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

(f) Any such use shall be authorised predominantly for the supply of the domestic market of the PARTY authorising such use.

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

(h) The right holder shall be paid [fair and equitable] [adequate] remuneration in the circumstances of each case, taking into account the economic value of the licence.

(i) The legality of any decision relating to the authorisation of such use shall be subject to judicial review or other independent review by a distinct higher authority in that PARTY.

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

(k) Laws, regulations and requirements relating to such use may [not] discriminate between fields of technology or activity [in areas of public health, nutrition or environmental protection or where necessary for the purpose of ensuring the availability of a product to the public at the lowest possible price consistent with giving due reward for the research leading to the invention].

(l) PARTIES are not obliged to apply the conditions set forth in sub-paragraphs (b) [and (f)] above where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. Appropriate remuneration may be awarded in such cases.

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

(i) the invention claimed in the second patent shall involve an important technical advance in relation to the invention claimed in the first patent and, where the invention claimed in the second patent is a process, such process shall be one of considerable economic significance;
(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

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

(n) Authorisation by a PARTY of such use on grounds of failure to work or insufficiency of working of the patented product or process shall not be applied for before the expiration of a period of four years from the date of filing of the patent application or three years from the date of grant of the patent, whichever period expires last. Such authorisation shall not be granted [where importation is adequate to supply the local market or] if the right holder can justify failure to work or insufficiency of working by legitimate reasons, including legal, technical or economic reasons.

(o) Notwithstanding the provisions of sub-paragraphs (a) - (k) above, where such use is made for public [non-commercial] purposes by the government or by any third party authorised by the government, PARTIES are not obliged to apply the conditions set forth in sub-paragraphs [...] above in such cases. [Where it comes to the knowledge of the government that a patent is being exploited under the provisions of this sub-paragraph, the government shall ensure that the patent owner is informed and is fairly and equitably] [adequately] compensated.

Article 35 Revocation/Forfeiture

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

Article 36: Term of Protection

[1A. The term of protection available shall not end before the expiration of a period of 20 years counted from the filing date.]

[1B. It shall be a matter for national legislation to determine the term of protection.]

Article 37: Reversal of Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in Article 31.1(b), if the subject matter of a patent is a process for obtaining a product, PARTIES [shall] [may] provide in at least one of the following circumstances that any

1It is understood that those PARTIES which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.
identical product when produced by any party not having the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

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

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

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

Article 38: Relation to Washington Treaty

PARTIES agree to provide protection to the layout-designs (topographies) of integrated circuits (hereinafter referred to as "layout-designs") in accordance with the substantive provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on 26 May 1989 and, in addition, to comply with the following provisions.

Article 39: Scope of the Protection

Subject to the provisions of Article 40.1 below, PARTIES shall consider unlawful the following acts if performed without the authorisation of the holder of the right: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated [, or an article incorporating such an integrated circuit. Rights extend to an article incorporating an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout-design.]

Article 40: Acts not Requiring the Authorisation of the Holder of the Right

1. Notwithstanding Article 39 above, no PARTY shall be obliged to consider unlawful the performance of any of the acts referred to in that paragraph in respect of an integrated circuit incorporating an unlawfully reproduced layout-design [or any article incorporating such an integrated circuit] where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit [or article incorporating such an integrated circuit], that it incorporated an unlawfully reproduced layout-design. [PARTIES shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the holder of the right a sum equivalent to a reasonable royalty in a freely negotiated licence in respect of the layout-design.]
2. The conditions set out in sub-paragraphs (a) - (l) and (o) of Article 34 above shall apply mutatis mutandis in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorisation of the right holder.

Article 41: Term of Protection

1. In PARTIES requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In PARTIES not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2 above, a PARTY may provide that protection shall lapse 15 years after the creation of the layout-design.

[SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION]

Article 42

1A. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), PARTIES shall protect undisclosed information in accordance with paragraphs 2 and 3 below and data submitted to governments or governmental agencies in accordance with paragraph 4 below.

2A. PARTIES shall provide in their domestic law the legal means for natural and legal persons to prevent information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

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

- has commercial value because it is secret; and

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

¹For the purpose of this provision, "a manner contrary to honest commercial practices" shall include practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.
3A. PARTIES shall not discourage or impede voluntary licensing of undisclosed information by imposing excessive or discriminatory conditions on such licences or conditions which dilute the value of such information.

4A. PARTIES, when requiring, as a condition of approving the marketing of new pharmaceutical products or of a new agricultural chemical product, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall [protect such data against unfair commercial use. Unless the person submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable time, generally no less than five years, commensurate with the efforts involved in the origination of the data, their nature, and the expenditure involved in their preparation. In addition, PARTIES shall] protect such data against disclosure, except where necessary to protect the public.]

[SECTION 8: CONTROL OF ABUSIVE OR ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES]

**Article 43**

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

2B. PARTIES may specify in their national legislation licensing practices or conditions that may be deemed to constitute an abuse of intellectual property rights or to have an adverse effect on competition in the relevant market, and may adopt appropriate measures to prevent or control such practices and conditions, including non-voluntary licensing in accordance with the provisions of Article 34 and the annulment of the contract or of those clauses of the contract deemed contrary to the laws and regulations governing competition and/or transfer of technology. The following practices and conditions may be subject to such measures where they are deemed to be abusive or anti-competitive: (i) grant-back provisions; (ii) challenges to validity; (iii) exclusive dealing; (iv) restrictions on research; (v) restrictions on use of personnel; (vi) price fixing; (vii) restrictions on adaptations; (viii) exclusive sales or representation agreements; (ix) tying arrangements; (x) export restrictions; (xi) patent pooling or cross-licensing agreements and other arrangements; (xii) restrictions on publicity; (xiii) payments and other obligations after expiration of industrial property rights; (xiv) restrictions after expiration of an arrangement.

3B. Each PARTY shall enter, upon request, into consultations with any other PARTY which has cause to believe that an intellectual property right owner that is a national or domiciliary of the PARTY to which the request for consultations has been addressed is undertaking practices in violation
of the requesting PARTY's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislations, without prejudice to any action under the law and to the full freedom of an ultimate decision of either PARTY. The PARTY addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting PARTY, and shall co-operate through the supply of available information of relevance to the matter in question, subject to and dependent upon the assurances of confidentiality given by the requesting PARTY unless the party providing the information agrees to its disclosure or disclosure is compelled by law.

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

PART III: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 44

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

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

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

4. Parties to a dispute shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in national laws concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.
5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of PARTIES to enforce their laws in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 45: Fair and Equitable Procedures

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

Article 46: Evidence of Proof

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

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

Article 47: Injunctions

The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after

¹For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.
customs clearance of such goods. PARTIES are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorised by a government, without the authorisation of the right holder are complied with, PARTIES may limit the remedies available against such use to payment of remuneration in accordance with sub-paragraph (h) of Article 34 above. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with national law, declaratory judgments and adequate compensation shall be available.

**Article 48: Damages**

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

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

**Article 49: Other Remedies**

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.
Article 50: Right of Information

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

Article 51: Indemnification of the Defendant

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

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, PARTIES shall not exempt public authorities or officials from liability, except for actions taken or intended in good faith in the course of the administration of such laws.

Article 52: Administrative Procedures

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

SECTION 3: PROVISIONAL MEASURES

Article 53

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

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

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

2. The judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.
3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that his right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

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

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

6. Without prejudice to paragraph 4 above, provisional measures taken on the basis of paragraphs 1 and 2 above shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where national law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

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

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

Article 54: Suspension of Release by Customs Authorities

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

Article 55: Application

Any right holder initiating the procedures under Article 54 above shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of his intellectual property right and to

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

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

3 For the purposes of this Agreement:

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

- Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorised by him in the country of production and which are made directly or indirectly from an article where the making of that copy constitutes an infringement of a copyright or a related right under the law of the country of importation.
supply a sufficiently detailed description of the goods to make them readily recognisable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

**Article 56: Security or Equivalent Assurance**

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

**Article 57: Notice of Suspension**

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 54 above.

**Article 58: Duration of Suspension**

If, within a period not exceeding ten working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another ten working days. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of Article 53.6 above shall apply.

**Article 59: Indemnification of the Importer and of the Owner of the Goods**

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 58 above.

**Article 60: Right of Inspection and Information**

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

**Article 61: Ex Officio Action**

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

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

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, *mutatis mutandis*, set out at Article 58 above;

(c) public authorities or officials shall not be exempted by PARTIES from liability, except for actions taken or intended in good faith.

**Article 62: Remedies**

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 49 above. In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

**Article 63: De Minimis Imports**

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

Article 64

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

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

Article 65

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

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

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

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where the national law provides for such procedures, opposition, revocation, cancellation or similar inter partes procedures, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 44.

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

Article 66: Transparency

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

2. PARTIES shall notify the laws and regulations referred to in paragraph 1 above to the Committee established under Part VII below in order to assist that Committee in its review of the operation of this Agreement. The Committee shall attempt to minimise the burden on PARTIES in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Committee if consultations with the World Intellectual Property Organisation on the establishment of a common register containing these laws and regulations are successful.\(^1\) The Committee shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).

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

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

\(^1\)This provision depends on the decision to be taken regarding the institutional arrangements for the international implementation of this Agreement.
**Article 67: Dispute Settlement**

PARTIES shall not have recourse in relation to other PARTIES to unilaterally decided economic measures of any kind. Furthermore, they undertake to modify and administer their domestic legislation and related procedures in a manner ensuring the conformity of all measures taken thereunder with the above commitment.

**PART VI: TRANSITIONAL ARRANGEMENTS**

**Article 68: Transitional Arrangements**

1. Subject to the provisions of paragraphs 2 and 3 below, PARTIES shall not be obliged to apply the provisions of this Agreement before the expiry of a period of [...] years following the date of entry into force of this Agreement for that PARTY.

2. Any developing country PARTY may delay for a period of [...] years the date of application, as defined under paragraph 1 above, of the provisions of this Agreement, other than Articles 3, 4 and 5 [, insofar as compliance with those provisions requires the amendment of domestic laws, regulations or practice].

3. Any other PARTY which is undertaking structural reform of its intellectual property system and faces special problems in the preparation and implementation of intellectual property laws, may also benefit from a period of delay as foreseen in paragraph 2 above.

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

5. Any PARTY availing itself of a transitional period in accordance with paragraph 2 or 3 above shall provide, on accession, a schedule setting out its timetable for application of the provisions of this Agreement. [This timetable shall be without commitment.] [The Committee established under Part VII below may authorise, upon duly motivated request, departures, consistent with provisions of paragraph 2 or 3 above, from the timetable.]

**Article 69: Least-Developed Countries**

1. In view of their special needs and requirements, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, least-developed country PARTIES shall not be required to apply the provisions of this Agreement, other than

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1 In regard to dispute settlement procedures, see the Annex to this text.
Articles 3, 4 [and 5, insofar as compliance with those provisions requires the amendment of domestic laws, regulations or practices for a period of [...] years from the date of application as defined under paragraph 1 of Article 68 above. The Committee shall, upon duly motivated request by a least developed country PARTY, accord extensions of this period.] The requirement of paragraph 5 of Article 68 above shall not apply to least developed country PARTIES.

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

**Article 70: Technical Cooperation**

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

**PART VII: INSTITUTIONAL ARRANGEMENTS: FINAL PROVISIONS**

**Article 71: Committee on Trade Related Intellectual Property Rights**

PARTIES shall establish a Committee on Trade Related Intellectual Property Rights composed of representatives from each PARTY. The Committee shall elect its own chairperson, establish its own rules of procedure and shall meet not less than once a year and otherwise upon request of any PARTY. The Committee shall monitor the operation of this agreement and, in particular, PARTIES' compliance with their obligations hereunder, and shall afford PARTIES the opportunity of consulting on matters relating to trade related intellectual property rights. It shall carry out such other responsibilities as assigned to it by the PARTIES, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Committee may consult with and seek information from any source they deem appropriate. In consultation with the World Intellectual Property Organization, the Committee shall seek to establish, within one year of its first meeting, appropriate arrangements for co-operation with bodies of that Organization.

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1This provision depends on the decision to be taken regarding the institutional arrangement for the international implementation of this Agreement.
Article 72: International Cooperation

PARTIES agree to co-operate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their national administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and co-operation between customs authorities with regard to trade in counterfeit goods.

Article 73: Protection of Existing Intellectual Property

1. PARTIES shall apply the provisions of Articles 3, 4 and 5 of Part I, of Sections 2, 3, 7 and 8 of Part II, of Part III and of Part IV to subject matter under protection in a PARTY on the date of application of the provisions of this Agreement for that PARTY as defined in Part VI above.

2. PARTIES are not obliged to apply the provisions of Sections 1, 4, 5 and 6 of Part II to subject matter under protection in a PARTY on the date of application of the provisions of this Agreement for that PARTY, subject to the provisions of Article[s] 15 [and 16.6]. Subject matter in respect of which the procedures for the acquisition of rights have been initiated as of that date for which, however, the intellectual property title has not yet been granted shall [not] benefit from the provisions of this Agreement. Nothing in this Agreement shall affect other subject matter covered by these Sections which is already in existence and not under protection in a PARTY on the date of application of the provisions of this Agreement for that PARTY, subject to the provisions of Article[s] 15 [and 16.6].

3. The application of Articles 2 and 6 of this Agreement to existing intellectual property shall be governed by paragraphs 1 and 2 of this Article, as appropriate to the intellectual property right in question.

Article 74: Review and Amendment

1. PARTIES shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 68 above. They shall, having regard to the experience gained in its implementation, review it [-] years after that date, and at identical intervals thereafter. The PARTIES may undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted by all PARTIES may be adopted by the Committee.

(Article 75: Reservations)

A PARTY may only enter reservations in respect of any of the provisions of this Agreement at the time of entry into force of this Agreement for that PARTY and with the consent of the other PARTIES.)
ANNEX

DISPUTE SETTLEMENT

Given that dispute settlement procedures are closely related to the question of the institutional arrangements for the international implementation of this Agreement, which question is specifically left for decision by Ministers when the results of the negotiations are established, and on which there are differing views, no attempt has been made to draft a single text on dispute settlement. Instead the following three texts are reproduced in this Annex in order to indicate the range of options presented and to provide a basis for possible elaboration in the light of the decision to be taken on institutional arrangements. Text I is the text that has figured in recent drafts.

Text I

1. Consultations and settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the authority of the Committee on Trade Related Aspects of Intellectual Property Rights.

2. The procedures for consultations and settlement of disputes shall as far as possible follow, mutatis mutandis, those adopted by the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade as a result of the dispute settlement negotiations in the Uruguay Round. Within this overall model, specific provisions relating to disputes under this Agreement shall apply as follows:

(a) If at the end of the period allowed for consultations, the PARTIES to a dispute have not reached agreement, the dispute shall be referred for conciliation, mediation and good offices, under the aegis of the chairman of the Committee on Trade Related Aspects of Intellectual Property Rights.

(b) If the procedure under sub-paragraph (a) above does not lead to a settlement within 30 days, the complaining PARTY may request the establishment of a panel.

(c) In order to ensure the availability of expertise in intellectual property matters, a roster of experts in the field shall be established by the Committee on Trade Related Aspects of Intellectual Property Rights. These experts shall be available to assist in conciliation, mediation and good offices; to serve as panelists; and to provide expert advice to panels.

1These provisions are without prejudice to decisions to be taken on the international implementation of this Agreement, or on general GATT dispute settlement procedures.
(d) If a PARTY fails to implement the recommendations and rulings of the Committee within the reasonable period of time, the complaining PARTY may:

- request the Committee for authorisation to suspend obligations under this Agreement; or

- request the GATT Council for authorisation to suspend concessions or other obligations under the General Agreement on Tariffs and Trade. If the PARTY that would be subject to such measures objects to the level of suspension proposed, the matter shall be referred to arbitration. Such arbitration shall where possible be carried out by the original panel. The arbitration body shall determine whether the amount of trade covered is appropriate in the circumstances.

Text II

1(a) When any dispute arises, concerning the interpretation or implementation of this Agreement, a PARTY may bring the matter to the attention of another PARTY and request the latter to enter into consultations with it.

(b) The PARTY so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The PARTIES engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

2. If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the PARTIES to the dispute may agree to refer to other means designed to lead to an amicable settlement of the dispute, such as good offices, conciliation, mediation and arbitration.

3(a) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Committee shall, at the request of either of the PARTIES to the dispute, convene a panel of three members to examine the matter. The members of the panel shall not, unless the PARTIES to the dispute agree otherwise, be from either PARTY to the dispute. They shall be selected from a list of designated governmental experts established by the Committee. The terms of reference for the panel shall be agreed upon by the PARTIES to the dispute. If such agreement is not achieved within three months, the Committee shall set the terms of reference for the panel.
after having consulted the PARTIES to the dispute and the members of the panel. The panel shall give full opportunity to the parties to the dispute and any other interested PARTY to present to it their views. If both PARTIES to the dispute so request, the panel shall stop its proceedings.

(b) The Committee shall adopt rules for the establishment of the said list of experts and the manner of selecting the members of the panel, who shall be governmental experts of the PARTIES, and for the conduct of panel proceedings, including provisions to safeguard the confidentiality of the proceedings and of any material designated as confidential by any participant in the proceedings.

(c) Unless the PARTIES to the dispute reach an agreement between themselves prior to the panel concluding its proceedings, the panel shall promptly prepare a report and provide it to the PARTIES to the dispute for their review. The PARTIES to the dispute shall have a reasonable period of time, whose length will be fixed by the panel, to submit any comments on the report of the panel, unless they agree to a longer time-frame in their attempts to reach a mutually satisfactory resolution to their dispute. The panel shall take into account such comments and shall promptly transmit its report to the Committee. The report shall contain the facts and recommendations for the resolution of the dispute, and shall be accompanied by the written comments, if any, of the PARTIES to the dispute.

4. The Committee shall give the report of the panel prompt consideration. The Committee shall by consensus, make recommendations to the PARTIES to the dispute, based upon its interpretation of this Agreement and the report of the panel. The Committee shall, thereafter, monitor the implementation of its recommendations.

Text III

PARTIES agree that, in the area of trade related intellectual property rights covered by this Agreement, they shall, in relation to each other, abide by the dispute settlement rules and procedures adopted by the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade as a result of the dispute settlement negotiations in the Uruguay Round, and abide by the recommendations, rulings and decisions of the CONTRACTING PARTIES.
TRADE IN COUNTERFEIT AND PIRATED GOODS

Preamble

Desirous of providing for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods while ensuring an unimpeded flow of trade in legitimate goods;

Deeming it highly desirable to ensure competition in international trade and to prevent arrangements which may restrain such competition;

Recognising the need to take into consideration the public policy objectives underlying national systems for the protection of intellectual property, including developmental and technological objectives;

Recognising also the special needs of the least developed countries in respect of maximum flexibility in the application of this Agreement in order to enable them to create a sound and viable technological base.

Section 1: Objectives

Article I

1. With respect to intellectual property and international trade, PARTIES agree on the following objectives:

(a) To clarify GATT provisions related to the effects of the enforcement of intellectual property rights on international trade, in particular Articles IX and XX(d), and to provide for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods.

(b) To ensure that such procedures and remedies do not themselves become barriers to legitimate trade and are not applied in a discriminatory manner to imported goods.

(c) To ensure the free flow of goods and prevent arrangements, effected by private or public commercial enterprises, which may result in the division of markets or otherwise restrain competition, thus having harmful effects on international trade.
SECTION 2: GUIDING PRINCIPLES AND NORMS

Article II: Trade in Counterfeit and Pirated Goods

1. PARTIES undertake to discourage trade in counterfeit trademark and pirated copyright goods and to combat such trade without inhibiting the free flow of legitimate trade. For this purpose, they shall adopt in their respective national legislation the necessary measures, procedures and remedies set out in this Section.

2. PARTIES shall exchange information and promote cooperation between customs authorities with respect to trade in counterfeit trademark and pirated copyright goods.

Article III: Safeguard against Creation of Trade Impediments in the Application of Measures and Procedures to Enforce Intellectual Property Rights

In the application of national measures and procedures to enforce intellectual property rights, PARTIES undertake to avoid the creation of impediments or distortions to international trade, and to refrain from applying their national legislation in a discriminatory manner to imports from the territories of other PARTIES. For this purpose, they shall observe the principles of national treatment and MFN enshrined in the GATT.

Article IV: Non-recourse to Unilateral Measures

PARTIES shall refrain, in relation to each other, from threatening or having recourse to unilaterally decided economic measures of any kind aimed at ensuring the enforcement of intellectual property rights.

1For the purposes of this Agreement:

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

- Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorised by him in the country of production and which are made directly or indirectly from an article where the making of that copy constitutes an infringement of a copyright or a related right under the law of the country of importation.
**Article V: Control of Anti-Competitive and Trade Distorting Practices**

PARTIES shall co-operate with each other to ensure the free flow of goods and to prevent intellectual property rights being used, through arrangements among enterprises, to create restrictions or distortions to international trade or to engage in anti-competitive practices having adverse effects on their trade. For this purpose, they undertake to exchange information and to agree upon the request of any other PARTY to consult with respect to any such practices and to take such measures in their territory as may be deemed appropriate with a view to eliminating the adverse effects of such practices.

**Article VI: Transparency**

Laws, regulations, judicial decisions and administrative rulings pertaining to the application of the principles and norms prescribed in Sections 1 and 2 shall be made publicly available in the official language of the PARTY adopting such texts and, shall be provided, upon request, to any other PARTY.

**SECTION 3: BORDER MEASURES RELATED TO COUNTERFEIT AND PIRATED GOODS**

**Article VII: Suspension of Release by Customs Authorities**

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

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1Where a PARTY has dismantled substantially all controls over movement of goods across its border with another PARTY with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

2It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.
Article VIII: Application

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

Article IX: Security or Equivalent Assurance

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

Article X: Notice of Suspension

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

Article XI: Duration of Suspension

If, within a period not exceeding ten working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another ten working days. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, such provisional measures shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where national law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.
Article XII: Indemnification of the Importer and of the Owner of the Goods

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

Article XIII: Right of Inspection and Information

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

Article XIV: Ex Officio Action

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

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

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

(c) Public authorities or officials shall not be exempted from liability, except for actions taken or intended in good faith.

Article XV: Remedies

In order to create an effective deterrent to infringement and without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order, that goods that they have found to be infringing be, without compensation of any sort,
disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

**Article XVI: Review**

The importer or other persons affected by border measures shall be entitled to judicial review or other independent review by a distinct higher authority of any final decision taken by an administrative authority.

**Article XVII: De Minimis Imports**

PARTIES may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.
Commentary

Negotiations conducted in the relevant Negotiating Group have revealed that basic divergences of view continue to exist in respect of the following points:

1. **Coverage**

   Should an agreement cover measures imposed only when an investment is made, or also measures applied to established firms and industries? Should an agreement cover TRIMs that are enforceable through a government offering or withdrawing advantages, and particularly subsidies, or only TRIMs that are legally enforceable?

2. **Level of discipline**

   Should the adverse trade effects of TRIMs be avoided only on a case-by-case basis through trade remedies, or should they be avoided in certain cases also by prohibition of the TRIM? In that regard, are certain TRIMs (such as those imposing local content requirements) prohibited already by GATT Articles III and XI, and is there need to affirm their prohibition in an agreement?

   Should other TRIMs (such as export requirements) be prohibited under new GATT provisions because they could be considered as inherently trade restrictive and distorting in their effects?

3. **Developing countries**

   In the light of the decisions reached on the level of discipline that should apply, what additional flexibility should be provided for developing countries, for example by means of authorisation to maintain TRIMs over a limited period or extended transitional arrangements?

4. **Restrictive Business Practices**

   Should an agreement on TRIMs address the restrictive business practices of private enterprises?

   Political decisions are needed to overcome these divergences in view of the fact that neither the draft text of the Chairman of the Negotiating Group, (Ref. No. 2657) dated 26 October 1990, nor a revision of that text, dated 9 November 1990, nor the text prepared by the representative of Hong Kong on behalf of the Chairman of the TNC in consultation with a number of delegations, dated 20 November 1990, have been considered an agreed basis for negotiations.
AGREEMENT ON TEXTILES AND CLOTHING

Commentary

When the attached text was submitted, the main points on which a divergence of opinion remained related to those set out below. It was, however, agreed that this text, along with this list of points, would form the basis for further negotiations.

1. **Timespan (Article 10)** What will be the period of transition for integrating this sector into GATT?

2. **Product Coverage (Annex II)** Some participants maintain that certain products should be excluded from this Annex, given their impact on the total volume of trade and thus on the percentage of products to be integrated under Articles 2.4 and 2.6.

3. **Integration by Stages (Articles 2.4 and 2.6)** The question here is whether the products to be integrated should encompass a percentage of products under restrictions, and include products drawn from the four degrees of processing in Annex IV. Another question relates to the percentage of the products to be integrated at each stage.

4. **Base Levels and Growth Rates (Articles 2.9 and 2.10)** Should there be an uplift in the base levels and, in addition to the adequacy of the growth rates themselves, should provision be made for a minimum (floor) growth rate.

5. **Special Categories of Exporters (Article 6.6)** The question here is how to extend meaningful differential treatment to the various categories of suppliers including new entrants.

6. **Transitional Safeguards (Article 6)** The problems relate mainly to the non-discriminating application of the selective safeguard (6.4); the reference period (6.8); the duration (6.12); and the terms to be provided for growth and flexibility (6.14).

7. **Recourse to GATT Article XIX (Article 2.15)** Whether provision should be made whereby an emergency action under Article XIX shall not be taken in respect of a product during a period of two years following the date of removal of all quantitative restrictions against that product under the terms of this Agreement.

8. **Review Procedure (Article 9.11)** The possibility of adjustment of the provisions of this Agreement relating to the process of integration in respect of any party found not to be complying with its obligations under Article 8 of this Agreement, raises problems for a number of participants.

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1 A precise date for the entry into force of this Agreement (1 January 1992) has to be agreed in advance in order to deal with the situation arising from the fact that the current Protocol extending the MFA will expire on 31 July 1991.
AGREEMENT ON TEXTILES AND CLOTHING

PREAMBLE

1. Having in mind the overall objectives of bringing about further liberalization and expansion of world trade to the benefit of all countries, especially less-developed contracting parties, of improving and strengthening the multilateral trading system based on the principles and rules of the GATT, and of bringing about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines;

2. Recognizing the great importance of the textile and clothing sector for the economies of many countries and particularly for the economic and social development of many developing countries, and for the expansion of their export earnings;

3. Recognizing also that international trade in textile products is characterized by a number of restrictive practices and measures, and that this trade has been subject, since 1961, to a special set of rules, separate and different from those of the General Agreement, and noting that the current Protocol extending the Arrangement Regarding International Trade in Textiles will expire on 31 July 1991;

4. Recalling that Ministers agreed at Punta del Este that negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade;

5. Recalling also that in the April 1989 TNC Decision it was agreed that the process of integration should commence following the conclusion of the Uruguay Round in 1990, and should be progressive in character. Recalling further that it was agreed that special treatment should be accorded to the least developed countries;

6. Desiring to provide for a multilateral framework, during the transitional period, which would permit the orderly integration of the textiles and clothing sector into GATT;

7. [Acknowledging that as a result of the Uruguay Round negotiations, GATT rules and disciplines have been strengthened, so as to form a basis for the integration process to be launched;]

8. Determined to have full regard to the principles and objectives of the General Agreement on Tariffs and Trade and, in carrying out the aims of the present Agreement, effectively to implement the decisions of Ministers taken at the conclusion of the Uruguay Round;

Parties to this Agreement hereby agree as follows:

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1 Throughout this paper the expression "textiles products" refers to "textiles and clothing".
ARTICLE 1
GENERAL PROVISIONS

1. This Agreement sets out provisions to be applied during a transitional period for the integration of the textiles and clothing sector into GATT. This process of integration shall be effected within a transition period of ... years, beginning on 1 January 1992.

2. Nothing in this Agreement shall prevent a party from eliminating restrictions maintained by it with immediate effect or earlier than specifically provided for in this Agreement.

3. Parties shall not interrupt or discourage autonomous industrial adjustment processes. Policies applied in this context should encourage businesses which are less competitive internationally to move progressively into more viable lines of production or into other sectors of the economy. They should allow for increased competition in the markets of the parties in order to prepare their industry for the integration of the textiles and clothing sector into the GATT.

4. The provisions of this Agreement shall not affect the rights and obligations of the parties under the GATT.

5. For the purpose of this Agreement, the product coverage is set out in [Annex --].
ARTICLE 2

MFA RESTRICTIONS

1. Parties agree that as of 1 January 1992, all quantitative restrictions maintained under the MFA, as extended, and in place on 31 December 1991, shall be governed by the provisions of this Agreement.

2. Within 60 days of the commencement of this Agreement, all MFA restrictions in force on 31 December 1991 shall be notified in detail by the parties maintaining such restrictions to the Textiles Monitoring Body (TMB), established under Article 9. The TMB shall promptly circulate these notifications to the other parties for their information. It is open to any party to bring to the attention of the TMB, within 60 days of the circulation of the notifications, any observations it deems appropriate with regard to such notifications.

3. The MFA restrictions thus notified shall be deemed to constitute the totality of such restrictions applied by the respective parties on 31 December 1991, and no new restrictions in terms of products or countries shall be introduced except under the provisions of this Agreement or relevant GATT provisions. MFA restrictions which are not notified within sixty days of the commencement of this Agreement shall be terminated forthwith.

4. On the first day of the coming into force of this Agreement, i.e. 1 January 1992, each party shall integrate into GATT products accounting for not less than [10] per cent of the total volume of imports in 1990 of the products subject to this Agreement (see Annex II), in terms of HS lines or categories. The products to be integrated by the importing parties shall encompass a range of products from the four groups which make up Annex IV of this Agreement.

[AND]

- eliminate restrictions and restrictive practices [listed in] [as may be agreed with respect to] Annex III B and III C, (see Annex III).

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1 Quantitative restrictions are defined as limits in place under MFA agreements in effect on 31 December 1991, i.e., specific [and group and aggregate] limits.

2 The legal cover for the restrictions under the MFA as extended by the 1986 Protocol, for the period 1 August 1991 to 31 December 1991, will be provided by means of a decision of the Textiles Committee.
5. Notwithstanding the date of the coming into force of this Agreement, i.e., 1 January 1992, the parties concerned undertake to notify to the GATT Secretariat not later than 1 July 1991, full details of the actions to be taken pursuant to paragraph 4 above. The GATT Secretariat shall promptly circulate the notifications to the other parties for information. These notifications will be made available to the TMB, when established, for the purposes of paragraph 8 below.

6. The remaining products, i.e., the products not integrated into GATT under paragraph 4 above, shall be integrated, in terms of HS lines or categories, in three stages, as follows:

A. On 1 January [....], not less than [15] per cent of the total volume of 1990 imports of products subject to this Agreement (see Annex IV). The products to be integrated by the importing parties shall encompass a range of products from the four groups which make up Annex IV of this Agreement.

B. On 1 January [....], not less than [20] per cent of the total volume of 1990 imports of products subject to this Agreement (see Annex II). The products to be integrated by the importing parties shall encompass a range of products from the four groups which make up Annex IV of this Agreement.

C. On 1 January [....], all restrictions under this Agreement would have been eliminated and the textiles and clothing sector stand integrated into GATT.

7. The respective programmes of integration to be adopted by the parties concerned in pursuance of paragraph 6 above shall be notified in detail to the TMB at least 12 months before their coming into effect, for circulation to all parties. Such administrative arrangements as deemed necessary for the integration process may be agreed bilaterally between the parties concerned. Any such arrangements shall also be notified to the TMB for circulation to all parties.

8. The TMB shall, at the request of any party, review any particular matter with reference to the implementation of the provisions of paragraphs 4 and 6 above. It shall make appropriate recommendations or findings within thirty days to the party or parties concerned after inviting the participation of such parties. The TMB shall keep under review the implementation of this Article.

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1 For further procedures in relation to the TMB recommendations, see Article 9.
9. The base levels of the restrictions on the remaining products, mentioned in paragraph 6 above, shall be the actual levels of the MFA restrictions in force on 31 December 1991 [uplifted by [ ] per cent].

10. During the life of this Agreement, the levels of restrictions in force, i.e., until such restrictions are eliminated and the products to which they apply integrated into GATT in accordance with the provisions of paragraph 6 above, shall be increased annually by not less than the growth rates established according to the following procedure:

(i) for Stage 1 (years 1992 to [ ] inclusive), each existing growth rate for the respective product categories in MFA bilateral agreements for the year 1991, increased by [16 per cent];

(ii) for Stage 2 (years [ ] to [ ] inclusive), growth rate for the respective product categories during Stage 1, increased by [21 per cent];

(iii) for Stage 3 (years [ ] to [ ] inclusive), growth rate for the respective product categories during Stage 2, increased by [26 per cent];

[provided that all growth rates in existing MFA bilateral agreements lower than 1 per cent shall be increased to 1 per cent before the application of the above growth factors.]

11. Flexibility provisions, i.e., swing, carryover, and carry forward applicable to all quantitative restrictions in force in accordance with the provisions of this Article shall be the same as those provided for in MFA bilateral agreements for the year 1991. No quantitative limits shall be placed on the combined use of swing, carryover and carry forward.

12. Parties to this Agreement may mutually agree to provide for [a different mix of base levels, rates of growth and flexibility, provided that the resulting agreement shall not involve any diminution of the access level in the importing party provided for under this Article].

13. [With respect to suppliers which are substantial producers of cotton whose exports are heavily dependent on textile products made of cotton, the base levels indicated in paragraph 9, above, shall be uplifted so as to ensure meaningful improvement in the access to that importing country, the flexibility provisions ............, and the growth rates indicated in paragraph 10 above shall be increased by ..... per cent for Stage 1, .... per cent for Stage 2, and .... per cent for Stage 3.]

14. With respect to participating countries whose total volume of textile exports is small in comparison with the total volume of exports of other countries, and whose total volume of textile exports into a specific country is one per cent or less of the total volume of imports of textiles of the importing country concerned, the base levels indicated in paragraph 9 above shall be uplifted so as to ensure meaningful improvement
in the access to that importing country, the flexibility provisions .......
and the growth rates indicated in paragraph 10 above shall be increased by .... per cent for Stage 1, .... per cent for Stage 2, and .... per cent for Stage 3.

OR

As regards to the parties whose restrictions represent one per cent or less of the total volume of the restrictions notified under paragraph 2 above, meaningful improvement in access shall be provided through growth rates (higher than those in paragraph 10, the precise figures to be developed as a function of the definition of paragraph 10), or as appropriate, in combination with increases in base levels indicated in paragraph 9.

15. [An emergency action shall not be taken in respect of a particular product during a period of two years following the date of removal of all quantitative restrictions on that product in accordance with the programme of progressive elimination of restrictions in Article 2.]
ARTICLE 3

OTHER RESTRICTIONS ON TEXTILES AND CLOTHING

1. All restrictions on textiles and clothing products (other than those maintained under the MFA and covered by the provisions of Article 2 above), whether consistent with GATT or not, shall be notified in detail, or notifications with respect to them made available, to the TMB within sixty days of the entry into force of this Agreement, by the parties maintaining such restrictions. The notification should, wherever applicable, provide information with respect to any GATT justification for the restrictions, including the GATT Article on which they are based. The TMB shall circulate the notifications to other parties for their information.

2. Over the period of this Agreement, parties shall notify, for the information of the TMB, any new restrictions or changes in existing restrictions, including the GATT Article on which they are based, wherever applicable, within sixty days of their coming into effect.

3. It shall be open to any party to make reverse notifications to the TMB in regard to any restrictions that may not have been notified under the provision of paragraphs 1 and 2 above.

4. All non-MFA restrictions not consistent with GATT, to the extent that such restrictions do not fall within the competence of other relevant GATT bodies (e.g., safeguards, NTMs), shall be either: (a) brought into conformity with GATT within one year of the entry into force of this Agreement; or (b) phased-out within a period not exceeding the transitional period, according to a programme submitted by the party maintaining such restrictions to the TMB within six months of the entry into force of this Agreement. The phasing out of non-MFA restrictions not consistent with GATT shall be implemented in a manner equivalent to the phasing out of MFA restrictions provided for in Article 2 of this Agreement. The TMB may make recommendations to the GATT Council with respect to such a programme.

5. Any party to this agreement which considers that any other party is not fulfilling its obligations with respect to the bringing into conformity with the GATT or the phasing out of inconsistent restrictions, as provided for in paragraph 4 above, may notify the TMB and take up the matter for action under normal GATT procedures.

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1Restrictions denote all unilateral quantitative restrictions, bilateral arrangements and any other quantitative measures having a restrictive effect.
ARTICLE 4

ADMINISTRATION OF RESTRICTIONS

1. Restrictions referred to in Article 2, and as provided for under Article 6, shall be administered by the exporting parties.

2. Parties agree that changes in the categorisation of textile products prevailing in the restraining parties on 31 December 1991 could frustrate the implementation of this Agreement. They, therefore, agree that any changes in such categorisation systems may only be made as set out in paragraph 3, below.

3. Parties agree that introduction of changes, such as changes in practices, rules, procedures and categorisation of textile products, including those changes relating to the Harmonised System, in the implementation or administration of restrictions under this Agreement, should not adversely affect the access level available to a party under this Agreement; impede the full utilization of such level; upset the balance or rights and obligations between the parties concerned; disrupt trade under this Agreement. When such changes are necessary, however, parties agree that the party initiating such changes shall, wherever possible, inform and initiate consultations with the affected party prior to the implementation of such changes, with a view to reaching a mutually acceptable solution regarding appropriate and equitable adjustments. Parties further agree that where consultation prior to implementation is not feasible, the party initiating such changes will consult as early as possible, and in any case within -- days, with the parties concerned with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments. If a mutually satisfactory solution is not reached, any party involved may refer the matter to the TMB for recommendations.
ARTICLE 5
FRAUD AND CIRCUMVENTION

1. Parties agree that circumvention by transshipment, re-routing and false declaration concerning country or place of origin frustrate the objective of this Agreement to integrate the textiles and clothing sector into the GATT. Accordingly, parties should establish the necessary legal provisions and/or administrative procedures to address and take action against such circumvention. Parties further agree that, consistent with their domestic laws and procedures, they will cooperate fully to address problems arising from circumvention.

2. Should any party believe that this Agreement is being circumvented by transshipment, re-routing or false declaration concerning country or place of origin and that no, or inadequate, measures are being applied to address or to take action against such circumvention, that party should consult with the party or parties concerned with a view to seeking a mutually satisfactory solution. Such consultations should be held promptly, and within 30 days where possible. If a mutually satisfactory solution is not reached, the matter may be referred by any party involved to the TMB for recommendations.

3. Parties agree to take necessary action to prevent, to investigate and, where appropriate, to take legal and/or administrative action against circumvention practices within their territory. Parties agree to cooperate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of this Agreement, to establish the relevant facts in the places of import, export and, where applicable, transshipment. It is agreed that such cooperation, consistent with domestic laws and procedures, will include investigation of circumvention practices which increase restrained exports to the party maintaining such restraints; exchange of documents, correspondence, reports and other relevant information to the extent available; and facilitation of plant visits and contacts, upon request and on a case-by-case basis. Parties should endeavour to clarify the circumstances of any such instances of circumvention or alleged circumvention, including the respective roles of the exporters or importers involved.

4. Where, as a result of investigation, there is sufficient evidence that circumvention has occurred (e.g., where evidence is available concerning the place of true origin, and the circumstances of such circumvention) parties agree that appropriate action, to the extent necessary to address the problem, should be taken. Such action may include the denial of entry of goods or, where goods have entered, [having due regard to the actual circumstances and the involvement of the country of true origin] the adjustment of charges to restraint levels to reflect the true country of
origin. Also, where there is evidence of the involvement of the countries or places through which the goods have been transshipped, such action may include the introduction of restraints with respect to such countries or places. Any such actions, together with their timing and scope, may be taken [after] consultation between the concerned parties and shall be notified to the TMB with full justification. The parties concerned may agree on other remedies in consultation. If a mutually satisfactory solution is not reached, any party concerned may refer the matter to the TMB for recommendations.

5. Parties note that some cases of circumvention may involve shipments transiting through countries or places with no changes or alterations made to the goods contained in such shipments in the places of transit. They note that, it may not be generally practicable for such places of transit to exercise control over such shipments.

6. Parties agree that false declaration concerning fibre content, quantities, description or classification of merchandise also frustrate the objective of this Agreement. Where there is evidence that any such false declaration has been made for purposes of circumvention, parties agree that appropriate measures, consistent with domestic laws and procedures, should be taken against the exporters or importers involved. Should any party believe that this Agreement is being circumvented by such false declarations and that no, or inadequate, administrative measures are being applied to address and/or to take action against such circumvention, that party should consult promptly with the party involved with a view to seeking a mutually satisfactory solution. If such a solution is not reached, the matter may be referred by any party involved to the TMB for recommendations. This provision is not intended to prevent parties from making technical adjustments when inadvertent errors in declarations have been made.

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¹To be defined.
ARTICLE 6

SAFEGUARD MECHANISM DURING THE TRANSITIONAL PERIOD

1. Parties to this Agreement recognise that during the transition period it may be necessary to apply a specific transitional safeguard mechanism (hereinafter referred to as "transitional safeguard"). The transitional safeguard may be applied by any party, to all products covered by Annex II to this Agreement, except those integrated into the GATT under the provisions of Article 2.

2. Safeguard action may be taken under this Article when, on the basis of a determination by a party, it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Serious damage or actual threat thereof must demonstrably result from such an increase in total imports and not from factors such as technological changes or changes in consumer preference.

3. In making a determination of serious damage, or actual threat thereof, as referred to in paragraph 2 above, the party shall examine the effect of those imports on the state of the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment; none of which, either alone or combined with other factors, can necessarily give decisive guidance.

4. Any measure invoked pursuant to the provisions of this Article shall be on a country-by-country basis. The party invoking a safeguard measure shall determine the party or parties contributing to the serious damage or actual threat thereof, referred to in paragraphs 2 and 3 above, through a sharp and substantial increase in imports, actual or imminent, from such a party or parties individually, and on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable

1[A customs union may apply a safeguard measure as a single unit or on behalf of a member state. - To be finalized in the light of the corresponding provision of the general Safeguard Agreement.]  
2Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries.
stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. The application of such safeguard measures shall not affect the party or parties whose exports of the particular product are already under restraint. [In principle, a party shall not be subject to restraints if the transitional safeguard is not applied to any other party that has a larger market share, in respect of the particular product.]

5. The period of validity of a determination of serious damage or actual threat thereof for the purpose of invoking safeguard action shall not exceed 90 days.

6. [The transitional safeguard should be applied as sparingly as possible, consistent with the provisions of this Article and the effective implementation of the integration process under this Agreement. In the application of the transitional safeguard, particular account shall be taken of the interests of exporting parties as set out below:

(a) Least-developed countries shall be accorded treatment significantly more favourable than that provided to the other groups referred to in this paragraph, preferably in all its elements but, at least, on overall terms.

(b) The economic terms relating to growth and flexibility rates to be accorded to new entrants shall take due account of the future possibilities for the development of their trade and the need to permit commercial quantities of imports, in order to further their economic and social development.

(c) Exports from parties whose total volume of textile exports is small in comparison with the total volume of exports of other parties, [and is one per cent or less of the total volume of imports of textiles of the importing party concerned, and not more than [X] per cent in the particular product] [and represent a small percentage of the total imports of textiles of the importing party concerned covered by this Agreement], shall be accorded differential and more favourable treatment when considering quota levels [and growth rates] [and flexibility] [as well as a shorter duration for the safeguard measure].

(d) Special consideration shall be given to the terms for safeguard action to be accorded to exports of cotton products originating in cotton-producing exporting parties substantially dependent upon the exports of cotton textile products.

(e) With respect to wool products from wool producing, developing parties whose economy and textile trade are dependent on the wool sector, whose total textile exports consist almost exclusively of wool textile products, and whose volume of textile trade is comparatively small in the markets of the importing parties, special consideration shall be given to the export needs of such countries when considering quota levels, growth rates and flexibility.
(f) [More favourable treatment shall be accorded to] [Transitional safeguard shall not be applied to] reimports into a country of textile products which that party has exported to another party for processing and subsequent reimportation, as defined by the laws and practices of the importing parties, and subject to satisfactory control and certification procedures, when these products are imported from a party for which this type of trade represents a significant proportion of its total exports of textiles and clothing.]

7. The party proposing to take safeguard action shall seek consultations with the party or parties which would be affected by such an action. The request for consultations shall be accompanied by specific and relevant factual information, as up-to-date as possible, particularly in regard to: (a) the factors, referred to in paragraph 3 above, on which the party invoking the action has based its determination of the existence of serious damage or actual threat thereof; and (b) the factors, referred to in paragraph 4 above, on the basis of which it proposes to invoke the safeguard action with respect to the party or parties concerned. The party invoking the action shall also indicate the specific level at which imports of the product in question from the party or parties concerned are proposed to be restrained; such level shall not be lower than the level referred to in paragraph 8, below. The request for consultations, along with the proposed restraint level shall, at the same time, be communicated to the TMB for information. The party or parties concerned shall respond to this request promptly and the consultations shall be held without delay and normally be completed within sixty days of the date on which the request has been received.

8. If, in the consultations, there is mutual understanding that the situation calls for restraint on the exports of the particular product from the party or parties concerned, the level of such restraint shall be fixed at a level not lower than [(a) the actual level of exports or imports from the party concerned during the twelve month period terminating two months preceding the month in which the request for consultation was made, or (b) the average of actual exports of imports during the last three years for which trade data are available, whichever is higher.]

9. Details of the agreed restraint measure shall be communicated to the TMB, which shall determine whether the agreement is justified in accordance with the provisions of this Article. The TMB may make such recommendations as it deems appropriate to the parties concerned.

10. If, however, after the expiry of the period of sixty days from the date on which the request for consultations was received, there has been no agreement between the parties, the party which proposed to take safeguard action may apply the restraints [by date of import or date of export] in accordance with the provisions of this Article within 30 days following the sixty days period for consultations and at the same time refer the matter to the TMB. It shall be open to either party to refer the matter to the TMB before the expiry of the period of sixty days. In either case, the TMB shall promptly conduct
an examination of the matter, and make appropriate recommendations to the parties concerned within thirty days.²

11. In highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10, above, may be taken provisionally on the condition that consultations shall be effected immediately after the taking of the action. In such a case, the provisions of paragraph 7 above relating to notification shall apply. The outcome of the consultations shall be notified to the TMB upon conclusion but, in any case, not later than the sixty day period set out in paragraph 7. The matter will be dealt with in the same manner as provided for in the relevant parts of paragraphs 9 and 10 above.

12. Measures invoked pursuant to the provisions of this Article may remain in place: (a) [for up to three years without extension] [for one year with possible extension for a maximum of two years], or (b) until the product is removed from the scope of this Agreement, whichever comes first.

13. If, in the view of the restraining party, there is need to continue with the measure for a further period of ......., [it shall, not later than sixty days before the expiry of the measure, produce evidence in terms of paragraphs 2 to 4 above, in relation to the need for extension, before the TMB. The TMB shall examine the matter and make appropriate recommendations to the parties concerned within thirty days] [it shall be free to do so provided that agreement is reached between the parties directly concerned on such extension, including the possibility of compensatory adjustment elsewhere. Proposals for extension shall be submitted to the TMB which shall make the appropriate recommendations].

14. Should the restraint measure remain in force for a period exceeding one year, the level for subsequent year[s] shall be the level specified for the first year increased by a growth rate of [not lower than 6 per cent per annum; in the case of wool products, not lower than 1 per cent per annum]. Flexibility i.e., [swing], carryover and carry forward, shall be provided [as set out in paragraph 11 of Article 2] [as set out in this Article].

15. If safeguard action is taken on a product for which a restraint was previously in place in 1991 under the MFA or pursuant to the

²For further procedures in relation to TMB recommendations, see Article 9.
provisions of Article 2 or 6 of this Agreement, the level of the new restraint shall be the level provided for in paragraph 8 of this Article unless the period provided therein overlaps with the previous restraint, in which case the level shall be: (i) the level provided for in the restraint, or the level of actual imports or exports, whichever is higher, except in case of over-shipment, for the months where the period referred to in paragraph 8 overlap; and (ii) the level of actual imports or exports for the months where no overlap occurs.

ARTICLE 7
ADDITIONAL TRADE MEASURES

1. [Without prejudice to the provisions of Article 1, paragraph 4, parties [maintaining restrictions] under this Agreement shall refrain from taking additional trade measures which may have the effect of nullifying the objective of this Agreement or impairing the liberalization process. [Parties maintaining restrictions shall not levy anti-dumping or countervailing duties during the transitional period on textile products covered by this Agreement].
ARTICLE 8

GATT RULES AND DISCIPLINES

1. As part of the integration process and with reference to the specific commitments undertaken by the parties in the Uruguay Round, all parties shall take such actions as may be necessary to abide by GATT rules and disciplines so as to:

   (i) promote improved access to markets for textiles and clothing through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities;

   (ii) ensure the application of provisions relating to fair and equitable trading conditions as regards textiles and clothing in such areas as dumping and anti-dumping rules and procedures, subsidies and countervailing measures, and protection of intellectual property rights; and

   (iii) avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons.

Such actions shall be without prejudice to the rights and obligations of parties under GATT.

2. Parties shall notify to the TMB the actions referred to in paragraph 1 above which have a bearing on the implementation of this Agreement. To the extent that these have been notified to other GATT committees or bodies, a summary, with reference to the original notification, shall be sufficient to fulfil the requirements under this paragraph. It shall be open to any party to make reverse notifications to the TMB.

3. Where any party considers that another party has not taken the actions referred to in paragraph 1 above, that party may bring the matter before the relevant GATT committees and bodies and inform the TMB. Any subsequent findings or conclusions by the GATT committees and bodies concerned shall form a part of the TMB’s comprehensive report.

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1 Subject to the final decision on the Agreement in this area.
ARTICLE 9

MONITORING, SURVEILLANCE, REVIEW AND DISPUTE SETTLEMENT

1. In order to supervise the implementation of this Agreement, to examine all measures taken under its provisions and their conformity therewith, and to take the actions specifically required of it in the articles of this Agreement, there shall be established by the [GATT Council] a Textiles Monitoring Body (herein referred to as the TMB). The TMB shall consist of a Chairman and 10 members. Its membership shall be balanced and broadly representative of the parties and shall provide for rotation of its members at appropriate intervals. The members shall be appointed by parties designated by the [GATT Council] to serve on the TMB discharging their function on an ad personam basis. The TMB will develop its own working procedures.

2. The TMB shall be considered as a standing body and shall meet as necessary to carry out the functions required of it under this Agreement. It shall rely on notifications and information supplied by the parties under the relevant articles of this Agreement, supplemented by any additional information or necessary details they may submit or it may decide to seek from them. It may also rely on notifications to and reports from other GATT committees and bodies and from such other sources as it may deem appropriate.

3. Parties shall afford to each other adequate opportunity for consultations with respect to any matters affecting the operation of this Agreement.

4. In the absence of any mutually agreed solution in the bilateral consultations provided for in this Agreement, the TMB shall, at the request of either party, and following a thorough and prompt consideration of the matter, make recommendations to the parties concerned.

5. At the request of any party, the TMB shall review promptly any particular matter which that party considers to be detrimental to its interests under this Agreement where consultations between it and the party or parties concerned have failed to produce a mutually satisfactory solution. On such matters, the TMB may make such observations as it deems appropriate to the parties concerned and for the purposes of the review provided for in paragraph 10, below.

6. Before formulating its recommendations or observations, the TMB shall invite participation of such parties as may be directly affected by the matter in question.

7. Whenever the TMB is called upon to make recommendations or findings, it shall do so, preferably within a period of 30 days, unless a different time period is specified in this Agreement. All such recommendations or
findings shall be communicated to the parties directly concerned and to the [GATT Council].

8. The parties shall endeavour to accept in full the recommendations of the TMB which shall exercise proper surveillance of the implementation of such recommendations.

9. If a party considers itself unable to conform with the recommendations of the TMB, it shall provide the TMB with the reasons therefor not later than one month after receipt of such recommendations. Following thorough consideration of the reasons given, the TMB shall issue any further recommendations it considers appropriate forthwith. It shall be open to either party to bring the matter before the [GATT Council].

10. In order to oversee the implementation of the Agreement, the [GATT Council] shall conduct a major review before the end of each stage of the integration process. To assist in this review, the TMB shall, at least 5 months before the end of each stage, transmit to the [GATT Council] a comprehensive report on the implementation of this Agreement during the stage under review, in particular in matters with regard to the integration process, the application of the transitional safeguard mechanism, and relating to the application of GATT rules and disciplines as defined in Articles 2, 6 and 8 of this Agreement, respectively.

11. In the light of its review, the [GATT Council] shall take such decisions as it deems appropriate to ensure that the balance of rights and obligations embodied in this Agreement is not being impaired. [Such decisions may include adjustment of the provisions of this Agreement, relating to the process of integration for the stage subsequent to the review, with respect to any party found not to be complying with its obligations thereunder, without prejudicing the final date as set out under Article 10 of this Agreement.]

ARTICLE 10

TIME SPAN

1. This Agreement shall enter into force on 1 January 1992, and terminate on ..................at which time the textiles and clothing sector shall be fully integrated into GATT.
ARTICLE 11

FINAL PROVISIONS

1. This Agreement shall enter into force on 1 January 1992 ...

2. Notwithstanding the provisions of paragraph 1 above, the notification requirements set out in Article 2, paragraph 5 of this Agreement shall be provisionally applied as from 1 July 1991 for the parties which have signed this Agreement.

3. ............
ANNEX I

LIST OF PRODUCTS FOR THE PURPOSES OF NOTIFICATION PROCEDURES, BUT NOT FOR ACTIONS UNDER ARTICLES 2 AND 6 OF THIS AGREEMENT

(TO BE DISCUSSED)
ANNEX II

LIST OF PRODUCTS COVERED BY THIS AGREEMENT FOR THE PURPOSES OF ARTICLES 2 AND 6

This Annex lists textile products identified by Harmonized Commodity Description and Coding System (HS) codes at the six digit level which will constitute the basis for the integration of products into GATT during the transition period in accordance with Article 2 of this Agreement, and for products that will be subject to the safeguard mechanism under Article 6, until integrated into GATT pursuant to the provisions of Article 2. Actions under the safeguard provisions in Article 6 will be taken on particular textile and clothing products and not on the basis of the HS lines per se.
### Section 11

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>Silk.</td>
</tr>
<tr>
<td>5004</td>
<td>Silk yarn (other than yarn spun from silk waste) not put up for retail sale</td>
</tr>
<tr>
<td>5005</td>
<td>Yarn spun from silk waste, not put up for retail sale</td>
</tr>
<tr>
<td>5006</td>
<td>Silk yarn &amp; yarn spun from silk waste, put up for retail sale; silk-worm gut</td>
</tr>
<tr>
<td>5007</td>
<td>Woven fabrics of noil silk</td>
</tr>
<tr>
<td>5007 20</td>
<td>Woven fabrics of silk/silk waste, other than noil silk, 85% or more of such fibres</td>
</tr>
<tr>
<td>5007 90</td>
<td>Woven fabrics of silk, nes</td>
</tr>
<tr>
<td>51</td>
<td>Wool, fine/coarse animal hair, horsehair yarn &amp; fabric</td>
</tr>
<tr>
<td>5105</td>
<td>Combed wool</td>
</tr>
<tr>
<td>5105 29</td>
<td>Wool tops and other combed wool, other than combed wool in fragments</td>
</tr>
<tr>
<td>5105 30</td>
<td>Fine animal hair, carded or combed</td>
</tr>
<tr>
<td>5106 10</td>
<td>Yarn of carded wool, &gt;/= 85% by weight of wool, not put up for retail sale</td>
</tr>
<tr>
<td>5106 20</td>
<td>Yarn of carded wool, &lt;85% by weight of wool, not put up for retail sale</td>
</tr>
<tr>
<td>5107 10</td>
<td>Yarn of combed wool, &gt;/= 85% by weight of wool, not put up for retail sale</td>
</tr>
<tr>
<td>5107 20</td>
<td>Yarn of combed wool, &lt;85% by weight of wool, not put up for retail sale</td>
</tr>
<tr>
<td>5108 10</td>
<td>Yarn of carded fine animal hair, not put up for retail sale</td>
</tr>
<tr>
<td>5108 20</td>
<td>Yarn of combed fine animal hair, not put up for retail sale</td>
</tr>
<tr>
<td>5109 10</td>
<td>Yarn of wool of fine animal hair, &gt;/= 85% by weight of such fibres, put up</td>
</tr>
<tr>
<td>5109 90</td>
<td>Yarn of wool of fine animal hair, &lt;85% by weight of such fibres, put up</td>
</tr>
<tr>
<td>5110 00</td>
<td>Yarn of coarse animal hair or of horsehair</td>
</tr>
<tr>
<td>5111 11</td>
<td>Woven fabrics of carded wool/fine animal hair, &gt;/= 85% by weight, &lt;/= 300 g/m²</td>
</tr>
<tr>
<td>5111 19</td>
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<tr>
<td>5111 20</td>
<td>Woven fabrics of carded wool/fine animal hair, &gt;/= 85% by weight, mixed w m-m fi</td>
</tr>
<tr>
<td>5111 30</td>
<td>Woven fabrics of carded wool/fine animal hair, &gt;/= 85% by weight, mixed w m-m fib</td>
</tr>
<tr>
<td>5111 90</td>
<td>Woven fabrics of carded wool/fine animal hair, &lt;/= 85% by weight, nes</td>
</tr>
<tr>
<td>5112 11</td>
<td>Woven fabrics of combed wool/fine animal hair, &gt;/= 85% by weight, &lt;/= 200 g/m²</td>
</tr>
<tr>
<td>5112 19</td>
<td>Woven fabrics of combed wool/fine animal hair, &gt;/= 85% by weight, &gt;200 g/m²</td>
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<tr>
<td>5112 20</td>
<td>Woven fabrics of combed wool/fine animal hair, &lt;85% by weight, mixed w m-m fil</td>
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<tr>
<td>5112 30</td>
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</tr>
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<tr>
<td>5113 00</td>
<td>Woven fabrics of coarse animal hair or of horsehair</td>
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</tr>
<tr>
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</tr>
<tr>
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</tr>
<tr>
<td>5204 19</td>
<td>Cotton sewn thread, &lt;85% by weight of cotton, not put up for retail sale</td>
</tr>
<tr>
<td>5204 20</td>
<td>Cotton sewing thread, put up for retail sale</td>
</tr>
<tr>
<td>5205 11</td>
<td>Cotton yarn, &gt;/= 85%, single, uncombed, &gt;/= 714.29 dtex, not put up</td>
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<td>5205 21</td>
<td>Cotton yarn, &gt;/= 85%, single, combed, &gt;/= 714.29, not put up</td>
</tr>
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Cotton yarn, >85%, multi, uncombed, <125 dtex, not put up, nes
Cotton yarn, >85%, multiple, combed, >714.29 dtex, not put up, nes
Cotton yarn, >85%, multi, combed, 714.29 >dtex>/=232.56, nt put up, nes
Cotton yarn, >85%, multi, combed, 232.56 >dtex>/=192.31, nt put up, nes
Cotton yarn, >85%, multiple, combed, 192.31 >dtex>/=125, not put up, nes
Cotton yarn, >85%, multiple, combed, <125 dtex, not put up, nes
Cotton yarn, >85%, single, uncombed, >714.29, not put up
Cotton yarn, >85%, single, uncombed, 714.29 >dtex>/=232.56, nt put up
Cotton yarn, >85%, single, uncombed, 232.56 >dtex>/=192.31, not put up
Cotton yarn, >85%, single, combed, 192.31 >dtex>/=125, not put up, nes
Cotton yarn, >85%, single, combed, <125 dtex, not put for retail sale
Cotton yarn, >85%, single, combed, >714.29 dtex, nt put up
Cotton yarn, >85%, single, combed, 714.29 >dtex>/=232.56, not put up
Cotton yarn, >85%, single, combed, 232.56 >dtex>/=192.31, not put up
Cotton yarn, >85%, single, combed, 192.31 >dtex>/=125, nt put up, nes
Cotton yarn, >85%, single, combed, <125 dtex, not put for retail sale
Cotton yarn, >85%, multiple, uncombed, >714.29, not put up, nes
Cotton yarn, >85%, multiple, uncombed, 714.29 >dtex>/=232.56, nt put up, nes
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Cotton yarn, >85%, multiple, uncombed, 192.31 >dtex>/=125, nt put up, nes
Cotton yarn, >85%, multiple, uncombed, <125 dtex, not put up, nes
Cotton yarn, >85%, multiple, combed, >714.29 dtex, nt put up, nes
Cotton yarn, >85%, multiple, combed, 714.29 >dtex>/=232.56, not put up
Cotton yarn, >85%, multiple, combed, 232.56 >dtex>/=192.31, not put up
Cotton yarn, >85%, multiple, combed, 192.31 >dtex>/=125, nt put up, nes
Cotton yarn, >85%, multiple, combed, <125 dtex, not put up, nes
Cotton yarn (other than sewing thread) >85% by weight of cotton, put up
Cotton yarn (other than sew thread) <85% by wt of cotton, put up for retail sale
Plain weave cotton fabric, >85%, not more than 100 g/m2, unbleached
Plain weave cotton fabric, >85%, >100 g/m2 to 200 g/m2, unbleached
Twill weave cotton fabric, >85%, not more than 200 g/m2, unbleached
Woven fabrics of cotton, >85%, not more than 200 g/m2, unbleached, nes
Plain weave cotton fabrics, >85%, not more than 100 g/m2, bleached
Plain weave cotton fabric, >85%, >100 g/m2 to 200 g/m2, bleached
Twill weave cotton fabric, >85%, not more than 200 g/m2, bleached
Woven fabrics of cotton, >85%, nt more than 200 g/m2, bleached
Woven fabrics of cotton, >85%, nt more than 200 g/m2, dyed
Plain weave cotton fabric, >85%, >100g/m2 to 200g/m2, dyed
Twill weave cotton fabrics, >85%, not more than 200 g/m2, dyed
Woven fabrics of cotton, >85%, not more than 200 g/m2, dyed, nes
Plain weave cotton fabric, >85%, not more than 100 g/m2, yarn dyed
Twill weave cotton fabric, >85%, not more than 200 g/m2, yarn dyed
Woven fabrics of cotton, >85%, nt more than 200 g/m2, yarn dyed, nes
Plain weave cotton fabrics, >85%, not more than 100 g/m2, printed
Plain weave cotton fabric, >85%, >100 g/m2 to 200 g/m2, printed
Twill weave cotton fabric, >85%, not more than 200 g/m2, printed
Woven fabrics of cotton, >85%, not more than 200 g/m2, printed, nes
Plain weave cotton fabric, >85%, more than 200 g/m2, unbleached
Twill weave cotton fabric, >85%, more than 200 g/m2, unbleached
Woven fabrics of cotton, >85%, more than 200 g/m2, unbleached
Plain weave cotton fabric, >/=85%, more than 200 g/m², bleached

Twill weave cotton fabrics, >/=85%, more than 200 g/m², bleached

Woven fabrics of cotton, >/=85%, more than 200 g/m², bleached, nes

Plain weave cotton fabrics, >/=85%, more than 200 g/m², dyed

Twill weave cotton fabrics, >/=85%, more than 200 g/m², dyed

Woven fabrics of cotton, >/=85%, more than 200 g/m², dyed, nes

Plain weave cotton fabrics, >/=85%, more than 200 g/m², yarn dyed

Denim fabrics of cotton, >/=85%, more than 200 g/m²

Twill weave cotton fab, other than denim, >/=85%, more than 200 g/m², yarn dyed

Woven fabrics of cotton, >/=85%, more than 200 g/m², yarn dyed, nes

Plain weave cotton fabrics, >/=85%, more than 200 g/m², printed

Twill weave cotton fabrics, >/=85%, more than 200 g/m², printed

Woven fabrics of cotton, >/=85%, more than 200 g/m², printed, nes

Plain weave cotton fab, <85% mixed w m-m fib, not more than 200 g/m², unbleached

Twill weave cotton fab, <85% mixed w m-m fib, not more than 200 g/m², unbleached

Woven fab of cotton, <85% mixed w m-m fib, </=200 g/m², unbleached, nes

Plain weave cotton fab, <85% mixed w m-m fib, not more than 200 g/m², bleached

Twill weave cotton fab, <85% mixed w m-m fib, not more than 200 g/m², bleached

Woven fabrics of cotton, <85% mixed w m-m fib, </=200 g/m², bleached, nes

Plain weave cotton fab, <85% mixed w m-m fib, not more than 200 g/m², dye sensitive

Twill weave cotton fab, <85% mixed w m-m fib, not more than 200 g/m², dye sensitive

Woven fabrics of cotton, <85% mixed w m-m fib, </=200 g/m², dye sensitive, nes

Plain weave cotton fab, <85% mixed w m-m fib, nt mor than 200g/m², yarn dyed

Twill weave cotton fab, <85% mixed w m-m fib, nt mor than 200g/m², yarn dyed

Woven fabrics of cotton, <85% mixed w m-m fib, </=200g/m², yarn dyed, nes

Plain weave cotton fab, <85% mixed w m-m fib, nt mor than 200 g/m², printed

Twill weave cotton fab, <85% mixed w m-m fib, nt mor than 200 g/m², printed

Woven fabrics of cotton, <85% mixed w m-m fib, </=200 g/m², printed, nes

Plain weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², unbleached

Twill weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², unbleached

Woven fabrics of cotton, <85% mixed w m-m fib, more than 200 g/m², unbleached, nes

Plain weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², bleached

Twill weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², bleached

Woven fabrics of cotton, <85% mixed w m-m fib, more than 200 g/m², bleached, nes

Plain weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², yarn dyed

Twill weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², yarn dyed

Denim fabrics of cotton, <85% mixed w m-m fib, more than 200 g/m²

Plain weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², yarn dyed

Twill weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², printed

Woven fabrics of cotton, <85% mixed w m-m fib, more than 200 g/m², printed, nes

Plain weave cotton fab, <85% mixed w m-m fib, more than 200 g/m², bleached, nes

Woven fabrics of cotton, weighing not more than 200 g/m², unbleached, nes

Woven fabrics of cotton, weighing not more than 200 g/m², bleached, nes

Woven fabrics of cotton, weighing not more than 200 g/m², dyed, nes

Woven fabrics of cotton, >/=200g/m², of yarns of different colours, nes

Woven fabrics of cotton, weighing more than 200 g/m², printed, nes

Woven fabrics of cotton, weighing more than 200 g/m², unbleached, nes

Woven fabrics of cotton, weighing more than 200 g/m², bleached, nes

Woven fabrics of cotton, weighing more than 200 g/m², dyed, nes
5212 24  Woven fabrics of cotton, >200 g/m², of yarns of different colours, nes
5212 25  Woven fabrics of cotton, weighing more than 200 g/m², printed, nes

Ch. 53  Other vegetable textile fibres; paper yarn & woven fab
5306 10  Flax yarn, single
5306 20  Flax yarn, multile (folded) or cabled
5307 10  Yarn of jute or of other textile bast fibres, single
5307 20  Yarn of jute or of other textile bast fibres, multiple (folded) or cabled
5308 20  True hemp yarn
5308 90  Yarn of other vegetable textile fibres
5309 11  Woven fabrics, containing 85% or more by weight of flax, unbleached or bl
5309 19  Woven fabrics, containing 85% or more by weight of flax, other than unbl or bl
5309 21  Woven fabrics of flax, containing <85% by weight of flax, unbleached or bl
5309 29  Woven fabrics of flax, containing <85% by weight of flax, other than unbl or bl
5310 10  Woven fabrics of jute or of other textile bast fibres, unbleached
5310 20  Woven fabrics of jute or of other textile bast fibres, other than unbleached
5311 00  Woven fabrics of other vegetable textile fibres; woven fab of paper yarn

Ch. 54  Man-made filaments.
5401 10  Sewing thread of synthetic filaments
5401 20  Sewing thread of artificial filaments
5402 10  High tenacity yarn (other than sewn thread), nylon/other polyamides fi, nt put up
5402 20  High tenacity yarn (other than sewn thread), of polyester filaments, not put up
5402 31  Textured yarn nes, of nylon/other polyamides fi, </=50tex/s.y., not put up
5402 32  Textured yarn nes, of nylon/other polyamides fi, >50 tex/s.y., not put up
5402 33  Textured yarn nes, of polyester filaments, not put up for retail sale
5402 39  Textured yarn of synthetic filaments, nes, not put up
5402 41  Yarn of nylon or other polyamides fi, single, untwisted, nes, not put up
5402 42  Yarn of polyester filaments, partially oriented, single, nes, not put up
5402 43  Yarn of polyester filaments, single, untwisted, nes, not put up
5402 49  Yarn of synthetic filaments, single, untwisted, nes, not put up
5402 51  Yarn of nylon or other polyamides fi, single, >50 turns/m, not put up
5402 52  Yarn of polyester filaments, single, >50 turns per metre, not put up
5402 59  Yarn of synthetic filaments, single, >50 turns per metre, nes, not put up
5402 61  Yarn of nylon or other polyamides fi, multiple, nes, not put up
5402 62  Yarn of polyester filaments, multiple, nes, not put up
5402 69  Yarn of synthetic filaments, multiple, nes, not put up
5403 10  High tenacity yarn (other than sewn thread), of viscose rayon filam, nt put up
5403 20  Textured yarn nes, of artificial filaments, not put up for retail sale
5403 31  Yarn of viscose rayon filaments, single, untwisted, nes, not put up
5403 32  Yarn of viscose rayon filaments, single, >120 turns per m, nes, nt put up
5403 33  Yarn of cellulose acetate filaments, single, nes, not put up
5403 39  Yarn of artificial filaments, single, nes, not put up
5403 41  Yarn of viscose rayon filaments, multiple, nes, not put up
5403 42  Yarn of cellulose acetate filaments, multiple, nes, not put up
5403 49  Yarn of artificial filaments, multiple, nes, not put up
5404 10  Synthetic mono, </=67dtex, no cross sectional dimension exceeds 1 mm
5404 40  Strip & the like of syn tex material of an apparent width nt exceedg 5mm
5405 00  Artificial mono, 67 dtex, cross-sect >1mm; strip of arti tex mat w </=5mm
5406 10  Yarn of synthetic filament (other than sewing thread), put up for retail sale
5406 20  Yarn of artificial filament (other than sewing thread), put up for retail sale
5407 10  Woven fab of high tenacity fi yarns of nylon other polyamides/polyesters
5407 20 Woven fab obtained from strip/the like of synthetic textile materials
5407 30 Fabrics specif in Note 9 Section XI (layers of parallel syn tex yarn)
5407 41 Woven fab,/>=85% of nylon/other polyamides filaments, unbl or bl, nes
5407 42 Woven fabrics,/>=85% of nylon/other polyamides filaments, dyed, nes
5407 43 Woven fab,/>=85% of nylon/other polyamides filaments, yarn dyed, nes
5407 44 Woven fabrics,/>=85% of nylon/other polyamides filaments, printed, nes
5407 51 Woven fabrics,/>=85% of textured polyester filaments, unbl or bl, nes
5407 52 Woven fabrics,/>=85% of textured polyester filaments, dyed, nes
5407 53 Woven fabrics,/>=85% of textured polyester filaments, yarn dyed, nes
5407 54 Woven fabrics,/>=85% of textured polyester filaments, printed, nes
5407 60 Woven fabrics,/>=85% of non-textured polyester filaments, nes
5407 71 Woven fab,/>=85% of synthetic filaments, unbleached or bleached, nes
5407 72 Woven fabrics,/>=85% of synthetic filaments, dyed, nes
5407 73 Woven fabrics,/>=85% of synthetic filaments, yarn dyed, nes
5407 74 Woven fabrics,/>=85% of synthetic filaments, printed, nes
5407 81 Woven fabrics of synthetic filaments,/>=85% mixd w cotton, unbl o bl, nes
5407 82 Woven fabrics of synthetic filaments,/>=85% mixd with cotton, dyed, nes
5407 83 Woven fabrics of synthetic filaments,/>=85% mixd w cotton, yarn dyd, nes
5407 84 Woven fabrics of synthetic filaments,/>=85% mixd with cotton, printed, nes
5407 91 Woven fabrics of synthetic filaments, unbleached or bleached, nes
5407 92 Woven fabrics of synthetic filaments, dyed, nes
5407 93 Woven fabrics of synthetic filaments, yarn dyed, nes
5407 94 Woven fabrics of synthetic filaments, printed, nes
5408 10 Woven fabrics of high tenacity filament yarns of viscose rayon
5408 21 Woven fab,/>=85% of artificial fi o strip of art tex mat, unblbl, nes
5408 22 Woven fab,/>=85% of artificial fi o strip of art tex mat, dyed, nes
5408 23 Woven fab,/>=85% of artificial fi o strip of art tex mat, y dyed, nes
5408 24 Woven fab,/>=85% of artificial fi o strip of art tex mat, printd, nes
5408 31 Woven fabrics of artificial filaments, unbleached or bleached, nes
5408 32 Woven fabrics of artificial filaments, dyed, nes
5408 33 Woven fabrics of artificial filaments, yarn dyed, nes
5408 34 Woven fabrics of artificial filaments, printed, nes

Ch. 55 Man-made staple fibres.
5501 10 Filament tow of nylon or other polyamides
5501 20 Filament tow of polyesters
5501 30 Filament tow of acrylic or modacrylic
5501 90 Synthetic filament tow, nes
5502 00 Artificial filament tow
5503 10 Staple fibres of nylon or other polyamides, not carded or combed
5503 20 Staple fibres of polyesters, not carded or combed
5503 30 Staple fibres of acrylic or modacrylic, not carded or combed
5503 40 Staple fibres of polypropylene, not carded or combed
5503 90 Synthetic staple fibres, not carded or combed, nes
5504 10 Staple fibres of viscose, not carded or combed
5504 90 Artificial staple fibres, other than viscose, not carded or combed
5505 10 Waste of synthetic fibres
5505 20 Waste of artificial fibres
5506 10 Staple fibres of nylon or other polyamides, carded or combed
5506 20 Staple fibres of polyesters, carded or combed
5506 30 Staple fibres of acrylic or modacrylic, carded or combed
5506 90 Synthetic staple fibres, carded or combed, nes
5507 00 00 Artificial staple fibres, carded or combed
5508 10 10 Sewing thread of synthetic staple fibres
5508 20 20 Sewing thread of artificial staple fibres
5509 11 11 Yarn, >85% nylon or other polyamides staple fibres, single, not put up
5509 12 12 Yarn, >85% nylon or other polyamides staple fibres, multi, not put up, nes
5509 21 21 Yarn, >85% of polyester staple fibres, single, not put up
5509 22 22 Yarn, >85% of polyester staple fibres, multi, not put up, nes
5509 31 31 Yarn, >85% of acrylic or modacrylic staple fibres, single, not put up
5509 32 32 Yarn, >85% acrylic/modacrylic staple fibres, multiple, not put up, nes
5509 41 41 Yarn, >85% of other synthetic staple fibres, single, not put up
5509 42 42 . . >85% of other synthetic staple fibres, multiple, not put up, nes
5509 51 51 Yarn of polyester staple fibres mixed w/ arti staple fib, not put up, nes
5509 52 52 Yarn of polyester staple fib mix w wool/fine animal hair, nt put up, nes
5509 53 53 Yarn of polyester staple fibres mixed with cotton, not put up, nes
5509 59 59 Yarn of polyester staple fibres, not put up, nes
5509 61 61 Yarn of acrylic staple fib mix w wool/fine animal hair, not put up, nes
5509 62 62 Yarn of acrylic staple fibres mixed with cotton, not put up, nes
5509 69 69 Yarn of acrylic staple fibres, not put up, nes
5509 91 91 Yarn of oth synthetic staple fibres mixed w/wool/fine animal hair, nes
5509 92 92 Yarn of other synthetic staple fibres mixed with cotton, not put up, nes
5509 99 99 Yarn of other synthetic staple fibres, not put up, nes
5510 11 11 Yarn, >85% of artificial staple fibres, single, not put up
5510 12 12 Yarn, >85% of artificial staple fibres, multiple, not put up, nes
5510 20 20 Yarn of artificial staple fib mix w wool/fine animal hair, not put up, nes
5510 30 30 Yarn of artificial staple fibres mixed with cotton, not put up, nes
5510 90 90 Yarn of artificial staple fibres, not put up, nes
5510 10 10 Yarn, >85% of synthetic staple fibres, other than sewing thread, put up
5511 20 20 Yarn, >85% of synthetic staple fibres, put up for retail sale, nes
5511 30 30 Yarn of artificial fibres (other than sewing thread), put up for retail sale
5512 11 11 Woven fabrics, containing >85% of polyester staple fibres, unbl or bi
5512 19 19 Woven fabrics, containing >85% of polyester staple fibres, other than unbl or bi
5512 21 21 Woven fabrics, containing >85% of acrylic staple fibres, unbleached or bi
5512 29 29 Woven fabrics, containing >85% of acrylic staple fibres, other than unbl or bi
5512 91 91 Woven fabrics, containing >85% of oth synthetic staple fibres, unbl/bi
5512 99 99 Woven fabrics, containing >85% of other synthetic staple fib, other than unbl/bi
5513 11 11 Plain weave polyester stapl fib fab,<85%,mixd w/cotton,<=170g/m2, unbl/bi
5513 12 12 Twill weave polyester stapl fib fab,<85%,mixd w/cotton,<=170g/m2, unbl/bi
5513 13 13 Woven fab of polyester staple fib, <85% mix w/cot, <=170g/m2, unbl/bi, nes
5513 19 19 Woven fabrics of oth syn staple fib, <85%,mixd w/cot, <=170g/m2, unbl/bi
5513 21 21 Plain weave polyester staple fib fab, <85%,mix w/cotton, <=170g/m2, dyd
5513 22 22 Twill weave polyester staple fib fab, <85%,mix w/cotton, <=170g/m2, dyd
5513 23 23 Woven fab of polyester staple fib, <85% mix w/cot, <=170g/m2, dyd, nes
5513 29 29 Woven fabrics of oth syn staple fib, <85% mix w/cotton, <=170g/m2, dyd
5513 31 31 Plain weave polyester staple fib fab, <85%,mix w/cot, <=170g/m2, yarn dyd
5513 32 32 Twill weave polyester staple fib fab, <85% mix w/cot, <=170g/m2, yarn dyd
5513 33 33 Woven fab of polyester staple fib, <85% mix w/cot, <=170 g/m2, dyd nes
5513 39 39 Woven fab of oth syn staple fab, <85% mix w/cot, <=170g/m2, yarn dyd
5513 41 41 Plain weave polyester staple fib fab, <85%,mix w/cot, <=170g/m2, printed
5513 42 42 Twill weave polyester staple fib fab, <85%,mix w/cot, <=170g/m2, printed
5513 43 43 Woven fab of polyester staple fib, <85%,mix w/cot, <=170g/m2, ptd, nes
5513 49 49 Woven fab of oth syn staple fab, <85%,mix w/cot, <=170g/m2, printed
5514 11 11 Plain weave polyester staple fib fab, <85%,mix w/cotton, >170g/m2, unbl/bi
Ch. 56  Wadding, felt & nonwoven; yarns; twine, cordage, etc
5601 10  Sanitary articles of wadding of textile mat i.e. sanitary towels, tampons
5601 21  Wadding of cotton and articles thereof, other than sanitary articles
5601 22  Wadding of man-made fibres and articles thereof, other than sanitary articles
5601 29  Wadding of other textile materials/articles thereof, other than sanitary articles
5601 30  Textile flock and dust and mill neps
5602 10 Needleloom felt and stitch-bonded fibre fabrics
5602 21 Felt other than needleloom, of wool or fine animal hair, not impreg, ctd, cov etc
5602 29 Felt other than needleloom, of other textile materials, not impreg, ctd, cov etc
5602 90 Felt of textile materials, nes
5603 00 Nonwovens, whether or not impregnated, coated, covered or laminated
5604 10 Rubber thread and cord, textile covered
5604 20 High tenacity yarn of polyest, nylon oth polymamid, viscos rayon, ctd etc
5604 90 Textile yarn, strips&the like, impreg ctd/cov with rubber o plastics, nes
5605 00 Metallised yarn, beg textile yarn combine w metal thread, strip/powder
5606 00 Gimped yarn nes; chenille yarn; loop wale-yarn
5607 10 Twine, cordage, ropes and cables, of jute or other textile bast fibres
5607 21 Binder o baler twine, of sisal o oth textile fibres of the genus Agave
5607 29 Twine nes, cordage, ropes and cables, of sisal textile fibres
5607 30 Twine, cordage, ropes and cables, of abaca or other hard (leaf) fibres
5607 41 Binder or baler twine, of polyethylene or polypropylene
5607 49 Twine nes, cordage, ropes and cables, of polyethylene or polypropylene
5607 50 Twine, cordage, ropes and cables, of other synthetic fibres
5607 90 Twine, cordage, ropes and cables, of other materials
5608 11 Made up fishing nets, of man-made textile materials
5608 19 Knottd nettg of twine/cordage/rope, and oth made up nets of m-m tex mat
5608 90 Knottd nettg of twine/cordage/rope, nes, and made up nets of oth tex mat
5609 00 Articles of yarn, strip, twine, cordage, rope and cables, nes

Ch. 57 Carpets and other textile floor coverings.
5701 10 Carpets of wool or fine animal hair, knotted
5701 90 Carpets of other textile materials, knotted
5702 10 Kelem, Schumacks, Karamanie and similar textile hand-woven rugs
5702 20 Floor coverings of coconut fibres (coir)
5702 31 Carpets of wool/fine animl hair, of woven pile constructn, nt made up nes
5702 32 Carpets of man-made textile mat, of woven pile construct, nt made up, nes
5702 39 Carpets of oth textile mat, of woven pile constructn, nt made up, nes
5702 41 Carpets of wool/fine animal hair, of woven pile construction, made up, nes
5702 42 Carpets of man-made textile mat, of woven pile construction, made up, nes
5702 49 Carpets of oth textile materials, of woven pile construction, made up, nes
5702 51 Carpets of wool or fine animal hair, woven, not made up, nes
5702 52 Carpets of man-made textile materials, woven, not made up, nes
5702 59 Carpets of other textile materials, woven, not made up, nes
5702 91 Carpets of wool or fine animal hair, woven, made up, nes
5702 92 Carpets of man-made textile materials, woven, made up, nes
5702 99 Carpets of other textile materials, woven, made up, nes
5703 10 Carpets of wool or fine animal hair, tufted
5703 20 Carpets of nylon or other polyamides, tufted
5703 30 Carpets of other man-made textile materials, tufted
5703 90 Carpets of other textile materials, tufted
5704 10 Tiles of felt of textile materials, havg a max surface area of 0.3 m2
5704 90 Carpets of felt of textile materials, nes
5705 00 Carpets and other textile floor coverings, nes

Ch. 58 Special woven fab; tufted tex fab; lace; tapestries etc
5801 10 Woven pile fabrics of wool/fine animal hair, other than terry&narrow fabrics
5801 21 Woven uncut weft pile fabrics of cotton, other than terry and narrow fabrics
5801 22 Cut corduroy fabrics of cotton, other than narrow fabrics
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5801 23</td>
<td>Woven weft pile fabrics of cotton, nes</td>
</tr>
<tr>
<td>5801 24</td>
<td>Woven warp pile fab of cotton, ping1 (uncut), other than terry &amp; narrow fab</td>
</tr>
<tr>
<td>5801 25</td>
<td>Woven warp pile fabrics of cotton, other than terry and narrow fabrics</td>
</tr>
<tr>
<td>5801 26</td>
<td>Chenille fabrics of cotton, other than narrow fabrics</td>
</tr>
<tr>
<td>5801 31</td>
<td>Woven uncut weft pile fabrics of manmade fibres, other than terry &amp; narrow fab</td>
</tr>
<tr>
<td>5801 32</td>
<td>Cut corduroy fabrics of man-made fibres, other than narrow fabrics</td>
</tr>
<tr>
<td>5801 33</td>
<td>Woven weft pile fabrics of man-made fibres, nes</td>
</tr>
<tr>
<td>5801 34</td>
<td>Woven warp pile fab of man-made fib, ping1 (uncut), other than terry &amp; nar fab</td>
</tr>
<tr>
<td>5801 35</td>
<td>Woven warp pile fabrics of man-made fib, cut, other than terry &amp; narrow fabrics</td>
</tr>
<tr>
<td>5801 36</td>
<td>Chenille fabrics of man-made fibres, other than narrow fabrics</td>
</tr>
<tr>
<td>5801 90</td>
<td>Woven pile fab &amp; chenille fab of other tex mat, other than terry &amp; narrow fabrics</td>
</tr>
<tr>
<td>5802 11</td>
<td>Terry towell &amp; similar woven terry fab of cotton, other than narrow fab, unbl</td>
</tr>
<tr>
<td>5802 19</td>
<td>Terry towell &amp; similar woven terry fab of cotton, other than unbl &amp; other than nar fab</td>
</tr>
<tr>
<td>5802 20</td>
<td>Terry towell &amp; similar woven terry fab of oth tex mat, other than narrow fabrics</td>
</tr>
<tr>
<td>5802 30</td>
<td>Tufted textile fabrics, other than products of heading No 57.03</td>
</tr>
<tr>
<td>5803 10</td>
<td>Gauze of cotton, other than narrow fabrics</td>
</tr>
<tr>
<td>5803 90</td>
<td>Gauze of other textile material, other than narrow fabrics</td>
</tr>
<tr>
<td>5804 10</td>
<td>Tulle &amp; other net fabrics, not incl woven, knitted or crocheted fabrics</td>
</tr>
<tr>
<td>5804 21</td>
<td>Mechanically made lace of man-made fib, in the piece, in strips/motifs</td>
</tr>
<tr>
<td>5804 29</td>
<td>Mechanically made lace of oth tex mat, in the piece, in strips/in motifs</td>
</tr>
<tr>
<td>5804 30</td>
<td>Hand-made lace, in the piece, in strips or in motifs</td>
</tr>
<tr>
<td>5805 00</td>
<td>Hand-woven tapestries &amp; needle-worked tapestries, whether or not made up</td>
</tr>
<tr>
<td>5806 10</td>
<td>Narrow woven pile fabrics and narrow chenille fabrics</td>
</tr>
<tr>
<td>5806 20</td>
<td>Narrow woven fab, cntg by wt &gt;/=5% elastomeric yarn/rubber thread nes</td>
</tr>
<tr>
<td>5806 31</td>
<td>Narrow woven fabrics of cotton, nes</td>
</tr>
<tr>
<td>5806 32</td>
<td>Narrow woven fabrics of man-made fibres, nes</td>
</tr>
<tr>
<td>5806 39</td>
<td>Narrow woven fabrics of other textile materials, nes</td>
</tr>
<tr>
<td>5806 40</td>
<td>Fabrics consisting of warp w/o weft assembled by means of an adhesive</td>
</tr>
<tr>
<td>5807 10</td>
<td>Labels, badges and similar woven articles of textile materials</td>
</tr>
<tr>
<td>5807 90</td>
<td>Labels, badges and similar articles, not woven, of textile materials, nes</td>
</tr>
<tr>
<td>5808 10</td>
<td>Braids in the piece</td>
</tr>
<tr>
<td>5808 90</td>
<td>Ornamental trimmings in the piece, other than knit; tassels, pompons &amp; similar art</td>
</tr>
<tr>
<td>5809 00</td>
<td>Woven fabrics of metal thread/of metallic yarn, for apparel, etc, nes</td>
</tr>
<tr>
<td>5810 00</td>
<td>Embroidery without visible ground, in the piece, in strips or in motifs</td>
</tr>
<tr>
<td>5810 10</td>
<td>Embroidery of cotton, in the piece, in strips or in motifs, nes</td>
</tr>
<tr>
<td>5810 91</td>
<td>Embroidery of man-made fibres, in the piece, in strips or in motifs, nes</td>
</tr>
<tr>
<td>5810 99</td>
<td>Embroidery of oth textile materials, in the piece, in strips/motifs, nes</td>
</tr>
<tr>
<td>5811 00</td>
<td>Quilted textile products in the piece</td>
</tr>
</tbody>
</table>

Ch. 59 Impregnated, coated, cover/laminated textile fabric etc
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5901 10</td>
<td>Textile fabrics coated with gum, of a kind used for outer covers of books</td>
</tr>
<tr>
<td>5901 90</td>
<td>Tracg cloth; prepared painting canvas; stiffened textile fab; for hats etc</td>
</tr>
<tr>
<td>5902 10</td>
<td>Tire cord fabric made of nylon or other polyamides high tenacity yarns</td>
</tr>
<tr>
<td>5902 20</td>
<td>Tire cord fabric made of polyester high tenacity yarns</td>
</tr>
<tr>
<td>5902 90</td>
<td>Tire cord fabric made of viscose rayon high tenacity yarns</td>
</tr>
<tr>
<td>5903 10</td>
<td>Textile fab impregnated, ctd, cov, or laminated w polyvinyl chloride, nes</td>
</tr>
<tr>
<td>5903 20</td>
<td>Textile fabrics impregnated, ctd, cov, or laminated with polyurethane, nes</td>
</tr>
<tr>
<td>5903 90</td>
<td>Textile fabrics impregnated, ctd, cov, or laminated with plastics, nes</td>
</tr>
<tr>
<td>5904 10</td>
<td>Linoleum, whether or not cut to shape</td>
</tr>
<tr>
<td>5904 91</td>
<td>Floor coverings, other than linoleum, with a base of needleloom felt/nonwovens</td>
</tr>
<tr>
<td>5904 92</td>
<td>Floor coverings, other than linoleum, with other textile base</td>
</tr>
<tr>
<td>5905 00</td>
<td>Textile wall coverings</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>5906 10</td>
<td>Rubberised textile adhesive tape of a width not exceeding 20 cm</td>
</tr>
<tr>
<td>5906 91</td>
<td>Rubberised textile knitted or crocheted fabrics, nes</td>
</tr>
<tr>
<td>5906 99</td>
<td>Rubberised textile fabrics, nes</td>
</tr>
<tr>
<td>5907 00</td>
<td>Textile fab impreg, ctd, cov nes; paintd canvas (e.g.threatrical scenery)</td>
</tr>
<tr>
<td>5908 00</td>
<td>Textile wicks f lamps, stoves, etc; gas mantles&amp;knittd gas mantle fabric</td>
</tr>
<tr>
<td>5909 00</td>
<td>Textile hosepiping and similar textile tubing</td>
</tr>
<tr>
<td>5910 00</td>
<td>Transmission or conveyor belts or belting of textile material</td>
</tr>
<tr>
<td>5911 10</td>
<td>Textile fabrics usd f card clothing, and sim fabric f technical uses</td>
</tr>
<tr>
<td>5911 20</td>
<td>Textile bolting cloth, whether or not made up</td>
</tr>
<tr>
<td>5911 31</td>
<td>Textile fabrics used in paper-making or similar machines, &lt;650 g/m²</td>
</tr>
<tr>
<td>5911 32</td>
<td>Textile fabrics usd in paper-mak or similar mach, weighg &gt;/=650 g/m²</td>
</tr>
<tr>
<td>5911 40</td>
<td>Textile straing cloth usd in oil presses o the like, incl of human hair</td>
</tr>
<tr>
<td>5911 90</td>
<td>Textile products and articles for technical uses, nes</td>
</tr>
</tbody>
</table>

Ch. 60 Knitted or crocheted fabrics.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6001 10</td>
<td>Long pile knitted or crocheted textile fabrics</td>
</tr>
<tr>
<td>6001 21</td>
<td>Looped pile knitted or crocheted fabrics, of cotton</td>
</tr>
<tr>
<td>6001 22</td>
<td>Looped pile knitted or crocheted fabrics, of man-made fibres</td>
</tr>
<tr>
<td>6001 29</td>
<td>Looped .nie knitted or crocheted fabrics, of other textile materials</td>
</tr>
<tr>
<td>6001 91</td>
<td>Pile knitted or crocheted fabrics, of cotton, nes</td>
</tr>
<tr>
<td>6001 92</td>
<td>Pile knitted or crocheted fabrics, of man-made fibres, nes</td>
</tr>
<tr>
<td>6001 99</td>
<td>Pile knitted or crocheted fabrics, of other textile materials, nes</td>
</tr>
<tr>
<td>6002 10</td>
<td>Knittd or crocheted tex fab, w&lt;/=30 cm,&gt;/=5% of elastomeric/rubber, nes</td>
</tr>
<tr>
<td>6002 20</td>
<td>Knitted or crocheted textile fabrics, */=a width not exceedg 30 cm, nes</td>
</tr>
<tr>
<td>6002 30</td>
<td>Knittt/crocheted tex fab, width &gt; 30 cm,&gt;/=5% of elastomeric/rubber, nes</td>
</tr>
<tr>
<td>6002 41</td>
<td>Warp knitted fabrics, of wool or fine animal hair, nes</td>
</tr>
<tr>
<td>6002 42</td>
<td>Warp knitted fabrics, of cotton, nes</td>
</tr>
<tr>
<td>6002 43</td>
<td>Warp knitted fabrics, of man-made fibres, nes</td>
</tr>
<tr>
<td>6002 49</td>
<td>Warp knitted fabrics, of other materials, nes</td>
</tr>
<tr>
<td>6002 91</td>
<td>Knitted or crocheted fabrics, of wool or of fine animal hair, nes</td>
</tr>
<tr>
<td>6002 92</td>
<td>Knitted or crocheted fabrics, of cotton, nes</td>
</tr>
<tr>
<td>6002 93</td>
<td>Knitted or crocheted fabrics, of manmade fibres, nes</td>
</tr>
<tr>
<td>6002 99</td>
<td>Knitted or crocheted fabrics, of other materials, nes</td>
</tr>
</tbody>
</table>

Ch. 61 Art of apparel & clothing access, knitted or crocheted.

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6101 10</td>
<td>Mens/boys overcoats, anoraks etc, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6101 20</td>
<td>Mens/boys overcoats, anoraks etc, of cotton, knitted</td>
</tr>
<tr>
<td>6101 30</td>
<td>Mens/boys overcoats, anoraks etc, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6101 90</td>
<td>Mens/boys overcoats, anoraks etc, of other textile materials, knitted</td>
</tr>
<tr>
<td>6102 10</td>
<td>Womens/girls overcoats, anoraks etc, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6102 20</td>
<td>Womens/girls overcoats, anoraks etc, of cotton, knitted</td>
</tr>
<tr>
<td>6102 30</td>
<td>Womens/girls overcoats, anoraks etc, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6102 90</td>
<td>Womens/girls overcoats, anoraks etc, of other textile materials, knitted</td>
</tr>
<tr>
<td>6103 11</td>
<td>Mens/boys suits, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6103 12</td>
<td>Mens/boys suits, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6103 19</td>
<td>Mens/boys suits, of other textile materials, knitted</td>
</tr>
<tr>
<td>6103 21</td>
<td>Mens/boys ensembles, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6103 22</td>
<td>Mens/boys ensembles, of cotton, knitted</td>
</tr>
<tr>
<td>6103 23</td>
<td>Mens/boys ensembles, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6103 29</td>
<td>Mens/boys ensembles, of other textile materials, knitted</td>
</tr>
<tr>
<td>6103 31</td>
<td>Mens/boys jackets and blazers, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6103 32</td>
<td>Mens/boys jackets and blazers, of cotton, knitted</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6103</td>
<td>Mens/boys jackets and blazers, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6103</td>
<td>Mens/boys jackets and blazers, of other textile materials, knitted</td>
</tr>
<tr>
<td>6103</td>
<td>Mens/boys trousers and shorts, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6103</td>
<td>Mens/boys trousers and shorts, of cotton, knitted</td>
</tr>
<tr>
<td>6103</td>
<td>Mens/boys trousers and shorts, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6103</td>
<td>Mens/boys trousers and shorts, of other textile materials, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls suits, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls suits, of cotton, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls suits, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls suits, of other textile materials, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls ensembles, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls ensembles, of cotton, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls ensembles, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls ensembles, of other textile materials, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls jackets, of wool or fine animal hair, knitted</td>
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<tr>
<td>6104</td>
<td>Womens/girls jackets, of cotton, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls jackets, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls jackets, of other textile materials, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls dresses, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls dresses, of cotton, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls dresses, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls dresses, of artificial fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls dresses, of other textile materials, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls skirts, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls skirts, of cotton, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls skirts, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Womens/girls skirts, of other textile materials, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Mens/boys trousers and shorts, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Mens/boys trousers and shorts, of cotton, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Mens/boys trousers and shorts, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Mens/boys trousers and shorts, of other textile materials, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Mens/boys shirts, of cotton, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Mens/boys shirts, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6104</td>
<td>Mens/boys shirts, of other textile materials, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys blouses and shirts, of cotton, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls blouses and shirts, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls blouses and shirts, of other materials, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys underpants and briefs, of cotton, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys underpants and briefs, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys underpants and briefs, of other textile materials, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys nightshirts and pyjamas, of cotton, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys nightshirts and pyjamas, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys nightshirts and pyjamas, of other textile materials, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys bathrobes, dressing gowns etc of cotton, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys bathrobes, dressing gowns, etc of man-made fibres, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Mens/boys bathrobes, dressg gowns, etc of oth textile materials, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls slips and petticoats, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls slips and petticoaals, of other textile materials, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls briefs and panties, of cotton, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls briefs and panties, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls briefs and panties, of other textile materials, knitted</td>
</tr>
<tr>
<td>6105</td>
<td>Womens/girls nightdresses and pyjamas, of cotton, knitted</td>
</tr>
</tbody>
</table>

*Note: The table continues with similar entries for other textile materials and garments.*
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6108 32</td>
<td>Womens/girls nightdresses and pyjamas, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6108 39</td>
<td>Womens/girls nightdresses &amp; pyjamas, of other textile materials, knitted</td>
</tr>
<tr>
<td>6108 91</td>
<td>Womens/girls bathrobes, dressing gowns, etc, of cotton, knitted</td>
</tr>
<tr>
<td>6108 92</td>
<td>Womens/girls bathrobes, dressing gowns, etc, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6108 99</td>
<td>Women/girls bathrobes, dressgowns, etc, of oth textile materials, knittedd</td>
</tr>
<tr>
<td>6109 10</td>
<td>T-shirts, singlets and other vests, of cotton, knitted</td>
</tr>
<tr>
<td>6109 11</td>
<td>T-shirts, singlets and other vests, of other textile materials, knitted</td>
</tr>
<tr>
<td>6110 10</td>
<td>Pullovers, cardigans&amp;similar article of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6110 20</td>
<td>Pullovers, cardigans and similar articles of cotton, knitted</td>
</tr>
<tr>
<td>6110 30</td>
<td>Pullovers, cardigans and similar articles of man-made fibres, knitted</td>
</tr>
<tr>
<td>6111 10</td>
<td>Babies garments&amp;clothg accessories of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6111 20</td>
<td>Babies garments and clothing accessories of cotton, knitted</td>
</tr>
<tr>
<td>6111 30</td>
<td>Babies garments and clothing accessories of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6112 00</td>
<td>Garments made up of impreg, coadt, coverd or laminatd textile knittd fab</td>
</tr>
<tr>
<td>6112 10</td>
<td>Garments nes, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6112 20</td>
<td>Garments nes, of cotton, knitted</td>
</tr>
<tr>
<td>6113 30</td>
<td>Garments nes, of man-made fibres, knitted</td>
</tr>
<tr>
<td>6114 40</td>
<td>Garments nes, of other textile materials, knitted</td>
</tr>
<tr>
<td>6114 90</td>
<td>Panty hose&amp;tights, of synthetic fibre yarns &lt;67 dtex/single yarn knitttd</td>
</tr>
<tr>
<td>6115 12</td>
<td>Panty hose&amp;tights, of synthetic fib yarns &gt;/=67 dtex/single yarn knitttd</td>
</tr>
<tr>
<td>6115 19</td>
<td>Panty hose and tights, of other textile materials, knitted</td>
</tr>
<tr>
<td>6115 20</td>
<td>Women full-l/knee-l hosiery, of textile yarn=67 dtex/single yarn knitttd</td>
</tr>
<tr>
<td>6115 91</td>
<td>Hosiery nes, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6115 92</td>
<td>Hosiery nes, of cotton, knitted</td>
</tr>
<tr>
<td>6115 93</td>
<td>Hosiery nes, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6115 99</td>
<td>Hosiery nes, of other textile materials, knitted</td>
</tr>
<tr>
<td>6116 10</td>
<td>Gloves impregnated, coated or covered with plastics or rubber, knitted</td>
</tr>
<tr>
<td>6116 91</td>
<td>Gloves, mittens and mitts, nes, of wool or fine animal hair, knitted</td>
</tr>
<tr>
<td>6116 92</td>
<td>Gloves, mittens and mitts, nes, of cotton, knitted</td>
</tr>
<tr>
<td>6116 93</td>
<td>Gloves, mittens and mitts, nes, of synthetic fibres, knitted</td>
</tr>
<tr>
<td>6116 99</td>
<td>Gloves, mittens and mitts, nes, of other textile materials, knitted</td>
</tr>
<tr>
<td>6117 10</td>
<td>Shawls, scarves, veils and the like, of textile materials, knitted</td>
</tr>
<tr>
<td>6117 20</td>
<td>Ties, bow ties and cravats, of textile materials, knitted</td>
</tr>
<tr>
<td>6118 80</td>
<td>Clothing accessories nes, of textile materials, knitted</td>
</tr>
<tr>
<td>6119 79</td>
<td>Parts of garments/of clothg accessories, of textile materials, knittd</td>
</tr>
</tbody>
</table>

Ch. 62 | Art of apparel & clothing access, not knitted/crocheted |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6201 11</td>
<td>Mens/boys overcoats&amp;similar articles of wool/fine animal hair, not knit</td>
</tr>
<tr>
<td>6201 12</td>
<td>Mens/boys overcoats and similar articles of cotton, not knitted</td>
</tr>
<tr>
<td>6201 13</td>
<td>Mens/boys overcoats &amp; similar articles of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6201 19</td>
<td>Mens/boys overcoats&amp;sim articles of oth textile materials, not knittd</td>
</tr>
<tr>
<td>6201 91</td>
<td>Mens/boys anoraks&amp;similar articles, of wool/fine animal hair, not knittd</td>
</tr>
</tbody>
</table>
Mens/Boys anoraks and similar articles, of cotton, not knitted
Mens/Boys anoraks and similar articles, of man-made fibres, not knitted
Mens/Boys anoraks & similar articles, of other textile materials, not knitted
Womens/girls overcoats & similar articles of wool/fine animal hair, not knitted
Womens/girls overcoats and similar articles of cotton, not knitted
Womens/girls overcoats & similar articles of man-made fibres, not knitted
Womens/girls anoraks & similar articles of other textile materials, not knitted
Womens/girls anoraks and similar articles of cotton, not knitted
Womens/girls anoraks & similar articles of wool/fine animal hair, not knitted
Womens/girls anoraks & similar articles of other textile materials, not knitted
Womens/girls anoraks & similar articles of man-made fibres, not knitted
Womens/girls suits, of wool or fine animal hair, not knitted
Mens/Boys suits, of synthetic fibres, not knitted
Mens/Boys suits, of other textile materials, not knitted
Mens/Boys ensembles, of wool or fine animal hair, not knitted
Mens/Boys ensembles, of cotton, not knitted
Mens/Boys ensembles, of synthetic fibres, not knitted
Mens/Boys ensembles, of other textile materials, not knitted
Mens/Boys jackets and blazers, of wool or fine animal hair, not knitted
Mens/Boys jackets and blazers, of cotton, not knitted
Mens/Boys jackets and blazers, of synthetic fibres, not knitted
Mens/Boys jackets and blazers, of other textile materials, not knitted
Mens/Boys trousers and shorts, of wool or fine animal hair, not knitted
Mens/Boys trousers and shorts, of cotton, not knitted
Mens/Boys trousers and shorts, of synthetic fibres, not knitted
Mens/Boys trousers and shorts, of other textile materials, not knitted
Womens/girls suits, of wool or fine animal hair, not knitted
Womens/girls suits, of cotton, not knitted
Womens/girls suits, of synthetic fibres, not knitted
Womens/girls suits, of other textile materials, not knitted
Womens/girls ensembles, of wool or fine animal hair, not knitted
Womens/girls ensembles, of cotton, not knitted
Womens/girls ensembles, of synthetic fibres, not knitted
Womens/girls ensembles, of other textile materials, not knitted
Womens/girls jackets, of wool or fine animal hair, not knitted
Womens/girls jackets, of cotton, not knitted
Womens/girls jackets, of synthetic fibres, not knitted
Womens/girls jackets, of other textile materials, not knitted
Womens/girls jackets, of wool or fine animal hair, not knitted
Womens/girls jackets, of cotton, not knitted
Womens/girls jackets, of synthetic fibres, not knitted
Womens/girls jackets, of other textile materials, not knitted
Womens/girls dresses, of wool or fine animal hair, not knitted
Womens/girls dresses, of cotton, not knitted
Womens/girls dresses, of synthetic fibres, not knitted
Womens/girls dresses, of artificial fibres, not knitted
Womens/girls dresses, of other textile materials, not knitted
Womens/girls skirts, of wool or fine animal hair, not knitted
Womens/girls skirts, of cotton, not knitted
Womens/girls skirts, of synthetic fibres, not knitted
Womens/girls skirts, of other textile materials, not knitted
Womens/Boys trousers & shorts, of wool or fine animal hair, not knitted
Womens/girls trousers and shorts, of cotton, not knitted
Womens/girls trousers and shorts, of synthetic fibres, not knitted
Womens/girls trousers & shorts, of other textile materials, not knitted
Mens/Boys shirts, of wool or fine animal hair, not knitted
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6205 20</td>
<td>Mens/boys shirts, of cotton, not knitted</td>
</tr>
<tr>
<td>6205 30</td>
<td>Mens/boys shirts, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6205 90</td>
<td>Mens/boys shirts, of other textile materials, not knitted</td>
</tr>
<tr>
<td>6206 10</td>
<td>Womens/girls blouses and shirts, of silk or silk waste, not knitted</td>
</tr>
<tr>
<td>6206 20</td>
<td>Womens/girls blouses &amp; shirts, of wool or fine animal hair, not knitted</td>
</tr>
<tr>
<td>6206 30</td>
<td>Womens/girls blouses and shirts, of cotton, not knitted</td>
</tr>
<tr>
<td>6206 40</td>
<td>Womens/girls blouses and shirts, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6206 90</td>
<td>Womens/girls blouses and shirts, of other textile materials, not knitted</td>
</tr>
<tr>
<td>6207 11</td>
<td>Mens/boys underpants and briefs, of cotton, not knitted</td>
</tr>
<tr>
<td>6207 19</td>
<td>Mens/boys underpants and briefs, of other textile materials, not knitted</td>
</tr>
<tr>
<td>6207 21</td>
<td>Mens/boys nightshirts and pyjamas, of cotton, not knitted</td>
</tr>
<tr>
<td>6207 22</td>
<td>Mens/boys nightshirts and pyjamas, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6207 29</td>
<td>Mens/boys nightshirts &amp; pyjamas, of other textile materials, not knitted</td>
</tr>
<tr>
<td>6207 91</td>
<td>Mens/boys bathrobes, dressing gowns, etc of cotton, not knitted</td>
</tr>
<tr>
<td>6207 92</td>
<td>Mens/boys bathrobes, dressing gowns, etc of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6207 99</td>
<td>Mens/boys bathrobes, dressing gowns, etc of oth textile materials, not knitted</td>
</tr>
<tr>
<td>6208 11</td>
<td>Womens/girls slips and petticoats, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6208 19</td>
<td>Womens/girls slips &amp; petticoats, of other textile materials, not knitted</td>
</tr>
<tr>
<td>6208 21</td>
<td>Womens/girls nightdresses and pyjamas, of cotton, not knitted</td>
</tr>
<tr>
<td>6208 22</td>
<td>Womens/girls nightdresses and pyjamas, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6208 29</td>
<td>Womens/girls nightdresses&amp;pyjamas, of oth textile materials, not knitted</td>
</tr>
<tr>
<td>6209 11</td>
<td>Womens/girls panties, bathrobes, etc, of cotton, not knitted</td>
</tr>
<tr>
<td>6209 12</td>
<td>Womens/girls panties, bathrobes, etc, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6209 99</td>
<td>Womens/girls panties, bathrobes, etc, of oth textile materials, not knitted</td>
</tr>
<tr>
<td>6209 10</td>
<td>Babies garments&amp;clothing accessories of wool or fine animal hair, not knitted</td>
</tr>
<tr>
<td>6209 20</td>
<td>Babies garments and clothing accessories of cotton, not knitted</td>
</tr>
<tr>
<td>6209 30</td>
<td>Babies garments &amp; clothing accessories of synthetic fibres, not knitted</td>
</tr>
<tr>
<td>6209 90</td>
<td>Babies garments&amp;clothing accessories of oth textile materials, not knitted</td>
</tr>
<tr>
<td>6210 10</td>
<td>Garments made up of textile felts and of nonwoven textile fabrics</td>
</tr>
<tr>
<td>6210 20</td>
<td>Mens/boys overcoats&amp;similar articles of impreg, ctd, cov etc, tex wov fab</td>
</tr>
<tr>
<td>6210 30</td>
<td>Womens/girls overcoats&amp;sim articles, of impreg, ctd, etc, tex wov fab</td>
</tr>
<tr>
<td>6210 40</td>
<td>Mens/boys garments nes, made up of impreg, ctd, cov, etc, textile woven fab</td>
</tr>
<tr>
<td>6210 50</td>
<td>Womens/girls garments nes, of impregnated, ctd, cov, etc, textile woven fab</td>
</tr>
<tr>
<td>6211 11</td>
<td>Mens/boys swimwear, of textile materials not knitted</td>
</tr>
<tr>
<td>6211 12</td>
<td>Womens/girls swimwear, of textile materials, not knitted</td>
</tr>
<tr>
<td>6211 20</td>
<td>Ski suits, of textile materials, not knitted</td>
</tr>
<tr>
<td>6211 31</td>
<td>Mens/boys garments nes, of wool or fine animal hair, not knitted</td>
</tr>
<tr>
<td>6211 32</td>
<td>Mens/boys garments nes, of cotton, not knitted</td>
</tr>
<tr>
<td>6211 39</td>
<td>Mens/boys garments nes, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6211 41</td>
<td>Womens/girls garments nes, of wool or fine animal hair, not knitted</td>
</tr>
<tr>
<td>6211 42</td>
<td>Womens/girls garments nes, of cotton, not knitted</td>
</tr>
<tr>
<td>6211 43</td>
<td>Womens/girls garments nes, of man-made fibres, not knitted</td>
</tr>
<tr>
<td>6211 49</td>
<td>Womens/girls garments nes, of other textile materials, not knitted</td>
</tr>
<tr>
<td>6212 10</td>
<td>Brassieres and parts thereof, of textile materials</td>
</tr>
<tr>
<td>6212 20</td>
<td>Girdles, panty girdles and parts thereof, of textile materials</td>
</tr>
<tr>
<td>6212 30</td>
<td>Corselettes and parts thereof, of textile materials</td>
</tr>
<tr>
<td>6212 90</td>
<td>Handkerchiefs, of silk or silk waste, not knitted</td>
</tr>
<tr>
<td>6213 10</td>
<td>Handkerchiefs, of cotton, not knitted</td>
</tr>
<tr>
<td>6213 90</td>
<td>Handkerchiefs, of other textile materials, not knitted</td>
</tr>
<tr>
<td>6214 10</td>
<td>Shawls, scarves, veils and the like, of silk or silk waste, not knitted</td>
</tr>
</tbody>
</table>
Shawls, scarves, veils & the like, of wool or fine animal hair, not knitted
Shawls, scarves, veils and the like, of synthetic fibres, not knitted
Shawls, scarves, veils and the like, of artificial fibres, not knitted
Shawls, scarves, veils & the like, of other textile materials, not knitted
Ties, bow ties and cravats, of silk or silk waste, not knitted
Ties, bow ties and cravats, of man-made fibres, not knitted
Ties, bow ties and cravats, of other textile materials, not knitted
Gloves, mittens and mitts, of textile materials, not knitted
Clothing accessories nes, of textile materials, not knitted
Parts of garments or of cloth garments nes, of tex mat, not knitted

Ch. 63
Other made up textile articles; sets; worn clothing etc
6301 10 Electric blankets, of textile materials
6301 20 Blankets (other than electric) & travelling rugs, of wool or fine animal hair
6301 30 Blankets (other than electric) and travelling rugs, of cotton
6301 40 Blankets (other than electric) and travelling rugs, of synthetic fibres
6301 90 Blankets (other than electric) and travelling rugs, of other textile materials
6302 10 Bed linen, of textile knitted or crocheted materials
6302 21 Bed linen, of cotton, printed, not knitted
6302 22 Bed linen, of man-made fibres, printed, not knitted
6302 29 Bed linen, of other textile materials, printed, not knitted
6302 31 Bed linen, of cotton, nes
6302 32 Bed linen, of man-made fibres, nes
6302 39 Bed linen, of other textile materials, nes
6302 40 Table linen, of textile knitted or crocheted materials
6302 51 Table linen, of cotton, not knitted
6302 52 Table linen, of flax, not knitted
6302 53 Table linen, of man-made fibres, not knitted
6302 59 Table linen, of other textile materials, not knitted
6302 60 Toilet & kitchen linen, of terry towel or similar terry fab, of cotton
6302 91 Toilet and kitchen linen, of cotton, nes
6302 92 Toilet and kitchen linen, of flax
6302 93 Toilet and kitchen linen, of man-made fibres
6302 99 Toilet and kitchen linen, of other textile materials
6303 11 Curtains, drapes, interior blinds & curtain or bed valances, of cotton, knit
6303 12 Curtains, drapes, interior blinds & curtain/bed valances, of synth fib, knitted
6303 19 Curtains, drapes, interior blinds & curtain/bed valances, of other textile materials
6303 91 Curtains/drapes/interior blinds & curtain/bed valances, of cotton, not knit
6303 92 Curtains/drapes/interior blinds curtain/bed valances, of synth fib, not knit
6303 99 Curtain/drape/interior blind curtain/bed valance, of other textile materials, not knit
6304 11 Bedspreads of textile materials, nes, knitted or crocheted
6304 19 Bedspreads of textile materials, nes, not knitted or crocheted
6304 91 Furnishing articles nes, of textile materials, knitted or crocheted
6304 92 Furnishing articles nes, of cotton, not knitted or crocheted
6304 93 Furnishing articles nes, of synthetic fibres, not knitted or crocheted
6304 99 Furnishing articles nes, of other textile materials, not knitted or crocheted
6305 10 Sacks & bags, for pack of goods, of jute or of other textile bast fibres
6305 20 Sacks and bags, for packing of goods, of cotton
6305 31 Sacks & bags, for pack of goods, of polyethylene or polypropylene strips
6305 39 Sacks & bags, for packing of goods, of other man-made textile materials
6305 90 Sacks and bags, for packing of goods, of other textile materials
6306 11 Tarpaulins, awnings and sunblinds, of cotton
6306 12 Tarpaulins, awnings and sunblinds, of synthetic fibres
6306 19 Tarpaulins, awnings and sunblinds, of other textile materials
6306 21 Tents, of cotton
6306 22 Tents, of synthetic fibres
6306 29 Tents, of other textile materials
6306 31 Sails, of synthetic fibres
6306 39 Sails, of other textile materials
6306 41 Pneumatic mattresses, of cotton
6306 49 Pneumatic mattresses, of other textile materials
6306 91 Camping goods, of cotton
6306 99 Camping goods, of other textile materials
6307 10 Floor-cloths, dish-cloths, dusters & similar cleaning cloths, of tex mat
6307 20 Life jackets and life belts, of textile materials
6307 90 Made up articles, of textile materials, nes, including dress patterns
6308 00 Sets consistg of woven fab & yarn, for makg up into rugs, tapestries etc
6309 00 Worn clothing and other worn articles

Textile and clothing products in Chapters 30-49, 64-96

3005 90 Wadding, gauze, bandages and the like
ex 3921 12)
ex 3921 13 ( Woven, knitted or non-woven fabrics coated, covered or laminated with plastics
ex 3921 90 )
ex 4202 12)
ex 4202 22 ( Luggage, handbags and flatgoods with an outer surface predominantly of textile materials
ex 4202 32)
ex 4202 92 )
ex 6405 20 Footwear with soles and uppers of wool felt
ex 6406 10 Footwear uppers of which 50% or more of the external surface area is textile material
ex 6406 99 Leg warmers and gaiters of textile material
6501 00 Hat-forms, hat bodies and hoods of felt; plateaux and manchons of felt
6502 00 Hat-shapes, plaited or made by assembling strips of any material
6503 00 Felt hats and other felt headgear
6504 00 Hats & other headgear, plaited or made by assembling strips of any material
6505 90 Hats & other headgear, knitted or made up from lace, or other textile material
6601 10 Umbrellas and sun umbrellas, garden type
6601 91 Other umbrella types, telescopic shaft
6601 99 Other umbrellas
ex 7019 10 Yarns of fibre glass
ex 7019 20 Woven fabrics of fibre glass
8708 21 Safety seat belts for motor vehicles
8804 00 Parachutes; their parts and accessories
9113 90 Watch straps, bands and bracelets of textile materials
ex 9404 90 Pillow and cushions of cotton; quilts; eiderdowns; comforters and similar articles of textile materials
9502 91 Garments for dolls
ex 9612 10 Woven ribbons, of man-made fibres, other than those measuring less than 30 mm in width and permanently put up in cartridges
Note:

Actions under the safeguard provisions in Article 6 of this Agreement shall not apply to:

1. developing country's exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textile products, provided that such products are properly certified under arrangements established between the parties concerned;

2. historically traded textiles which were internationally traded in commercially significant quantities prior to 1982, such as bags, sacks, carpetbacking, cordage, luggage, mats, mattings and carpets typically made from fibres such as jute, coir, sisal, abaca, maguey and henequen;

3. products made of pure silk.
ANNEX III

INITIAL ACTION ON THE FIRST DAY OF THE COMING INTO FORCE OF THIS AGREEMENT, ON 1 JANUARY 1992

A. Products to be immediately integrated into GATT

1. [Textile products made of vegetable fibres; blends of vegetable fibres with cotton, man-made fibres and/or wool; and blends containing silk in which any or all of the vegetable fibres and/or silk in combination represent either the chief value of the fibres or 50 per cent or more by weight of the products;

2. Developing country exports of hand-loom fabrics of the cottage industry, or products made of hand-loom fabrics or traditional folklore handicraft textile products;

3. Products other than those included in Section XI (heading 50-63) of the International Convention on the Harmonised Commodity Description and Coding system;

4. Children's clothing up to [size 164];

5. Textile products which are not produced [or which are produced in insignificant quantities] by the domestic producers of the importing parties;

6. All categories [and sub-categories] under specific limits which represent less than X per cent of the total import of such categories [or sub-categories] in the importing countries will be removed from such specific limits. Safeguard measures may be instituted on these categories or sub-categories if the situation warrants.]

B. Restrictions with respect to certain suppliers to be eliminated

1. [Restrictions on textile and clothing exports of suppliers having a de minimis share of 1 per cent or less of total textile and clothing imports in a given market;

2. Restrictions on the least developed countries.]

C. Restrictive practices to be eliminated

1. [(a) Restrictions at aggregate level on imports of all textile products from a particular source;]
2. Restrictions at aggregate level on imports of a group of textile products from a particular source;

3. Restrictions on re-imports into a party's territory of textile products which that party has exported to another party's territory for processing, including restrictions described as "special régime", "guaranteed access levels", "outward processing trade" quotas, imports under TSUSA 807 and 807 A and other similar restrictions;

4. Subdivisions of quantitative restrictions among the member states of a customs union.
ANNEX IV

PROGRESSIVE STAGED ELIMINATION OF RESTRICTIONS
ACCORDING TO THE DEGREE OF PROCESSING

[The quantitative restrictions remaining on particular products shall be progressively eliminated in four stages. Each importing party shall eliminate the restrictions on textile products described in Section XI of the Harmonised Commodity Description and Coding System in the respective stages in the manner enumerated below. The duration of stages I and II shall be two years each, and that of III and IV one year each.

TOPS AND YARNS in Stage I including:

Headings 51.05-51.10; 52.04-52.07; 55.06-55.11.

FABRICS in Stage II including:

Headings 51.11-51.13; 52.08-52.12; 52.07; 54.08; 55.12-55.16;
Chapter 58: headings 59.01-59.06; 59.11; and Chapter 60.

MADE UPS in Stage III including:

Chapter 56; 57; headings 59.07-59.10; Chapter 63

CLOTHING in Stage IV including:

Chapters 61 and 62.]
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE II:1(b)
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

This Understanding has been agreed ad referendum.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE II:1(b)
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. It is agreed that in order to ensure transparency of the legal rights and obligations deriving from Article II:1(b), the nature and level of any "other duties or charges" levied on bound tariff items, as referred to in that provision, shall be recorded in the Schedules of tariff concessions against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges".

2. The date as of which "other duties or charges" are bound, for the purposes of Article II, shall be the date of the Uruguay Round (1990) Protocol to the General Agreement on Tariffs and Trade. "Other duties or charges" shall therefore be recorded in the Schedules of concessions at the levels applying on this date. At each subsequent renegotiation of a concession or negotiation of a new concession the applicable date for the tariff item in question shall become the date of the incorporation of the new concession in the Schedules of concessions. However, the date of the instrument by which a concession on any particular item was first incorporated into the General Agreement shall also continue to be recorded in column 6 of the Loose-Leaf Schedules.

3. "Other duties or charges" shall be recorded in respect of all tariff bindings.

4. Where a tariff item has previously been the subject of a concession, the level of "other duties or charges" recorded in the Schedules of concessions shall not be higher than the level obtaining at the time of the first incorporation of the concession in the Schedules. It will be open to any contracting party to challenge the existence of an "other duty or charge", on the ground that no such "other duty or charge" existed at the time of the original binding of the item in question, as well as the consistency of the recorded level of any "other duty or charge" with the previously bound level, for a period of three years after the deposit with the secretariat of the Schedule in question.

5. It is agreed that the recording of "other duties or charges" in the Schedules of concessions is without prejudice to their consistency with rights and obligations under the General Agreement other than those affected by paragraph 4 above. All contracting parties retain the right to challenge, at any time, the consistency of any "other duty or charge" with such obligations.

*The legal form of this decision will be decided at a later stage.
6. For the purposes of this decision, the normal GATT procedures of consultation and dispute settlement will apply.

7. It is agreed that "other duties or charges" omitted from a Schedule at the time of its deposit with the secretariat shall not subsequently be added to it and that any "other duty or charge" recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the deposit of the Schedule.

8. The decision in paragraph 2 above regarding the date applicable to each concession for the purposes of Article II:1(b) supersedes the decision regarding the applicable date taken by the GATT Council on 26 March 1980 (BISD 27S/22).
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

This Understanding has been agreed ad referendum.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Noting that Article XVII provides for obligations on contracting parties in respect of the activities of the state trading enterprises referred to in Article XVII:1, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in the General Agreement for governmental measures affecting imports or exports by private traders;

Noting further that contracting parties are subject to their GATT obligations in respect of those governmental measures affecting state trading enterprises;

Recognising that this decision is without prejudice to the substantive disciplines prescribed in Article XVII;

1. It is agreed that in order to ensure the transparency of the activities of state trading enterprises, such enterprises shall be notified to the CONTRACTING PARTIES, for review by the working party to be set up under paragraph 5 below, in accordance with the following working definition:

"Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports."

This notification requirement does not apply to imports of products for immeicate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale.

2. It is agreed that each contracting party shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the CONTRACTING PARTIES, taking account of the provisions of this decision. In carrying out such a review, each contracting party should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

3. Notifications shall be made in accordance with the 1960 questionnaire on state trading (BISD, 9S/184), it being understood that contracting parties shall notify the enterprises referred to in paragraph 1 above whether or not imports or exports have in fact taken place.
4. Any contracting party which has reason to believe that another contracting party has not adequately met its notification obligation may raise the matter with the contracting party concerned. If the matter is not satisfactorily resolved it may make a counter-notification to the CONTRACTING PARTIES, for consideration by the working party set up under paragraph 5 below, simultaneously informing the contracting party concerned.

5. A working party shall be set up, on behalf of the CONTRACTING PARTIES, to review notifications and counter-notifications. In the light of this review and without prejudice to Article XVII:4(c), the CONTRACTING PARTIES may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the 1960 questionnaire on state trading and the coverage of state trading enterprises notified under paragraph 1 above. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the GATT secretariat will provide a general background paper for the working party on the operations of state trading enterprises as they relate to international trade. Membership of the working party shall be open to all contracting parties indicating their wish to serve on it. It shall meet before the end of 1991 and thereafter at least once a year. It shall report annually to the CONTRACTING PARTIES.
[BALANCE OF PAYMENTS PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE]

Commentary

It has not yet been decided whether or not to engage in negotiations on this subject.
UNDERSTANDING ON THE INTERPRETATION AND APPLICATION OF ARTICLES XXII AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

The following three main issues are left for resolution at the Brussels Ministerial Meeting:

* The procedure for Council decisions relating to:
  the establishment of panels (Para. D.1(a))
  the adoption of panel reports (Para. G.4)
  the adoption of appellate reports (Para. H.3)
  authorization of retaliation (Para. L.3)

The choice to be made is essentially the same at each of the four decision points, i.e. that of the Council deciding "otherwise" or, more specifically, "not to do [x]", and then whether to specify for either of the above that the decision should be "by consensus".

* The non-resort to unilateral measures (Section M)

As indicated in footnote 5, to Section M, the proposed commitment is linked to other parts of the Understanding. There is a large degree of support for the concept in Section M but there is some concern over the breadth of the commitment. There is general agreement that the matter is one for ministers to address.

* Procedures for non-violation complaints (Section P)

The main issue is over the scope of Article XXIII:1(b) cases to be included under the paragraph P.1 criteria. For such cases, yet to be clearly defined, the procedures would be largely automatic, either via the panel and appellate procedures or via binding arbitration, or some combination of the two. For all other non-violation cases, there appears to be general acceptance that the procedure set out in paragraph P.7 would apply.
UNDERSTANDING ON THE INTERPRETATION AND APPLICATION OF ARTICLES XXII AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Following the meeting of the Trade Negotiations Committee at Ministerial level in December 1990, the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade

Approve the improvements to the GATT dispute settlement rules and procedures set out in this Understanding.

A. General Provisions

1. A full review of GATT dispute settlement rules and procedures shall be completed within four years after entry into force of this Understanding, and a decision shall be taken on the occasion of the 1994 meeting at Ministerial level whether to continue, modify or terminate such dispute settlement rules and procedures.

2. The dispute settlement system of GATT is a central element in providing security and predictability to the multilateral trading system. Contracting parties recognize that it serves to preserve the rights and obligations of contracting parties under the General Agreement, and to clarify the existing provisions of the General Agreement [in accordance with the rules and practice of international law]. Contracting parties agree that recommendations and rulings under Article XXIII cannot add to or diminish the rights and obligations provided in the General Agreement.

3. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.

¹A determination has to be made on the entry into force and application of this Understanding, and on the continuation of the dispute settlement procedures covered by the Decision of the Council of 12 April 1989 (BISD 36S/61) until the date of application of this Understanding.

²It should be noted that existing dispute settlement procedures, including provisions about full consensus, have not been recorded where bracketed alternatives appear, even though certain delegations have expressed a preference for the maintenance of these procedures in some instances.
4. Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII must be notified to the Council where any contracting party may raise any point relating thereto.

5. All the points set out in this Understanding shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966 (BISD 14S/18).

6. Where these GATT rules and procedures provide for the Council to take a decision, it shall do so by the traditional practice of consensus. The procedures foreseen in GATT dispute settlement are without prejudice to the application of the provisions of Article XXV of the General Agreement.

B. Consultations

1. If a request is made under Article XXII:1 or XXIII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting party that requested the holding of consultations may proceed directly to request the establishment of a panel.

2. If the consultations under Article XXII:1 or XXIII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel under Article XXIII:2. The complaining party may request a panel during the sixty-day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

4. In cases of urgency, including those which concern perishable goods, parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have

¹The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice.
failed to settle the dispute within a period of twenty days after the request, the complaining party may request the establishment of a panel.

5. In cases of urgency, including those which concern perishable goods, the parties concerned, panels and the appellate body shall make every effort to accelerate the proceedings to the greatest extent possible.

C. Good Offices, Conciliation, Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel. The complaining party may request a panel during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

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

D. Panel Procedures

1. Establishment of a Panel

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

   (b) The request for a panel shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.
2. Standard Terms of Reference

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

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document DS/... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

(b) In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

3. Composition of Panels

(a) Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a GATT panel, served as a representative to the GATT or in the GATT Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a contracting party.

(b) The roster of panelists, established through the decision by the CONTRACTING PARTIES on 30 December 1984 (BISD, 31S/9), shall be expanded and improved. To this end, contracting parties may suggest names of individuals possessing the qualifications outlined in paragraph (a) above to serve on panels and shall provide relevant information on their knowledge of international trade and of the GATT.

(c) Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

(d) Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

(e) If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.
4. Procedures for Multiple Complainants

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

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

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

5. Interim Review Stage

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

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

(c) The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time period set out in paragraph D.6(e).
6. Various Stages of a Panel

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

(b) Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs (annexed hereto) unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.

(c) In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

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

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

(f) When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should/shall the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.
(g) In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs B.2 and B.4. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph G.4 are not affected by any action pursuant to this paragraph.

(h) Where one or more of the parties is a developing contracting party, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing countries that form part of the General Agreement and of the instruments negotiated in GATT under its auspices, which have been raised by the developing contracting party in the course of the dispute settlement procedures.

E. Third Contracting Parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Such third parties shall receive submissions of the parties for the first meeting of the panel.

4. If a third party considers a measure already the subject of a panel nullifies or impairs benefits accruing to it under the General Agreement, that party may have recourse to normal GATT dispute settlement procedures. Such a dispute shall be referred to the original panel where possible.

F. Panel and Appellate Body Recommendations

Where a panel or the appellate body concludes that a measure is inconsistent with the General Agreement, it shall recommend that the contracting party concerned bring the measure into conformity with the General Agreement. [In cases involving non-violation nullification or impairment, the panel or appellate body shall recommend that the contracting party concerned [consider ways and means of making] [make] a satisfactory adjustment.] In addition to its recommendations, the panel or appellate body may suggest ways in which the contracting party concerned could implement the recommendations.
G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until twenty days after they have been issued to the contracting parties.

2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.

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

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

H. Appellate Review

1. Standing Appellate Body

   (a) A standing appellate body shall be established by the CONTRACTING PARTIES. The body shall hear appeals from panel cases. The appellate body shall be composed of a pool of seven members, three of whom shall serve on any one case. Members of the pool shall serve in rotation.

   (b) Members shall be appointed by the CONTRACTING PARTIES to serve for a four-year term. Vacancies shall be filled as they arise using the aforesaid procedure.

   (c) Members shall be persons of recognized authority, with demonstrated expertise in law, international trade and GATT matters generally. They shall be unaffiliated with any government. The appellate body membership shall be broadly representative of membership in GATT. Members shall be available at all times and on short notice, and shall stay abreast of GATT activities. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.
(d) Only parties to the dispute, not third parties, may appeal a panel decision or participate in the appellate review.

(e) As a general rule, the proceedings shall not exceed sixty days from the date a party formally notifies its intent to appeal to the date the appellate body issues its decision. When the appellate body considers that it cannot provide its report within sixty days, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case the proceedings exceed ninety days.

(f) An appeal shall be limited to issues of law covered in the panel report and legal interpretation developed by the panel.

(g) The appellate body shall be provided with appropriate administrative and legal support as it requires.

2. Procedures for Appellate Review

(a) Suggested working procedures shall be drawn up by the appellate body in consultation with the chairman of the Council and the Director-General, and communicated to the contracting parties for their information.

(b) The proceedings of the appellate body shall be confidential.

(c) The appellate body shall address each of the issues raised by the parties to the dispute during the appellate proceeding.

(d) The appellate body may uphold, modify or reverse the legal findings and conclusions of the panel.

3. Adoption of Appellate Reports

An appellate report shall be adopted by the Council and unconditionally accepted by the parties to the dispute unless the Council decides [otherwise] [by consensus] [not to adopt the appellate report] within thirty days following its issuance to the contracting parties. This adoption procedure is without prejudice to the right of contracting parties to express their views on an appellate report.

I. Ex Parte Communications

No ex parte communications are permitted between the panel or appellate body and the parties to the dispute concerning matters under consideration by the panel or appellate body.
J. Time-Frame for Council Decisions

Unless agreed to by the parties, the period from the request under Article XXII:1 or Article XXIII:1 until the Council considers the panel or appellate report for adoption shall not as a general rule exceed twelve months where the report is not appealed or fifteen months where the report is appealed. Where either the panel or the appellate body has acted, pursuant to paragraph D.6(f) or H.1(e), to extend the time of providing its report, the additional time taken shall be added to the above periods.

K. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. At a Council meeting held within thirty days of the adoption of the panel or appellate body report, the contracting party concerned shall inform the Council of its intentions in respect of implementation of the recommendations and rulings under Article XXIII:2. If it is impracticable to comply immediately with the recommendations and rulings, the contracting party concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

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

   (b) a period of time mutually agreed by the parties to the dispute within forty-five days following adoption of the recommendations and rulings; or, in the absence of such agreement,

   (c) a period of time determined through binding arbitration within ninety days following adoption of the recommendations and rulings.

3. Except where the panel or the appellate body has extended, pursuant to paragraph D.6(f) or H.1(e), the time of providing its report, the period from the request under Article XXII:1 or XXIII:1 until the determination of the reasonable period of time shall not exceed eighteen months unless the parties agree otherwise. Where either the panel or the appellate body has acted to extend the time of providing its report, the additional time taken shall be added to the eighteen-month period; provided that [in no event shall the total amount of time] [unless there are exceptional circumstances, the total time shall not] exceed twenty-one months.
4. Where there is disagreement as to the existence or GATT consistency of measures taken to comply with the recommendations and rulings under Article XXIII:2, such dispute shall be decided through recourse to GATT dispute settlement procedures, involving resort to the original panel wherever possible. The panel shall issue its decision within ninety days of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

5. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the recommendations or rulings.

6. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/214).

L. Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings under Article XXIII:2 are not implemented within a reasonable period of time. Compensation within GATT is voluntary and shall be applied on a most-favoured-nation basis.

2. If the contracting party concerned fails to bring the measure found to be inconsistent with the General Agreement into compliance therewith or otherwise comply with the recommendations and rulings under Article XXIII:2 within the reasonable period of time, such party shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party to the dispute, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within twenty days after the expiry of the reasonable period of time, any party to the dispute may request authorization from the Council to suspend the application to the contracting party concerned of concessions or other obligations under the General Agreement.
3. When the situation described in paragraph 2 above occurs, the Council, upon request, shall grant authorization to suspend concessions or other obligations within thirty days of the expiry of the reasonable period of time unless the Council decides [otherwise] [by consensus] [to reject the request]. However, if the party concerned objects to the level of suspension proposed, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator appointed by the Director-General, and shall be completed within sixty days of the expiry of the reasonable period of time. Concessions or other obligations shall not be suspended pending the outcome of the arbitration.

4. The amount of trade covered by the suspension of concessions or other obligations authorized by the Council or determined by arbitration shall be appropriate in the circumstances.

5. The arbitrator shall not examine the nature of the suspended concessions or other obligations, but shall determine whether the amount of trade covered is appropriate in the circumstances. The parties shall accept the arbitrator's determination as final.

6. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with the General Agreement has been removed, or the contracting party that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached.

[7. The amount of suspension [may] [shall, if requested by one of the parties,] be determined before expiry of the reasonable period of time, in accordance with the relevant procedures under paragraph L.3 above, and on the understanding that such suspension shall not come into effect before the expiry of the reasonable period of time.]

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1The expression "arbitrator" shall be interpreted as referring either to an individual or a body.
M. Strengthening of Multilateral System

The contracting parties shall: (i) abide by GATT dispute settlement rules and procedures; (ii) abide by the recommendations, rulings and decisions of the CONTRACTING PARTIES; (iii) not resort to unilateral measures or the threat of unilateral measures inconsistent with GATT rules and procedures; and (iv) for the purposes of (iii), undertake to adapt their domestic trade legislation and enforcement procedures in a manner ensuring the conformity of all measures with GATT dispute settlement procedures.

N. Special Procedures involving Least-Developed Contracting Parties

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed contracting party, particular consideration shall be given to the special situation of least-developed countries.

2. In dispute settlement cases involving a least-developed contracting party where a satisfactory solution has not been found in the course of consultations under Article XXII:1 or XXIII:1, the Director-General shall, upon request by a least-developed contracting party, offer his good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General, in providing the above assistance, may consult any source which he deems appropriate.

O. Arbitration

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

2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all contracting parties sufficiently in advance of the actual commencement of the arbitration process.

¹This proposed commitment is linked to other parts of this Understanding concerning: (a) an agreement not to oppose the establishment of a panel or the adoption of panel or appellate body reports; (b) an agreement not to retain measures found inconsistent with the General Agreement, or to fail to remedy other measures found to nullify or impair benefits under the General Agreement, beyond the "reasonable period" for compliance; and (c) an agreement not to oppose authorization for the affected party to suspend concessions or other obligations if non-compliance continues after the expiration of the "reasonable period".
3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the Council where any contracting party may raise any point relating thereto.

4. The provisions on implementation and surveillance shall apply mutatis mutandis to arbitration awards.

P. Non-Violation Complaints

1. Option a: The general dispute settlement procedures shall apply, subject to the following qualifications, in the case of complaints that a [reasonable] [legitimate] expectation by a complaining party in respect of a benefit accruing to it through the operation of a market access concession [or other commitment] [, other obligation,] [or derogation [under Article XXV] therefrom], has been frustrated by the introduction or intensification of a measure, not in conflict with the General Agreement, [upsetting the conditions of competition] [having an adverse effect on trade], and thereby nullifying or impairing a GATT benefit.

Option b: Without prejudice to the scope of Articles XXII and XXIII of the General Agreement, the general dispute settlement procedures shall apply, [including panel and appellate procedures], [except that binding arbitration should replace panel and appellate procedures] in the case of complaints that a legitimate expectation by a complaining party in respect of a benefit accruing to it through the operation of a market access concession [or other commitment] [, other obligation, or derogation [under Article XXV] therefrom,] has been frustrated by the unforeseeable introduction or intensification of a measure, not in conflict with the General Agreement, [upsetting the conditions of competition] [having an adverse effect on trade], and thereby nullifying or impairing a GATT benefit.

2. The complaining contracting party shall present a detailed justification in support of any complaint made pursuant to the procedures of paragraph 1 above.

3. Option a: If the parties to a dispute agree that the dispute concerns nullification or impairment as described in paragraph 1 above, they shall have immediate recourse to consultations, and should they not reach a mutually satisfactory solution within thirty days, to the normal panel and appellate procedures for a determination on whether there has been nullification or impairment and thereafter to binding arbitration for a ruling on the value of any benefits which have been nullified or impaired.
If the parties to a dispute do not agree that theirs is a non-violation dispute, they shall have recourse to the normal panel and appellate procedures for decisions on whether there has been an infringement of GATT rules and whether there has been nullification or impairment as described in paragraph 1 above. Should it be found that there has been nullification or impairment despite the absence of an infringement of GATT rules, the parties shall have immediate recourse to consultations, and should they not reach a mutually satisfactory solution within thirty days, to binding arbitration on the value of any benefits which have been nullified or impaired.

Option b: Upon request by one or both parties, [the panel and appellate body] [the arbitration body] shall give a binding ruling on the value of benefits which have been nullified or impaired and on possible ways and means of achieving a mutually satisfactory solution.

4. If the parties cannot agree upon an arbitrator by the conclusion of the consultations referred to in paragraph 3 above, the arbitrator shall be appointed by the Director-General, after consulting both parties, within ten days after the end of the consultation period.

5. Any arbitration award, and any mutually agreed solutions in these cases, shall be notified to the Council.

6. Where a measure has been found to constitute a case of nullification or impairment of benefits under the General Agreement without violation thereof, there is no obligation to withdraw or modify such a measure.

7. All non-violation complaints not covered by paragraph 1 above, including those under Article XXIII:1(c), shall be referred to the Council for appropriate action. If there is no agreement as to whether the complaint falls under paragraph 1 or this paragraph, then the procedures of paragraph 3 shall apply to elicit a determination on this point.

Q. Technical Assistance

1. While the Secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the Secretariat shall make available a qualified legal expert within the Technical Co-operation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the Secretariat.

2. The Secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties’ experts to be better informed in this regard.
Annex

Suggested Working Procedures

1. In its proceedings the Panel will be guided by the relevant provisions of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210); of the 1982 Ministerial Declaration (BISD 29S/13); and of the Decisions on dispute settlement procedures adopted by the CONTRACTING PARTIES in November 1984 (L/5718) and in April 1989 (BISD 36S/61). In addition, the following guidelines will apply.

2. The Panel will meet in closed session. The Parties to the dispute, or other interested Parties, will be present at the meetings only when invited by the Panel to appear before it.

3. The deliberations of the Panel and the documents submitted to it will be kept confidential. For the duration of the Panel proceeding, the Parties to the dispute are requested not to release any papers or make any statements in public regarding the dispute.

4. Before the first substantive meeting of the Panel with the Parties, both Parties to the dispute are expected to transmit to the Panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the Panel will ask the Party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the Party against which the complaint has been brought will be asked to present its point of view.

6. As it may be necessary for the Parties to have time to prepare their formal rebuttals, the latter will be made at a second substantive meeting of the Panel. The Party complained against will have the right to take the floor first to be followed by the complaining Party. Both Parties are encouraged to submit, prior to that meeting, written briefs to the Panel.

7. The Panel may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

8. The Parties to the dispute and any third contracting party invited to present its views in accordance with paragraph 15 of the 1979 Understanding (BISD 29S/213) and section F(e) of the April 1989 Decision (BISD 36S/61) are encouraged to make available to the Panel a written version of their oral statements.
9. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 8 above will be made in the presence of both Parties. Moreover, each Party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the Panel, will be made available to the other Party.

10. Any additional procedures specific to the Panel.

11. The Panel proposes the following timetable for its work:

   (a) Receipt of first written submissions of the Parties: 3-6 weeks

      (1) complaining Party: 
      (2) Party complained against: 2-3 weeks

   (b) Date, time and place of first substantive meeting with the Parties: 1-2 weeks

   (c) Receipt of written rebuttals of the Parties: 2-3 weeks

   (d) Date, time and place of second substantive meeting with the Parties: 1-2 weeks

   (e) Submission of descriptive part of the report to the Parties: 3-6 weeks

   (f) Receipt of comments by the Parties on the descriptive part of the report: 2 weeks

   (g) Submission of the final report, including the findings and conclusions, to the Parties: 2-6 weeks

   (h) Circulation of the report to the CONTRACTING PARTIES: 2-4 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the Parties will be scheduled if required.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

Certain participants maintained reservations regarding this Understanding: in one case because of concerns relating to its provisions on XXIV:6 and XXIV:12; in another case because of concerns relating to its provisions on XXIV:12; and in a third case on the ground that the Understanding does not adequately address what was perceived to be a trend away from multilateralism and towards regional trading arrangements. This text has therefore been forwarded to the Trade Negotiations Committee by the Chairman of the Negotiating Group on GATT Articles on his own responsibility. In doing so he indicated that he believed it possible to agree on this text, which in his view represented a reasonable balance between the interests involved.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Preamble

The CONTRACTING PARTIES

Having regard to the provisions of Article XXIV of the General Agreement;

Recognising that customs unions and free trade areas have greatly increased in number and importance since the establishment of the GATT, and today cover a significant proportion of world trade;

Recognising the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

Recognising also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other contracting parties;

Convinced also of the need to reinforce the effectiveness of the role of the CONTRACTING PARTIES in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

Recognising the need for a common understanding of the obligations of contracting parties under Article XXIV:12;

Agree as follows:

1. Customs unions, free trade areas, and interim agreements leading to the formation of a customs union or free trade area, to be consistent with Article XXIV, must satisfy the provisions of its paragraphs 5, 6, 7 and 8 inter alia.
Article XXIV:5

2. The evaluation under Article XXIV:5(a) of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff line basis and in values and quantities, broken down by GATT country of origin. The GATT secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognised that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The "reasonable length of time" referred to in Article XXIV:5(c) should exceed ten years only in exceptional cases. In cases where contracting parties believe that ten years would be insufficient they shall provide a full explanation to the CONTRACTING PARTIES of the need for a longer period.

Article XXIV:6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a contracting party forming a customs union proposes to increase a bound rate of duty. In this regard it is reaffirmed that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted by the CONTRACTING PARTIES on 10 November 1980 (27S/26) and in the 1990 Decision on Article XXVIII, Modification of Schedules, of the CONTRACTING PARTIES, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union.

5. It is agreed that these negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by Article XXIV:6, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the contracting parties having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected contracting parties shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.
6. The General Agreement imposes no obligation on contracting parties benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its members.

Review of Customs Unions and Free Trade Areas

7. All notifications made under Article XXIV:7(a) shall be examined by a working party in the light of the relevant provisions of the General Agreement and of paragraph 1 of this Decision. The working party shall submit a report to the CONTRACTING PARTIES on its findings in this regard. The CONTRACTING PARTIES may make such recommendations to contracting parties as they deem appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed timeframe and on measures required to complete the formation of the customs union or free trade area. It may if necessary provide for further review of the agreement.

9. Substantial changes in the plan and schedule included in an interim agreement shall be notified, and shall be examined by the CONTRACTING PARTIES if so requested.

10. Should an interim agreement notified under Article XXIV:7(a) not include a plan and schedule, contrary to Article XXIV:5(c), the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and members of free trade areas shall report periodically to the CONTRACTING PARTIES, as envisaged by the CONTRACTING PARTIES in their instruction to the GATT Council concerning reports on regional agreements (18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

Dispute Settlement

12. The dispute settlement provisions of the General Agreement may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free trade areas or interim agreements leading to the formation of a customs union or free trade area.
Article XXIV:12

13. Each contracting party is fully responsible under the General Agreement for the observance of all provisions of the General Agreement, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The dispute settlement provisions of the General Agreement may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a contracting party. When the CONTRACTING PARTIES have ruled that a provision of the General Agreement has not been observed, the responsible contracting party shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each contracting party undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another contracting party concerning measures affecting the operation of the General Agreement taken within the territory of the former.
A decision has to be taken on the date to be inserted in paragraph 4 of this text. This will be the date by which existing waivers, unless extended in accordance with the procedures laid down in the Understanding, will be terminated.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXV
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. It is agreed that a request for a waiver or for an extension of an existing waiver shall describe the measures which the contracting party proposes to take, the specific policy objectives which the contracting party seeks to pursue and the reasons which prevent the contracting party from achieving its policy objectives by measures consistent with its obligations under the General Agreement.

2. A decision by the CONTRACTING PARTIES granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate.

3. Any waiver granted for a period of more than one year shall be reviewed by the CONTRACTING PARTIES not later than one year after it was granted, and thereafter annually until the waiver terminates. In each review, the CONTRACTING PARTIES shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The CONTRACTING PARTIES, on the basis of the annual review, may extend, modify or terminate the waiver.

4. Any waiver in effect on the date of this Decision shall terminate, unless extended in accordance with the procedures above, on the date of its expiry or [ ] year[s] from the date of this Decision, whichever is earlier.

5. Any contracting party considering that a benefit accruing to it under the General Agreement is being nullified or impaired as a result of

(a) the failure of the contracting party to whom a waiver was granted to observe the terms or conditions of the waiver, or

(b) the application of a measure consistent with the terms and conditions of the waiver

may invoke the provisions of Article XXIII.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

This Understanding has been agreed ad referendum.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. For the purposes of modification or withdrawal of a concession, the contracting party which has the highest ratio of exports affected by the concession (i.e. exports of the product to the market of the country modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest as provided for in Article XXVIII:1. It is however agreed that this paragraph will be reviewed five years from the date of this decision by the Committee on Tariff Concessions with a view to deciding whether this criterion has worked satisfactorily in securing a redistribution of negotiating rights in favour of small and medium-sized exporting contracting parties. If this is not the case consideration will be given to possible improvements, including, in the light of the availability of adequate data, the adoption of a criterion based on the ratio of exports affected by the concession to exports to all markets of the product in question.

2. Where a contracting party considers that it has a principal supplying interest in terms of paragraph 1 above, it should communicate its claim in writing, with supporting evidence, to the contracting party proposing to modify or withdraw a concession, and at the same time inform the secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" (BISD 278/26) shall apply in these cases.

3. In the determination of contracting parties with a principal supplying interest (whether as provided for in paragraph 1 above or in Article XXVIII:1) or substantial interest, it is agreed that only trade in the affected product which has taken place on an MFN basis shall be taken into consideration. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the renegotiation or will do so by its conclusion.

4. When a tariff concession is modified or withdrawn on a new product (i.e. a product for which three years' trade statistics are not available) the country possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and substantial interests and the calculation of compensation shall inter alia take into account production capacity and investment in the affected product in the exporting country and estimates of export growth, as well as forecasts of demand for the product in the importing country. For the purposes of this paragraph "new product" is understood to include a tariff item created by means of a breakout from an existing tariff line.
5. Where a contracting party considers that it has a principal supplying or a substantial interest in terms of paragraph 4 above, it should communicate its claim in writing, with supporting evidence, to the contracting party proposing to modify or withdraw a concession, and at the same time inform the secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" (BISD 27S/26) shall apply in these cases.

6. When an unlimited tariff concession is replaced by a tariff rate quota, the amount of compensation provided should exceed the amount of the trade actually affected by the modification of the concession. The basis for the calculation of compensation should be the amount by which future trade prospects exceed the level of the quota. It is understood that the calculation of future trade prospects should be based on the greater of:

   (i) the average annual trade in the most recent representative three year period, increased by the average annual growth rate of imports in that same period, or by ten per cent, whichever is the greater; or
   (ii) trade in the most recent year increased by ten per cent.

In no case shall the liability for compensation exceed that which would be entailed by complete withdrawal of the concession.

7. Any contracting party having a principal supplying interest, whether as provided for in paragraph 1 above or in Article XXVIII:1, in a concession which is modified or withdrawn shall be accorded an initial negotiating right in the compensatory concessions, unless another form of compensation is agreed by the contracting parties concerned.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXXV
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

In agreeing to forward this text to the Trade Negotiations Committee for decision, some participants indicated that they were still considering its legal and technical implications.
UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXXV
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Preamble

The CONTRACTING PARTIES

Having regard to the linked provisions of paragraph 1 of Article XXXV of the General Agreement on Tariffs and Trade;

Noting that by invoking Article XXXV a contracting party on the one hand, or a government acceding to the General Agreement on Tariffs and Trade on the other, declines to apply the General Agreement, or alternatively Article II of that Agreement, to the other party;

Desiring to ensure that tariff negotiations between contracting parties and a government acceding to the General Agreement on Tariffs and Trade are not inhibited by unwillingness to accept an obligation to apply the General Agreement as a consequence of entry into such negotiations;

Agree as follows:

A contracting party and a government acceding to the General Agreement on Tariffs and Trade may engage in negotiations relating to the establishment of a GATT schedule of concessions by the acceding government without prejudice to the right of either to invoke Article XXXV in respect of the other.
UNDERSTANDING ON PARAGRAPH 1(b) OF THE PROTOCOL OF PROVISIONAL APPLICATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND CORRESPONDING PROVISIONS IN PROTOCOLS OF ACCESSION

Commentary

Agreement has to be reached on the date to be inserted in this text. This date will be that on which the "grandfather clause" which provides cover for legislation inconsistent with Part II of the General Agreement will expire.

\footnote{Cf. paragraph 4 of the Final Act.}
UNDERSTANDING ON PARAGRAPH 1(b) OF THE PROTOCOL OF PROVISIONAL APPLICATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND CORRESPONDING PROVISIONS IN PROTOCOLS OF ACCESSION

It is agreed that the derogation provided for in paragraph 1(b) of the Protocol of Provisional Application of the General Agreement and in the corresponding provisions of the protocols of accession, according to which Part II of the General Agreement may be applied to the fullest extent not inconsistent with existing legislation, shall expire on [date].

1Cf. paragraph 4 of the Final Act.
DECISION ON THE FUNCTIONING OF THE GATT SYSTEM

Commentary

Apart from agreement on holding Sessions of the CONTRACTING PARTIES at Ministerial level every two years, the draft makes no proposals on institutional reinforcement of the GATT. Paragraph 8 provides a point at which any decisions reached by Ministers on institutional reinforcement could be incorporated into the draft.

There is not yet agreement on whether, or how, the draft statement in Section C should refer to non-trade aspects of international economic policy, and especially to exchange and interest rate problems, as well as to the terms of trade of developing countries and the definition of concessionary and non-concessionary flows of financial resources.
DECISION ON THE FUNCTIONING OF THE GATT SYSTEM

A. ENHANCED SURVEILLANCE IN THE GATT

Trade Policy Review Mechanism

1. Ministers recommend that the CONTRACTING PARTIES confirm the establishment of the Trade Policy Review Mechanism.

2. On the basis of the limited number of country reviews carried out so far, no changes at present appear necessary in the aims, coverage and procedures of the Trade Policy Review Mechanism as defined by the mid-term decision. However, bearing in mind that all contracting parties are subject to periodic review, clear guidelines are required for the efficient long-term scheduling of reviews. Such guidelines, which should be in conformity with the provisions regarding Frequency of Review of the Decision of the CONTRACTING PARTIES of 12 April 1989 establishing the Trade Policy Review Mechanism (L/6490), should be established by the Council not later than June 1991.

3. When greater experience has been gained, and not later than October 1992, the Council will review, and if necessary modify, the arrangements for the Trade Policy Review Mechanism.

Overview of Developments in the International Trading Environment

4. Ministers note that, on the basis of their mid-term decisions, and in conjunction with the country reviews under the Trade Policy Review Mechanism, the CONTRACTING PARTIES have instituted annual reviews of developments in the international trading environment which are having an impact on the multilateral trading system. Ministers regard these annual overviews by the Council as an important element in enhanced surveillance in the GATT, and recommend that they continue as under the present arrangements.

Domestic transparency

5. Ministers recognize the inherent value of domestic transparency of government decision-making on trade policy matters for both national economies and the multilateral trading system, and agree to encourage and promote greater transparency within their national systems, acknowledging that the implementation of domestic transparency must be on a voluntary basis and take account of their own legal and political systems.

Notification Procedures

6. Ministers recommend approval by the CONTRACTING PARTIES of the improvement and further review of GATT notification procedures as set out below.
THE CONTRACTING PARTIES,

DESIRING to improve the operation of notification procedures under the General Agreement, and thereby to contribute to the transparency of national trade policies and to the effectiveness of surveillance arrangements established to that end,

RECALLING their existing obligations under the General Agreement to publish and notify, including obligations assumed under the terms of specific Protocols of Accession, waivers, and other agreements entered into by the CONTRACTING PARTIES,

DESIRING to reinforce the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted by the CONTRACTING PARTIES on 28 November 1979,

Have agreed as follows:

I. General obligation to notify

Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.

Contracting parties recall their additional undertakings set out in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance of 28 November 1979. With regard to their undertaking therein to notify, to the maximum extent possible, their adoption of trade measures affecting the operation of the General Agreement, such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement, contracting parties agree to be guided by the annexed list of measures. Contracting parties therefore agree that the introduction or modification of such measures is subject to the notification requirements of the 1979 Understanding.

II. Central registry of notifications

A central registry of notifications shall be established under the responsibility of the secretariat. While contracting parties will continue to follow existing notification procedures, the Secretariat shall ensure that the registry records such elements of the information provided on the measure by the contracting party as its purpose, its trade coverage, and the requirement under which it has been notified. The registry shall cross-reference its records of notifications by country and obligation.

The central registry shall inform each contracting party annually of the regular notification obligations to which that contracting party will be expected to respond in the course of the following year.

The central registry shall draw the attention of individual contracting parties to regular notification requirements which remain unfulfilled.
Information in the central registry regarding individual notifications shall be made available on request to any contracting party entitled to receive the notification concerned.

III. Review of notification obligations and procedures

The CONTRACTING PARTIES will undertake a review of GATT notification obligations and procedures. The review will be carried out by a working group, membership in which will be open to all contracting parties. The group will be established immediately after the end of the Uruguay Round.

The terms of reference of the working group will be:

- to undertake a thorough review of all existing notification obligations of Contracting Parties established under the General Agreement, with a view to simplifying, standardizing and consolidating these obligations to the greatest extent practicable, as well as to improving compliance with these obligations, bearing in mind the overall objective of improving the transparency of national trade policies and the effectiveness of surveillance arrangements established to this end, and also bearing in mind the possible need of some developing Contracting parties for assistance in meeting their notification obligations;

- to make recommendations to the Council by 31 December 1991.

B. INSTITUTIONAL REINFORCEMENT OF THE GATT

7. Ministers recall the Decision of the CONTRACTING PARTIES of 12 April 1989 (L/6490) that the CONTRACTING PARTIES should meet at Ministerial level at least every two years, in order, inter alia:

(a) to make a fuller contribution to the direction and content of GATT work;

(b) to reinforce the commitment of governments to the GATT system;

(c) to give greater prominence to GATT in domestic political arenas;

(d) to assess trends in international trade and place these trends in their wider economic and political context;

(e) to enable the CONTRACTING PARTIES to contribute effectively to international discussion at the policy level of the international adjustment process; and by these means

(f) to increase the contribution of the GATT to greater coherence in global economic policy making.

[8. The results of the Uruguay Round on which Ministers have now reached agreement substantially enlarge the scope of future co-operation among
their governments on trade matters. This will require appropriate adaptation of existing consultative and institutional arrangements. [Accordingly, [ ]].]

C. INCREASING THE CONTRIBUTION OF THE GATT TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICYMAKING

9. The globalization of the world economy has led to ever-growing interactions between the economic policies pursued by individual countries, including interactions between the structural, macroeconomic, trade, financial and development aspects of economic policymaking. The task of achieving harmony between these policies falls primarily on governments at the national level, but their coherence internationally is an important and valuable element in increasing the effectiveness of these policies at national level. The agreements reached in the Uruguay Round show that all the participating governments recognize the contribution that liberal trading policies can make to the healthy growth and development of their own economies and of the world economy as a whole.

10. At the international level, the Uruguay Round has taken place over a period marked by large and persistent external imbalances among major industrial countries, protectionist pressures, [exchange rate [instability] [adaptation] and high real interest rates,] [a deterioration in the terms of trade of developing countries,] and continuing severe debt problems in a number of countries, particularly developing countries, accompanied by inflationary, fiscal and balance-of-payments difficulties. Since each of these factors interacts with the others, successful co-operation in each area of economic policy contributes to progress in other areas. [A stable and efficient international monetary system contributes] [Greater exchange rate stability and more orderly underlying economic and financial conditions should contribute] to the expansion of trade, sustainable growth and development, and the correction of external imbalances. The central rôle of the IMF in overseeing and improving the international monetary system is recognized. Ministers also recognize the need for an adequate and timely flow of concessional and non-concessional financial resources [in real terms], and for further efforts to address debt problems, to ensure economic growth and development. Trade liberalization forms an increasingly important component in the success of the adjustment programmes that many countries are undertaking, often involving significant transitional social costs. In this connection, Ministers note the rôle of the World Bank and the IMF in supporting adjustment to trade liberalization, including support to net food-importing developing countries facing short-term costs arising from agricultural trade reforms.

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1Any decisions on consultative or institutional arrangements to improve the overall effectiveness and decision-making of the GATT as an institution could be included here, including that of the analytical capacity of the secretariat.
11. The positive outcome of the Uruguay Round [, in particular, commitments by participants to the substantial reduction of trade-distorting subsidies to agriculture,] [and similarly the full integration of trade in textiles and clothing into GATT,] is a major contribution towards more coherent and complementary international economic policies. The results of the Uruguay Round ensure an expansion of market access to the benefit of all countries, as well as a framework of strengthened multilateral disciplines for trade. They also guarantee that trade policy will be conducted in a more transparent manner and with greater awareness of the benefits for domestic competitiveness of an open trading environment. The strengthened multilateral trading system emerging from the Round has the capacity to provide an improved forum for liberalization, to contribute to more effective surveillance, and to ensure strict observance of multilaterally agreed rules and disciplines. These improvements mean that trade policy can in future play a more substantial role in ensuring the coherence of global economic policymaking.

[12. Ministers recognize, however, that difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone. This underscores the importance of efforts to improve other elements of global economic policymaking to [permit] [complement] the effective implementation of the results achieved in the Uruguay Round.]

13. The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. GATT should therefore pursue and develop its co-operation with the international organizations responsible for monetary and financial matters, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions. Ministers further recommend that the CONTRACTING PARTIES invite the Director-General of GATT to review, with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of GATT's future responsibilities for its co-operation with the Bretton Woods institutions, as well as the forms such co-operation might take, with a view to achieving greater coherence in global economic policymaking. The Director-General should report his conclusions to the Council by 31 December 1991. In this review, he should take into account the specific proposals to develop closer institutional co-operation put forward in the course of the Uruguay Round negotiations.
ANNEX

Indicative list\(^1\) of notifiable measures

- tariffs (including range and scope of bindings, GSP provisions, rates applied to members of free trade areas/customs unions, other preferences)
- tariff quotas and surcharges
- QRs, including VERs and OMAs affecting imports
- other non-tariff measures such as licensing and mixing requirements; variable levies
- customs valuation
- rules of origin
- government procurement
- technical barriers
- safeguard actions
- anti-dumping actions
- countervailing actions
- export taxes
- export subsidies, tax exemptions and concessionary export financing
- free trade zones, including in-bond manufacturing
- export restrictions, including VERs and OMAs
- other government assistance, including subsidies, tax exemptions
- rôle of state-trading enterprises
- foreign exchange controls related to imports and exports
- government-mandated countertrade
- any other measure covered by the General Agreement, its annexes and its protocols.

\(^1\)This list does not alter existing notification requirements in specific GATT Articles and in agreements and arrangements negotiated under GATT auspices.
ACTION ON ROLLEBACK

1Cf. paragraph 16 of Report of the Chairman of the Surveillance Body (MTN.SB/14).
ANNEX II

GENERAL AGREEMENT ON TRADE IN SERVICES

Commentary

1. The draft text of the Agreement is submitted by the Chairman of the Group of Negotiation on Services on his own responsibility. There remain many divergences of views among participants, and most of these are reflected in square brackets in the text.

2. The major decision which has to be taken concerning this text relates to whether most-favoured-nation treatment (Article II) is to be treated as a general obligation to extend the benefits of any measure on trade in services from any country to all parties, or whether it would involve only the application to other Parties of benefits given under the provisions of the Agreement to one Party.

3. The alternative text for Article II also raises the question whether it would be necessary to provide in sectoral Annexes for any specific derogations from m.f.n., or to include in them any provisions protecting bilateral and other agreements. The present Annexes are drawn up on the assumption that the first alternative m.f.n. provision applies. If this assumption is maintained, decisions will have to be taken on the scope of the derogations from m.f.n. which are reflected in the present draft Annexes.

4. While there was agreement on the need for a sectoral Annex on financial services, there was no agreement on its scope and content. The content of such an Annex would again depend on the manner in which the m.f.n. issue is settled.

5. The inclusion and contents of an Annex on labour mobility are important for many developing countries and some other participants, as the Annex would have a bearing on the nature of commitments which might be negotiated with respect to the supply of labour services.

6. The conditions for application of the balance-of-payments provisions of the Agreement (Article XII) are regarded by many countries as crucial.

7. The scope of exceptions provided for in Article XIV also needs to be clarified.

8. There is a number of other questions, including technical matters, on which detailed work remains to be completed. The legal consistency and some formal aspects of the draft will also require further examination before the Agreement can be formally adopted.

9. The text has attached to it for consideration a draft decision on initial commitments.
GENERAL AGREEMENT ON TRADE IN SERVICES

PREAMBLE

Part I SCOPE AND DEFINITION

Article I Scope and Definition

Part II GENERAL OBLIGATIONS AND DISCIPLINES

Article II Most-Favoured-Nation Treatment
Article III Transparency
Article IV Increasing Participation of Developing Countries
Article V Economic Integration
Article VI Domestic Regulation
Article VII Harmonization and Recognition
Article VIII Monopolies and Exclusive Service Providers
Article IX Behaviour of Private Operators
Article X Emergency Safeguard Measures
Article XI Payments and Transfers
Article XII Restrictions to Safeguard the Balance of Payments
Article XIII [Public] [Government] Procurement
Article XIV Exceptions
Article XV Subsidies
Part III  SPECIFIC COMMITMENTS

Article XVI  Market Access
Article XVII  National Treatment

Part IV  PROGRESSIVE LIBERALIZATION

Article XVIII  Negotiation of Commitments
Article XIX  Application
Article XX  Schedules of Commitments
Article XXI  Modification of Schedules

Part V  INSTITUTIONAL PROVISIONS

Article XXII  Consultation
Article XXIII  Dispute Settlement and Enforcement
Article XXIV  Joint Action
Article XXV  Council
Article XXVI  Technical Cooperation
Article XXVII  Relationship with Other International Organizations

Part VI  FINAL PROVISIONS

Article XXVIII  Acceptance and Accession
Article XXIX  Entry into Force
Article XXX  Non-Application
Article XXXI  Denial of Benefits
Article XXXII  Amendments
Article XXXIII Withdrawal
Article XXXIV Definition of Terms
Article XXXV Annexes
PREAMBLE

The Parties to this Agreement,

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

[Recognizing the sovereignty of national economic space;]

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

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

[Recognizing the right of Parties to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives, and the particular need of developing countries to exercise this right;]*

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

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

Hereby agree as follows:

*Alternative to paragraph 1 of Article VI.
PART I

SCOPE AND DEFINITION

Article I

Scope and Definition

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

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:
   
   (a) from the territory of one Party into the territory of any other Party;
   
   (b) in the territory of one Party to the service consumer of any other Party;
   
   (c) by natural persons of one Party in the territory of any other Party; and
   
   (d) through the [commercial] presence of [service providing entities] [juridical persons] of one Party in the territory of any other Party [, the provision of service being for a limited duration and a specified purpose].

3. For the purposes of this Agreement:
   
   (a) "measures by Parties" means measures taken by:
   
      (i) central, regional or local governments and authorities; and
   
      (ii) non-governmental bodies in the exercise of governmental powers [or in the grant of governmental benefits];
   
      ([iii] Each Party is fully responsible under the Agreement for the observance of all provisions of the Agreement and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.)*
   
   (b) "services" includes any service in any sector [except services supplied in the exercise of governmental functions].

*Several participants proposed the inclusion of this paragraph with the precise location of it to be determined later.
PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Party shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than that it accords to like services and providers of like services of any other country [ig like circumstance] [with respect to the same mode of delivery].

2. [The provisions of paragraph 1 of this Article shall temporarily not apply to those activities in specific sectors covered by other international agreements as are identified and set out in the annexes to this Agreement.]

3. The application of paragraph 2 shall be subject to review pursuant to paragraph 1 of Article XIX.

4. Without prejudice to specific commitments in its schedule, the presence in its territory of service providers of another country on terms which have since been altered by the host Party, shall not subsequently require the host Party to permit the presence of service providers of other Parties in its territory on the same terms.**

Alternative text of Article II

[ In applying the provisions of this Agreement, including the commitments in its schedule, a Party shall accord to the services and service providers of another Party treatment no less favourable than the treatment it accords to like services and like service providers of any other Party.]

* The provisions of this Article do not apply to international agreements on taxation, investment protection or juridical and/or administrative assistance.

**The placement and the formulation of this paragraph are yet to be agreed.
Article III

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant laws, regulations, administrative guidelines and all other decisions, rulings, or measures of general application, whether made effective by national or sub-national government bodies or by a non-governmental regulatory entity, which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party to this Agreement is a signatory shall also be published.

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

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

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

5. Any Party may notify to the PARTIES any measure, taken by another Party, which it considers affects the operation of this Agreement.

6. The provisions of this Article shall not require any Party to provide confidential information the disclosure of which would impede law enforcement or otherwise contrary to the public interest or prejudice legitimate commercial interests.
Article IV

Increasing Participation of Developing Countries

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

- the strengthening of [their technological capabilities and] their domestic services capacity and its efficiency and competitiveness;
- the improvement of their access to [technology and to] distribution channels and information networks; and
- the liberalization of market access in sectors and modes of delivery of export interest to them.

2. Developed Parties, and to the extent possible other Parties, shall establish contact points within (...) years from the entry into force of this Agreement to facilitate the access of developing countries' service providers to information, related to their respective markets, concerning:

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

3. Special priority shall be given to the least developed countries in the implementation of paragraphs 1 and 2 above. In view of the weakness of their domestic service capacity, [special consideration shall be given to their difficulties in accepting commitments under Parts III and IV of this Agreement.] [they will not be expected to make commitments until their domestic service sector becomes significantly competitive.]
Article V

Economic Integration

[1. The provisions of this Agreement shall not prevent any of its Parties from being a party to or entering an agreement establishing among the parties thereto a higher degree of liberalization of trade in services than that set out in their schedules, on condition that such an agreement:

(a) provides for a high degree of liberalization within a reasonable period of time;

(b) has substantial sectoral coverage, and

(c) involves the different modes of delivery.

In evaluating whether the above conditions are met, positive consideration shall be given to the relationship of the agreement to a wider process of economic integration among the countries concerned.

2. Where developing countries are parties to an agreement, flexibility shall be provided for regarding the conditions set out in paragraph 1 of this article, in accordance with the level of development of the countries concerned.

3. Agreements referred to in paragraphs 1 and 2 of this Article shall not in respect to other Parties raise overall levels of barriers to trade in services within the respective sectors/sub-sectors. Parties to an agreement should seek to implement any common measures with respect to other Parties at the least restrictive level existing prior to entering into such an agreement.

4. Any Party deciding to enter into or modify significantly an agreement referred to in paragraphs 1 and 2 of this Article shall promptly notify the PARTIES and make available to them such information as they deem appropriate. The PARTIES shall establish a working party to examine such agreement or modifications in the light of the provisions of this Article. The progress in the implementation of such agreements, including existing agreements, shall be reviewed periodically.

5. If a Party outside an agreement referred to in paragraph 1 or 2 of this Article considers that the benefits accruing to it from a specific commitment under Parts III and IV of this Agreement are adversely affected as a result of such an agreement the procedures set forth in Article XXI shall apply.
6. This Agreement imposes no obligation on Parties benefiting from the liberalization resulting from an agreement referred to in paragraphs 1 or 2 of this Article to provide compensation to its members.

7. The provisions of this Agreement shall not be construed to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges in contiguous frontier zones of locally produced and locally consumed services.

Alternative text of Article V

[1. The provisions of this Agreement shall not prevent any of its Parties from being a party to or entering an agreement establishing among the parties thereto a higher degree of liberalization of trade in services than that set out in their schedules, on condition that such an agreement:

(a) covers substantially all services sectors,
(b) provides for a higher degree of liberalization in all covered sectors within a reasonable period of time,
(c) covers substantially all trade in services, and
[(d) applies to services trade supplied both cross-border and within the territory of each party.]
[(d) applies to each relevant mode of delivery in each service sector.]

2. Where developing countries are parties to an agreement, the provisions of paragraph 1 shall be interpreted with flexibility, in accordance with the level of development of the countries concerned.

3. Notwithstanding paragraph 1, Article II shall apply to service providers of other Parties to this Agreement that are commercially present in the territory covered by the Agreement.

4. Any agreement of the type referred to in paragraphs 1 shall not raise barriers to trade in services in respect of other Parties to this Agreement nor deny existing benefits enjoyed by other Parties. Any recognition or harmonization of measures, standards or qualifications relating to the supply of a service among the parties shall be conducted in accordance with Article VII and shall not raise the overall level of barriers to trade in respect of the services activities concerned.

5. Any agreement under paragraph 1 and any significant modification of such an agreement shall be promptly notified to the PARTIES. The parties to the agreement shall make available to the PARTIES such information as they deem appropriate. The PARTIES shall establish a working party to examine such agreement or modification in the light of the provisions of this Article. The progress in the implementation of such agreements, including existing agreements, shall be reviewed periodically.
6. If a Party outside an agreement referred to in paragraph 1 or 2 of this Article considers that the benefits accruing to it from a specific commitment under Parts III and IV of this Agreement are nullified or impaired as a result of such an agreement, the Party may have recourse to Articles XXII or XXIII.

7. This Agreement imposes no obligation on Parties outside an agreement referred to in paragraph 1 benefiting from the liberalization resulting from the agreement to provide compensation to its members.

8. The provisions of this Agreement shall not be construed to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges in contiguous frontier zones of locally produced and locally consumed services.

**Article VI**

**Domestic Regulation**

[1. Subject to the provisions of this Agreement, the right of Parties to regulate the provision of services within their territories in order to meet national policy objectives is recognized. This includes the right to introduce new regulations. It is recognized that, given the asymmetries existing with respect to the degree of development of services regulations in different countries, developing countries may have a particular need to exercise this right. Such right may include, inter alia, the granting of exclusive rights in certain sectors in order to implement national policy objectives.]*

2. Subject to the provisions of this Agreement, Parties may require that services or services providers of other Parties meet certain regulations, standards or qualifications. Such requirements shall not be applied in a manner which constitute a means of discrimination between Parties or a restriction on international trade in services. Parties shall administer these measures in a reasonable, objective and an impartial manner. Such requirements shall be based upon objective criteria, such as competence and the ability to provide such services, and not be more burdensome than necessary to achieve national policy objectives.**

*See paragraph 5 of the Preamble.

**Interpretative note on paragraph 2. Requirements which are not based upon objective criteria shall be considered as restrictions on market access and/or limitations on national treatment and, when a specific commitment is made, shall be inscribed, as appropriate, in the Party’s schedule.
[2. Where Parties require that services or service providers of other Parties must meet certain standards or qualifications, such requirements shall be based upon objective criteria, such as competence and the ability to provide such services, and not be more burdensome than necessary to achieve national policy objectives. Parties shall administer such measures in a reasonable, objective and impartial manner.*]

3. (a) Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service provider or consumer, for the prompt, review of and, where justified, appropriate remedies for administrative decisions relating to the supply of services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that they do in fact provide for an objective and impartial review.

(b) The provisions of sub-paragraph (a) shall not require a Party to institute such tribunals or procedures where this [would be inconsistent with] [is not provided for under] its constitutional structure or legal system.**

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

[5. Where measures of a Party impose obligations on service providers in the territory of another Party, and lead to conflicting requirements or adverse effects, affected Parties shall promote co-operation and, as appropriate, respond promptly and positively to requests for consultations on such matters.]

[*Interpretative note on paragraph 2. The provisions of paragraph 2 apply only the extent that a Party has taken a market access or national treatment commitment. Any derogation from paragraph 2 shall be inscribed in the Party's schedule.]

**[In the absence of a review procedure the matter may be taken up under Article XXIII (Dispute Settlement).]
Parties shall not, by immigration measures related to the temporary movement of natural persons, frustrate the intent of this Agreement, nor nullify or impair benefits arising from specific commitments set out in their national schedules. Where specific commitments involving the movement of natural persons have been made, each Party shall issue work permits and other permissions needed for the work and stay on a temporary basis in its territory of persons covered by such commitments.

Article VII

Harmonization and Recognition

1. Subject to the conditions set out in paragraph 2, Parties may adopt arrangements or agreements with other [countries] [Parties] which:

   (a) provide for the facilitation of the supply of services to the markets of such [countries] [Parties], though not themselves constituting specific commitments, in the sense of Part III, and

   (b) provide for recognition or harmonization of regulations, standards or qualifications relating to the supply of a service.

2. Such arrangements or agreements:

   (a) shall, on the basis of negotiations, be open for participation by other parties. Alternatively, on the basis of negotiations, like arrangements or agreements may be adopted with other parties;

   (b) shall not be formulated and applied in a manner inconsistent with the provisions of Article VI.2.

   (c) where it relates to professional services, shall concern qualifications, standards or scope of practice based on objective criteria such as competence.

3. Parties shall administer such arrangements and agreements in a reasonable, objective and impartial manner.

4. Notification of the PARTIES:

   (a) Parties shall within 12 months of entry into force of the Agreement inform the PARTIES of their harmonization and recognition arrangements or agreements which qualify under this Article.

   (b) In order to allow other interested Parties a sufficient opportunity to participate in such arrangements or agreements Parties shall on a timely basis inform the PARTIES when they decide to enter into negotiations with a view to the conclusion of such arrangements or agreements.
Parties shall promptly inform the PARTIES of any new arrangements or agreements concluded pursuant to this Article, and of any significant changes to existing or new ones.

5. In the absence of such arrangements or agreements between Parties, such Parties shall provide domestic procedures, where appropriate, for determining the competence of professionals from other Parties in sectors where commitments under Articles XVI and XVII have been made.

6. [Co-operative arrangements]*

[Note: There is a question of whether, as part of the possible future work programme, the promotion of the use of international standards might be taken up for appropriate services sub-sectors, e.g. professionals.]

Alternative text of Article VII

[1. Parties may enter into agreements with other countries or adopt arrangements which provide for the recognition or harmonization among each other of standards and qualifications relating to the supply of services. Parties to these agreements or arrangements shall afford adequate opportunity to any other Party to negotiate their participation in an existing agreement or arrangement or the adoption of comparable agreements or arrangements.

2. Such agreements or arrangements shall not be formulated or applied in a manner which would constitute a means of [arbitrary or unjustifiable] discrimination between Parties or introduce new barriers to trade services for other Parties.

3. Parties shall:

(a) within 12 months of entry into force of the Agreement inform the PARTIES of any existing arrangements or agreements referred to in paragraph 1;

(b) promptly inform the PARTIES of any new agreements and arrangements under paragraph 1 and of significant changes therein;

(c) promptly inform the PARTIES of the opening of negotiations of agreements or arrangements under paragraph 1 in order to allow any Party to exercise their rights under paragraph 1.

*Some participants suggested adding a new paragraph concerning co-operative arrangements.
4. In agreements or arrangements under paragraph 1, wherever appropriate, recourse should be made to internationally agreed requirements. Parties shall, in co-operation with the relevant international organizations work towards the establishment and adoption, where appropriate, of international standards.

5. Parties that have made specific commitments under Articles XVI and XVII in their schedules shall, in the absence of agreements or arrangements under paragraph 1, provide for adequate procedures in order to verify the competence of professionals of other parties.

6. Co-operative arrangements (p.m.)

Article VIII

Monopolies and Exclusive Service Providers

1. Each Party shall ensure that any monopoly provider of a service in its territory does not, in providing the monopoly service in the relevant market, behave in a manner which would nullify or impair benefits to which service providers of other Parties are entitled under Articles II, XVI and XVII of this Agreement.

2. Where a monopoly provider of a service competes either directly or through an affiliated company in the provision of another service subject to a commitment under Articles XVI or XVII which is outside the scope of its monopoly rights, the Party concerned shall ensure that such a provider does not exploit its monopoly position to operate otherwise than in accordance with [normal commercial considerations] [competition legislation of the territory concerned].

3. The PARTIES may, at the request of a Party which has a reason to believe that benefits accruing to it under Articles II, XVI and XVII of this Agreement are being adversely affected by operations of a monopoly provider of a service, request the Party establishing, maintaining or authorizing such entity to provide specific information concerning such operations. This shall not require any Party to provide confidential information the disclosure of which would impede law enforcement or prejudice legitimate commercial interests of particular service providers.

4. If, after the entry into force of this Agreement, a Party grants monopoly rights regarding the provision of a service covered by its specific commitments under this Agreement, Article XXI applies.

5. For the purposes of this Article, a "monopoly provider of a service" is any entity, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole provider of that service.
[6. The provisions of this Article shall also apply to cases where a Party designates formally or in effect a limited number of service providers and substantially limits, or permits substantial limitations on, competition among those providers.]

[7. Nothing in this Agreement condemns or condones the creation or maintenance of monopoly service providers.]

**Article IX**

**Behaviour of Private Operators**

1. [In order to prevent business practices of private operators which adversely affect competition in their services markets, including through anti-competitive restrictions on the exports of services, Parties shall, at the request of another Party, undertake consultations [between authorities responsible for competition policy] with a view to eliminating such practices [in accordance with their respective legislations].]

[1. In order to prevent business practices of private operators which adversely affect competition in their services markets or inhibit their exports of services, Parties shall, on request, provide information bearing on such practices and shall co-operate to eliminate such practices through consultation.]

2. The provision of information and its use by other Parties, under this Article, shall be subject to the provisions on confidentiality of Parties' respective laws and shall be dealt with in such a way as to safeguard the legitimate commercial interests of particular service providers.

**[ Article X**

**Emergency Safeguard Measures**

1. If, as a result of unforeseen developments and of the effect of a specific commitment assumed by a Party under this Agreement, any service is being imported into the territory of that Party [or is being supplied by a foreign service provider] in such increased quantities and under such conditions as to cause or threaten serious injury to domestic providers of a like service, the Party shall be free to suspend, in whole or in part, such a commitment to the extent and for the time necessary to remedy the injury.

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*There is a question of whether Article X is needed, or whether work needs to be undertaken to develop appropriate provisions relating to emergency safeguard measures.*
2. Any Party introducing a measure in pursuance of paragraph 1 shall, prior to its introduction or immediately thereafter, notify the PARTIES of such measure as well as all relevant data concerning the existence of serious injury or threat thereof, and shall provide adequate opportunity for consultations with Parties affected by the measure.

[3. Where such consultations do not lead to agreement, the Parties affected may suspend substantially equivalent concessions the suspension of which is not disapproved by the PARTIES.]

4. All measures falling under this Article shall be subject to surveillance by the PARTIES.]

Alternative text of Article X

[1. Within two years from the entry into force of the Agreement, multilateral negotiations shall be completed on the question of emergency safeguard measures.

2. Meanwhile, the three year delay in the ability of Parties to invoke Article XXI and the three months period required for notification under paragraph 1 of that Article are hereby suspended. This provision shall end within the two years referred to in paragraph 1.]

Article XI

Payments and Transfers

1. Except under the circumstances envisaged in Article XII, specific commitments on trade in services under this Agreement shall not be frustrated by restrictions on payments or transfers for [current] transactions related to such commitments.

2. Nothing in this Agreement shall affect the rights and obligations of members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with these Articles of Agreement.
Article XII

Restrictions to Safeguard the Balance of Payments*

1. [In order to safeguard against a deterioration in its external financial position and its balance of payments] [In the event of imminent or actual serious external financial or balance-of-payments difficulties], a Party may adopt or maintain [temporary] restrictions on [trade in] [cross-border provision of] services on which it has undertaken specific commitments, or on payment[s] or transfer[s] [outflows] for transactions related to such commitments. It is recognized that [particular pressures on the balance of payments of] a Party in the process of economic development [is more vulnerable to such difficulties, which] may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of [external] financial reserves adequate for the implementation of its programme of economic development.

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

3. Such restrictions shall not exceed those necessary, bearing in mind any recommendations made pursuant to paragraph 6 below, to deal with the circumstances described in paragraph 1.

4. The restrictions referred to in paragraph 1 above:
   
   (i) shall not discriminate among Parties to the Agreement;
   
   (ii) shall avoid unnecessary damage to the commercial and economic interests of other Parties; and
   
   [(iii) shall be temporary and uniformly applied to all services;]
   
   [(iv)] shall be relaxed progressively as conditions improve and maintained only to the extent that the circumstances described in paragraph 1 above justify their application.

[5. In determining the incidence of such restrictions, Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be taken for the purpose of protecting a particular service sector.]

6. Parties applying the provisions of this Article shall consult promptly with the PARTIES on restrictions maintained under this Article. The PARTIES shall develop procedures for consultations with the objective of

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*Some participants are of the view that provisions to safeguard the balance of payments in the Agreement should be drafted along the lines of Articles XII and XVIII:B of the GATT.
enabling such recommendations to be made to the Party concerned as they may deem appropriate. Such consultations shall also take into consideration, inter alia, such factors as the nature and extent of the [external financial and] balance-of-payments difficulties, [the external economic and trading environment of the consulting Party], and alternative corrective measures which may be available. In such consultations, the PARTIES shall accept all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, and [take into account] the assessment by the Fund of the [external financial and] balance-of-payments situation of the Party.

[7. After completion of such consultations, any Party that considers the Party applying the measure has failed to comply with the provisions of the Article may have recourse to Articles XXII and XXIII.]

8. If a Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the PARTIES will establish review and any other procedures necessary.

### Article XIII

[Public] [Government] Procurement

The provisions of Articles II, XVI and XVII shall not apply to procurement covered by [public] [government] procurement laws and regulations.*

[ [Public] [Government] procurement would be included in the list of subjects on which there shall be multilateral negotiations within two years from the entry into force of the Agreement.]

### Article XIV

Exceptions

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

*Parties may negotiate [offer] additional commitments pursuant to paragraph 4(e) of Article XVIII in the area of [public] [government] procurement.
(a) to protect [national security] public morals [and order], safety, [sustainable development and environment,] [human, animal and plant life and], health [cultural values,] [its environment,] [data,] [the integrity of infrastructure or transportation systems,] [conservation of exhaustible natural resources];

(b) to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to [the imposition of direct taxes or] the prevention of deceptive and fraudulent practices [, as well as the protection of confidentiality of individual records and accounts].

2. The PARTIES shall be informed of measures taken under paragraph 1.

3. Nothing in this Agreement shall be construed:

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

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

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

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

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

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

4. The PARTIES shall be informed to the fullest extent possible of measures taken under paragraph 3(b) and (c).
Article XV

Subsidies

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

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

PART III

SPECIFIC COMMITMENTS

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I of this Agreement, each Party shall grant services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule.

2. Where access through more than one mode of supply is provided for in a Party's schedule, service providers of other Parties shall be free to choose their preferred mode of delivery.

*Future work programme shall determine how and in what time-frame negotiations on the multilateral discipline and the appropriateness of countervailing procedures will be conducted.
Article XVII

National Treatment

1. In conformity with other relevant provisions of this Agreement, and in accordance with the conditions and qualifications set out in its schedule, each Party shall accord to services and service providers of other Parties, in respect of all measures affecting the supply of services, treatment no less favourable than that accorded to like domestic services or providers of like services.

[2. The treatment a Party accords to services and service providers of other Parties shall be considered to be no less favourable within the meaning of paragraph 1 if it accords to the services or service providers of other Parties opportunities to [compete] [supply services] that are no less favourable than those accorded to like domestic services or providers of like services.]

PART IV

PROGRESSIVE LIBERALIZATION

Article XVIII

Negotiation of Commitments

1. In pursuance of the objectives of this Agreement, Parties shall enter into successive rounds of negotiations, beginning not later than ... from the date of entry into force of this Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations. [A least developed Party shall benefit from the extension of all concessions exchanged under this Agreement.]

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Parties. There shall be appropriate flexibility for individual developing countries for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service providers, attaching to it conditions aimed at achieving the objectives referred to in Article IV.
3. For each round, negotiating guidelines and procedures shall be established. In drawing up such guidelines account shall be taken of:

(a) the results of an evaluation of previous negotiations with regard to the objectives of this Agreement, on the basis of objective criteria to be agreed by the PARTIES [, including the evolution of developing countries' share in world trade in services and their competitive position in such trade and the average level of liberalization achieved internationally in the different services sectors].

(b) the need to fulfil the provisions of Article IV;

(c) the liberalization autonomously undertaken by each Party, particularly developing countries, since the last negotiating round;

(d) the serious difficulties of the least-developed countries in accepting commitments in view of their special economic situation, development, trade and financial needs.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of bindings assumed by Parties with respect to the specific commitments under Part III of this Agreement. Such negotiations shall take place among Parties on the following:

(a) new market access commitments with respect to unbound sectors, sub-sectors or modes of delivery through binding levels of market access;

(b) new national treatment commitments with respect to unbound sectors, sub-sectors or modes of delivery;

(c) total or partial elimination of any limitations and/or conditions on market access in bound sectors, sub-sectors or modes of delivery;

(d) total or partial elimination of any conditions and/or qualifications on national treatment in bound sectors, sub-sectors or modes of delivery;

[(e) upon request, additional commitments to provide market access through the modification or elimination of measures which restrict the range of activities or otherwise deny service providers of other Parties competitive opportunities on the market of the Party concerned equal to those of its own providers.]

[5. Parties may negotiate further commitments on trade liberalization in covered services.]
Article XIX

Application

1. Except as otherwise indicated, the provisions of this Agreement, other than those in Part III, shall be applied to all sectors by all Parties in accordance with any relevant sectoral annexes from the date of entry into force of the Agreement. In cases where there are derogations from the general obligations in Part II, in accordance with any sectoral annexes, they shall be subject to periodic review by the Parties having regard to the objectives and the provisions of this Agreement.

2. Provisions in Part III shall be applied by each Party to the sectors, sub-sectors and modes of delivery covered in its schedule, in accordance with the negotiated specific commitments set out therein.

[3. After negotiations on specific commitments are concluded and the resulting commitments inscribed in schedules, a Party shall not, with respect to sectors, sub-sectors and modes of delivery covered therein:

(a) place or maintain limitations or conditions on market access, other than as set out in its schedule of bindings;

(b) modify existing, or introduce new measures, which would result, with respect to national treatment, in according services or service providers of other Parties treatment less favourable than that provided for in its schedule of bindings.]

[3. After negotiations on specific commitments are concluded and the resulting commitments are inscribed in schedules, a Party shall not:

(a) with respect to all sectors, unless otherwise provided in its schedules as a result of negotiations, modify existing, or introduce new measures, which would result, with respect to national treatment or market access, in according services or service providers of other Parties treatment less favourable than that provided for under existing measures;

(b) with respect to sectors, sub-sectors and modes of delivery covered by its specific commitments:

(i) place or maintain limitations or conditions on market access, other than as set out in its schedule of bindings;

(ii) modify existing, or introduce new measures, which would result, with respect to national treatment or market access, in according services or service providers of other Parties treatment less favourable than that provided for in its schedule of bindings.]
Article XX

Schedules of Commitments

1. Each Party shall set out in its schedule the commitments resulting from its negotiations with other Parties. Each schedule shall specify sectors and sub-sectors where bindings exist and shall in addition contain the following elements:

   (a) any limitations and conditions on market access*;

   (b) any conditions and qualifications on national treatment*;

   (c) with a view to identifying clearly the scope of the commitment, where a partial binding of a sector or a sub-sector exists, an indication as to where market access or national treatment are not bound with respect to any of the modes of delivery;

   (d) where appropriate, the agreed time-frame for the implementation of commitments;

   [(e) any additional measures to achieve market access;]

   (f) date of entry into force of commitments.

2. Schedules of bindings shall be annexed to this Agreement and form an integral part thereof.

Article XXI

Modification of Schedules

1. Any Party may, after a period of three years from the date a commitment enters into force, notify the PARTIES of its intention to modify or withdraw such a commitment included in its schedule. Such a Party (hereafter in this Article referred to as the "applicant Party") shall make such notification to the PARTIES no later than three months before the intended implementation of the modification or withdrawal.

*Where there is a total binding of market access or national treatment, in a given sector or sub-sector with respect to one of the modes of delivery, the word "None" would be entered to indicate that there are no such limitations, conditions or qualification.
2. At the request of any affected Party (which together with the applicant Party are in this Article hereinafter referred to as the "Parties concerned") the applicant Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. Such request shall be notified to the PARTIES.

3. In the event an agreement cannot be reached within the period of three months referred to in paragraph 1, the applicant Party shall be free to implement the proposed modification. Affected Parties, as determined by the PARTIES, shall, no later than six months after such implementation, be free to make adequate compensatory adjustments in the form of withdrawing or modifying equivalent commitments in their schedules. Any such modification or withdrawal shall be notified to the PARTIES. If any third Party should consider that such modification or withdrawal has adversely affected any benefit accruing to it under this Agreement it may refer the matter to the PARTIES with a view to their making appropriate recommendations.

4. Notwithstanding the provisions of paragraph 3, it shall be open to any Party concerned, prior to the expiry of the three months period referred to above, to refer the matter to the PARTIES for consideration and recommendation.
PART V

INSTITUTIONAL PROVISIONS

Article XXII

Consultation

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another Party with respect to any matter affecting the operation of this Agreement.

2. The PARTIES may, at the request of a Party, consult with any Party or Parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

Article XXIII

Dispute Settlement and Enforcement

1. If any Party should consider that another Party fails to carry out its obligations or commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the PARTIES. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory solution is effected between the Parties concerned within a reasonable period of time, the matter may be referred to the PARTIES. The PARTIES shall promptly investigate any such matter referred to them and shall make appropriate recommendations to the Parties which they consider to be concerned, or give rulings on the matter, as appropriate. The PARTIES may consult with other Parties as well as any relevant inter-governmental organization in cases where they consider such consultations necessary.
3. If the PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a Party or Parties to suspend the application to any other Party or Parties of such obligations and commitments under this Agreement as they determine to be appropriate in the circumstances.

[4. If any Party considers that any benefit it could reasonably have expected to accrue to it under a commitment assumed by another Party in its Schedule of Commitments is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may resort to the procedures of Article XXII and Article XXIII, paragraphs 1 and 2. If the commitment is determined by the PARTIES to have been nullified or impaired and the measure is not withdrawn, the commitment shall be deemed to have been modified or withdrawn and paragraphs 2 and 3 of Article XXI [on modification of schedule commitments] shall apply.]*

**Article XXIV**

**Joint Action**

1. Representatives of the Parties shall meet as necessary for the purpose of giving effect to those provisions of the Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the Parties acting jointly they are designated as the PARTIES.

2. Each Party shall be entitled to have one vote at all meetings of the PARTIES.

3. Except as otherwise provided for in this Agreement, decisions of the PARTIES shall be taken by a majority of the votes cast.

4. In exceptional circumstances not elsewhere provided for in this Agreement, the PARTIES may waive an obligation imposed upon a contracting Party by this Agreement; provided that any such decision shall be approved by approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the Parties.

*Text for discussion.*
5. (a) A decision by the PARTIES granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate.

(b) Any waiver granted for a period of more than one year shall be reviewed by the PARTIES not later than one year after it was granted, and thereafter annually until the waiver terminates. In each review, the PARTIES shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The PARTIES, on the basis of the annual review, may extend, modify or terminate the waiver.

**Article XXV**

**Council**

1. The PARTIES shall establish a Council which will perform such functions as may be assigned by them to facilitate the operation of this Agreement and further its objectives.

2. Each Party to this Agreement is entitled to be represented at the Council.

3. The Chairman of the Council shall be elected by the PARTIES. The Council shall establish its own rules of procedure. It may also establish such subsidiary bodies as may be necessary for the effective discharge of its functions.

**Article XXVI**

**Technical Cooperation**

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

2. Technical assistance to developing countries shall be provided at the multilateral level by the competent secretariat and shall be decided upon by the PARTIES.
Article XXVII

Relationship with Other International Organizations

The PARTIES shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as other Intergovernmental organizations concerned with services.
PART VI

FINAL PROVISIONS

Article XXVIII

Acceptance and Accession

1. This Agreement shall be open for acceptance until (...) by the governments whose schedules are contained in Annex (...).

2. Any government which does not accept this Agreement pursuant to paragraph 1 may accede to it on terms to be agreed with the PARTIES. Decisions of the PARTIES under this paragraph shall be taken by a two-thirds majority.

3. For the purposes of this Article and Article XXIX,

   (a) the European Economic Community, and

   [(b) any territory which possesses full autonomy in the conduct of its external economic relations and of the other matters provided for in the Agreement]

shall be deemed to be a government.

[4. Each government accepting this Agreement does so in respect of all territories under its jurisdiction, including the territories for whose international relations it is responsible, except those which are excluded by it by written notice to the depositary of this Agreement at the time of acceptance or accession.]

Article XXIX

Entry into Force

1. This Agreement, done in a single copy, in English, French and Spanish languages, each text being authentic, shall be deposited with the [Director-General of GATT] [Secretary-General of the United Nations], who shall furnish to each Party a certified copy.
2. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

3. This Agreement shall enter into force on the (---) day after (---) Parties have accepted it pursuant to paragraph 1 of Article XXVIII. For each other government it shall enter into force on the thirtieth day following the date of its accession.

**Article XXX**

**Non-Application**

1. This Agreement shall not apply [in whole or in part] as between any two Parties [if they have not entered into direct negotiations with each other on specific commitments and] if either of them, at the time either becomes a Party, does not consent to such application.

2. The PARTIES may review the application of paragraph 1 in particular cases at the request of any Party and make appropriate recommendations.

[3. At the request of any Party, the PARTIES shall establish a working party to examine the application of paragraph 1 in particular cases regarding, *inter alia*, appropriateness of the reason for which a Party invokes the provision of paragraph 1. With a view to enabling them to make recommendations to the Parties concerned and/or to the PARTIES.

[4. The provision of Article XXX shall not apply to those countries that have participated in the Uruguay Round, provided that they adhere to this Agreement within two years from the entry into force of it.]

**Article XXXI**

**Denial of Benefits**

A Party may deny the benefits of this Agreement to services or service providers if it establishes that they originate from a country which is not a Party to this Agreement or from another Party to whom the Party does not apply this Agreement pursuant to Article XXX.
Article XXXII

Amendments

1. Amendments to Parts I, II and III of this Agreement and any Annex provisions related thereto shall become effective in respect of those Parties which accept them, upon acceptance by two-thirds of the Parties and thereafter for each other Party upon acceptance by it.

2. Amendments to Parts IV, V and VI of this Agreement and any Annex provisions related thereto shall become effective for all Parties upon acceptance by two-thirds of the Parties.

3. Any Party accepting an amendment to this Agreement shall deposit an instrument of acceptance with Chief Executive Officer according to such procedures and within such a period as the PARTIES may specify.

Article XXXIII

Withdrawal

Any Party may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall take effect upon the expiration of --- months from the day on which written notice thereof is received by the Chief Executive Officer who shall promptly inform the PARTIES. Any Party may request an immediate meeting of the Council to examine the matter.

Article XXXIV

Definition of Terms*

For the purpose of this Agreement:

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

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

---

*Text to be discussed.
(c) "measures by Parties affecting the supply of a service" include measures in respect of

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

(ii) the access to and use of distribution and transportation systems and public telecommunications transport networks in connection with the supply of a service; and

(iii) the commercial presence of natural and juridical persons of a Party supplying a service in the territory of another Party.

(d) "natural person of any other Party" means any natural person who is a national of a Party under the law of that Party or, in the case of a Party to which Article XXVIII:3(b) applies, natural persons with the right of permanent residence in the territory of that Party;

(e) "juridical person of any other Party" means

(i) any entity legally constituted under the law applicable in the territory of another Party and any partnership or association organized under such law, whether constituted or organized for profit or not and whether privately-owned or governmentally-owned; and

(ii) any entity legally constituted or organized under the law applicable in the territory of a Party that is owned or controlled by natural persons identified in paragraph (d) or entities identified in paragraph (e)(i).

(f) "service provider of another Party" means any natural or juridical person of another Party that supplies a service, including any natural person of another Party employed by such a person;

(g) "service consumer of a Party" means any natural or juridical person of a Party that receives or uses a service;

(h) "commercial presence" means any type of business or professional presence within the territory of a Party for the purpose of supplying a service, whether through incorporation, the acquisition of existing enterprises, the creation of wholly- or partially-owned subsidiaries, joint ventures, partnerships, branches, representative offices, or otherwise.

Article XXXV

Annexes

The Annexes to this Agreement are an integral part of this Agreement.
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</table>
1. This Annex applies to maritime shipping services including associated ancillary services.

M.f.n.

[2. The provisions of paragraph 1 of Article II of the Agreement do not apply to measures relating to the services described in paragraph 1 above.]

[2. The provisions of paragraph 1 of Article II of the Agreement do not apply to cargo-sharing and reservation measures relating to the services described in paragraph 1 above, taken by Parties under existing [or future] bilateral agreements and arrangements, subject to the following requirements:

   [(a) Parties shall phase out [by Jan.1, 199x] all measures taken by them under [existing] bilateral agreements and arrangements, negotiated between Parties in strict conformity with the provisions of the U.N. Code of Conduct for Liner Conferences and Resolution 2 on non-conference lines, which are contrary to paragraph 1 of Article II of the Agreement.]

   (b) Parties shall phase out by Jan.1, 199x measures taken by them under bilateral agreements and arrangements [other than those falling under paragraph 2 (a) above], which are contrary to paragraph 1 of Article II of the Agreement.

   (c) Parties undertake not to circumvent the content of paragraphs [2 (a) and] 2 (b) of this Annex by instituting new or more restrictive regulations or by extending the scope of such regulations to cover non-conference maritime transport such as bulk shipping.]

[3. The provisions of paragraph 1 of Article II do not apply to cabotage covered by the specific measures or agreements listed in the Appendix to this Annex.]

[Other Provisions]

[4. The provisions of Article IV of the Agreement shall apply to all pertinent aspects associated with shipping conferences.]

[5. Pending the conclusion of negotiations on appropriate disciplines on subsidies and until the implementation of their results, Parties may introduce or apply legislation aimed at combating unfair pricing practices in maritime transport.]
[6. Parties shall not nullify or impair commitments undertaken under Articles XVI and XVII of the Agreement through the introduction of unreasonable or discriminatory restrictions on access to and use of infrastructure such as ports, terminals, berths, storage, handling and other port facilities, whether public or private, other than those justified by existing limitations of that infrastructure.]

Review

7. Parties shall review the provisions of this Annex within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:1 of the Agreement.

[Appendix

(List as per paragraph 3 of the Annex to be added).]
[INLAND WATERWAY TRANSPORT SERVICES

Annex

[1. This Annex applies to transport on inland waterways within a territory or which form part of the territory of one or more than one country, and/or transport on inland waterways in non-ocean-going and combined river/ocean vessels of no more than -- draft, -- weight and ... (other limiting characteristics).]

[1. This Annex applies to transport on inland waterways covered by the specific arrangements or agreements listed in the Appendix to this text.]

M.f.n.

[2. The provisions of paragraph 1 of Article II of the Agreement do not apply to [specific arrangements or agreements listed in the Appendix to this text] [measures taken by a Party in conformity with the provisions of existing [and future] bilateral or plurilateral agreements or arrangements relating to the supply of the service. [Any such existing agreements or arrangements which are not in conformity with Article II of the Agreement shall be phased out within ... years of the entry into force of the Agreement.]]

Review

3. Parties shall review these provisions within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:I of the Agreement.]

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[Appendix

(List as per paragraph 1 of the Annex to be added).]
1. This Annex applies to passenger and freight transport by road (i.e. truck and bus) [including associated ancillary services].

[M.f.n.]

2. The provisions of paragraph 1 of Article II of the Agreement do not apply to [the establishment of commercial presence and to] measures taken by a Party in conformity with the provisions of existing [and future] bilateral or plurilateral agreements or arrangements relating to the cross-border supply of the service. [Any such existing agreements or arrangements which are not in conformity with Article II of the Agreement shall be phased out within ... years of the entry into force of the Agreement.]

[Other provisions]

3. The needs of Parties to counter and redress environmental problems stemming, inter alia, from heavy use of the road system by transit vehicles, to the extent they are not fully met by the provisions of Article VI, XIV, XVI and XVII of the Agreement, are recognized.

[Review]

4. Parties shall review these provisions within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:I of the Agreement.]
AIR TRANSPORT SERVICES
Annex

1. This Annex applies to air transport services, i.e. all transport by air of passengers, cargo or mail, whether scheduled or not, and ancillary services.

Application

2. Except as provided in paragraph 4 below, no provision of the Agreement shall apply to traffic rights [and [directly]* related activities which would limit or affect the ability of Parties to negotiate, to grant or to receive traffic rights, or which would have the effect of limiting their exercise].

3. Notwithstanding the provisions of paragraph 2 above, the provisions of the Agreement shall apply to an agreed list of activities which shall be reviewed periodically in accordance with paragraph 6 below. The list** includes:

- aircraft repair and maintenance;
[- computer reservation systems;]
[- selling and marketing of air transport services;]
[- ground handling services.]

Transparency

4. With regard to transparency, Article III of the Agreement shall apply, except that with respect to traffic rights [and directly related activities], Parties shall be deemed to have complied with the requirements of Article III:1-3 of the Agreement when they are in full compliance with the transparency provisions of the Chicago Convention.

Review

5. Parties shall review the scope for the application of the provisions of the Agreement to air transport services periodically, pursuant to Article XIX:1 of the Agreement.

6. Parties shall also review the list of activities in paragraph 3 above every [3] years with a view to extending the list of activities covered by that paragraph.

*The word "directly" would be required by some participants only if paragraph 3 were not to be retained.
**Definitions would be required of the items retained in this list.
[BASIC TELECOMMUNICATIONS SERVICES
Annex

1. This Annex applies to public telecommunications transport networks and services offered or required by a measure of a Party to be offered to the public generally [, as set out in the attached illustrative list of services].

M.f.n.

2. Paragraph 1 of Article II of the Agreement does not apply to measures taken by a Party relating to the supply by service providers of other Parties of services described in paragraph 1.

Review

3. Parties shall review these provisions within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:I of the Agreement.]

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[Illustrative list of basic telecommunications transport networks and services

Telephone
Telegram
Telex
Facsimile
Packet- and circuit-switched data transmission services
Integrated services digital networks
Private leased circuits
Fibre optics transmission systems
Satellite systems]
[TELECOMMUNICATIONS
Annex

Objectives

1. Recognizing the specificities of the telecommunication services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the purpose of this Annex is to ensure that [benefits accruing to any Party under the Agreement are not nullified or impaired by the failure of another Party to carry out its obligations or commitments with respect to measures affecting] [the general obligations and disciplines of the Agreement and the implementation of specific commitments provided for in Parties' schedules are not nullified or impaired by measures affecting] access to and use of public telecommunications transport networks and services.

Scope

2. This Annex shall apply [, with respect to commitments included in a Party's schedule,] to:

   (a) all measures of a Party that affect access to and use of public telecommunications transport networks and services; and

   [(b) the manner in which such measures are enforced by a Party with respect to providers of public telecommunications transport networks and services under its jurisdiction.]

1 The use of this term may need to be reviewed in light of the final text of the Agreement.

2 The need for this paragraph may have to be reviewed in light of the final text of the Agreement including provisions on dispute settlement for non-violation nullification or impairment of benefits.

3. For the purposes of this Annex, "access to and use of" public telecommunications transport networks or public telecommunications transport services is limited to such access or use by service providers of other Parties for the provision of a service in the territory of a Party as specified in its schedule.
4. This Annex shall not apply to the cable or broadcast distribution of radio or television programming.

5. Notwithstanding the provisions of the Agreement or this Annex:

(a) A Party shall not be required to authorize a service provider of another Party to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or services, unless otherwise provided for in its schedule;

(b) A Party shall not be required to establish, construct, acquire, operate or offer public telecommunications transport networks or services not offered to the public generally on the date of entry into force of the Agreement. Access to, and use of, such networks and services offered to the public generally after that date will be subject to the provisions of this Annex.

[(c) A Party shall not be required to grant market access to service providers, including telecommunications service providers, of other Parties other than as specified in its schedule.]

Definitions

For the purposes of this Annex:

6. **Telecommunications** means the transmission and reception of signals by any electromagnetic means.

7. **Public telecommunications transport service** means any telecommunications transport service

- [offered to the public generally]
- [offered to the public generally or required [, directly or indirectly,] by a measure of a Party to be offered to the public generally].

Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.
8. Public telecommunications transport network means the public telecommunications infrastructure which permits the conveyance of telecommunications signals between and among defined network termination points.

[9. Intra-corporate communications means telecommunications [through the public telecommunications transport network]

- [by which a service provider supplying services as specified in the schedule of a Party]
- [which allow companies or firms to]

communicate[s] for internal purposes on a non-commercial basis with or among [its] [their] subsidiaries, branches [and affiliates]. For these purposes, "subsidiaries, branches [and affiliates]" shall be as defined by such Party. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services supplied to unrelated companies or firms, or offered to customers or potential customers.]

Transparency

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

Access to and use of Public Telecommunications Transport Networks and Services

11. Parties shall ensure that access to and use of public telecommunications transport networks and services offered within or across borders for the provision of a service, as provided for in their schedules, is accorded to service providers of other Parties on reasonable and non-discriminatory terms and conditions consistent with Articles II, VI and XVII of the Agreement.

12. Parties shall ensure that service providers of other Parties may have access to and use of public telecommunications transport services they require, including national and international private leased circuits, subject to the provisions of paragraph 5 of this Annex.

³This provision may need to be reviewed in the light of the final text of the Agreement.
[13. Parties shall [endeavour to] ensure that pricing of public telecommunications transport services is cost-oriented and does not nullify or impair commitments provided for in a Party's schedule.]

[14. [In accordance with national legislation [consistent with this Agreement]] Parties shall ensure that service providers of other Parties may use public telecommunications transport networks and services for the movement of information within and across borders, [including intra-corporate communications of such service providers,] and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.] [Any changes [by a Party] affecting such use shall be notified [in advance] and shall be subject to consultation in accordance with relevant provisions of the Agreement.]

15. Notwithstanding the preceding paragraph, a Party may take such measures as are necessary to ensure the security, confidentiality and privacy of messages and personal data, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade in services.

16. In the application of Article VI of the Agreement, Parties shall ensure that conditions are not imposed on such access and use other than as necessary:

(a) to safeguard the public service responsibilities of telecommunications transport networks and services, including the prevention of bypass of such networks and services unless allowed by a Party;

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4The privacy-related aspects of this sentence may need to be reviewed in light of the final text of the provisions of the Agreement related to protection of personal privacy. Even if privacy issues are dealt with elsewhere, the aspects of this provision regarding security and confidentiality of messages, which are specific to telecommunications, may need to remain.
(b) to ensure the technical integrity of public telecommunications transport networks and services; and

(c) to ensure that service providers of other Parties provide only those services that they may provide or are authorized to provide pursuant to commitments in a Party's schedule and its laws and regulations consistent with such commitments.

17. Subject to the provisions of paragraph 16, conditions for access to and use of public telecommunications transport networks and services may include those relating to:

(a) the re-sale or shared use of such services;

(b) specification of technical interfaces with such networks;

(c) inter-operability of such services, where necessary;

(d) attachment of terminal equipment to such networks;

(e) the interconnection of private leased or owned circuits with such networks or services or with circuits leased by another service provider; and

(f) notification, registration and licensing requirements, if any.

[18. Notwithstanding the previous paragraph, a developing country Party may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Party’s schedule.]
20. Parties shall encourage and support telecommunications co-operation among developing countries at the international, regional and sub-regional levels.

21. In co-operation with relevant international organizations, Parties shall make available, where practicable, to developing countries information with respect to international telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

22. Parties shall give special consideration to opportunities for the least developed countries to encourage foreign providers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services exports.

Relation to International Organizations and Agreements

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

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

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5 Paragraphs 23 and 24 may need to be reviewed in light of the final text of the provisions of the Agreement on harmonization and recognition agreements and in relation to other international agreements and organizations.
LABOUR MOBILITY

Annex

1. The provisions of the Agreement relate to temporary movement of natural persons performing particular services in respect of which access commitments have been undertaken. They do not apply to individual job seekers, and do not concern, and should not affect, national laws and regulations regarding citizenship or immigration related to residence or employment on a permanent basis.

[2. An illustrative list of natural persons performing particular services covering broad categories of sectors and skill levels is attached to this Annex.]

[2. Negotiations shall proceed on the basis of lists of categories of persons exchanged by the Parties without prejudice to whether access in respect of any such categories of persons is subsequently bound.]

3. Market access commitments specifying the categories of physical persons for the provision of a particular service shall be negotiated in accordance with Article XVI of the Agreement, drawing on the [illustrative] list[s] as a reference point.

4. Once such a market access commitment is inscribed in the schedules, all categories of natural persons covered by the commitment shall be allowed to provide the service.

[5. The benefits from any specific commitment covering labour mobility shall not be frustrated through the application of national laws or regulations relating to the entry, stay and work on a temporary basis of physical persons.]

[6. Notwithstanding Article II of the Agreement, Parties may undertake bilateral or plurilateral arrangements providing for preferential movement of natural persons with other countries, and may impose conditions and limitations on such movement. In applying such arrangements or in imposing such conditions and limitations, Parties shall endeavour to act in the least restrictive manner possible with respect to foreign providers of services.]

[7. It is understood that nothing in the Agreement shall be construed to prevent agreements or arrangements the effect of which is the substantial integration of labour markets.]}
[AUDIOVISUAL, BROADCASTING, SOUND RECORDING AND PUBLISHING] SERVICES*

Annex

1. This Annex applies to any activity related to the [production], [publication], distribution, broadcasting or other transmission of [audiovisual works] [films, radio and television programming, sound recordings, [books, periodicals and newspapers]] whatever the means used.

M.f.n.

2. The provisions of paragraph 1 of Article II of the Agreement do not apply to measures relating to any activities described in paragraph 1 above, that are taken by a Party in pursuance of cultural policy objectives in connection with [existing] bilateral or plurilateral agreements, arrangements or actions of international bodies.

Other Provisions

[3. It is recognized that in the activities referred to in paragraph 1 above, Parties may pursue cultural policy objectives; negotiations on specific commitments, for these activities, under Parts III and IV of the Agreement, shall respect their cultural specificities.]

[4. Nothing in the Agreement shall affect the status, as defined by each Party, of the entities providing audiovisual services in its territory.]

Review

5. Parties shall review the provisions of this annex within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:I of the Agreement.]

*An alternative to an Annex could be an exception for "cultural values" under Article XIV, relating to the list of activities in paragraph 1 of this text.*
*There is agreement on the need for an annex to address the specificities of the financial services sector. There is no agreement on the scope and contents of this annex.
[GUIDELINES AND RECOMMENDATIONS FOR NEGOTIATIONS ON INITIAL COMMITMENTS]

Negotiations on initial commitments would proceed on the basis of the following outline:

A. The pre-Brussels phase:

1. Participants are invited to submit initial offers on a provisional basis, prior to the end of November 1990, in which they specify commitments they are willing to assume under Parts III - d IV of the Agreement. Parties are also invited to furnish all relevant information which would permit an appreciation of such offers.

2. All offers would be made available, through the secretariat, to participants in the GNS in order to provide transparency.

3. Such offers may be subject to initial discussions among interested participants for the purpose of clarifying their content or commenting on them.

4. Initial offers may be subject to changes, refinement, or withdrawal.

5. The content of such offers, although not binding, would be a starting point for the actual process of negotiations on initial commitments in 1991.

B. At the Brussels meeting

1. The final text of the General Agreement on Trade in Services and the necessary annexes to it would be approved in Brussels.

2. A decision would also be approved in Brussels on the negotiation of a package of initial commitments to be concluded in 1991, such commitments entering into force at the same time as the Agreement. The decision would include guidelines for negotiations such as time limits, a political commitment from participants not to take any measures which would improve their negotiating position and leverage, as well as other elements reflected in the attached text on initial commitments.
C. The post-Brussels phase*:

1. Countries which have not submitted offers prior to the conclusion of the Uruguay Round and wishing to participate in the negotiations would be invited to submit such offers by 31 March 1991.

2. Actual negotiations on initial commitments on the basis of all offers submitted, as well as any other proposals or requests, would take place from 1 April 1991 until 30 September 1991.

3. After negotiations are concluded there would be a one-month period for the consolidation of schedules until 31 October 1991.

4. The Agreement would then be open for acceptance from 1 November 1991.

5. The Agreement would enter into force in accordance with the terms specified therein.

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*The suggested dates are put forward on the basis that all participants would have the necessary negotiating authority for the purpose.
1. In addition to the general obligations and disciplines of the Agreement, and in order to secure an overall balance of rights and obligations, Parties shall also negotiate specific commitments, to enter into force at the same time as the Agreement, in relation to the provisions mentioned in paragraph 2 of Article XIX of the Agreement. Such negotiations among Parties shall take place, having regard to the level of development of each participant and the situation of countries in economic transition, with a view to achieving a balance of interests.

2. Negotiations shall proceed according to the following guidelines:

(a) negotiations shall take place on the basis of an indicative list of sectors [as well as an illustrative list of physical persons];

(b) in order to provide appropriate flexibility to individual participants, in particular to individual developing countries, in line with their development situation, commitments shall be established at the appropriate level of disaggregation, in relation to categories of sectors, sectors, sub-sectors or transactions;

[(c) the extent of each Party’s commitment under paragraph 3 shall take into account:

- the general level of liberalisation already achieved internationally in the services sector concerned [and its share in international trade in services], as well as the level of development and the degree of liberalization of the Party in that sector;

- the need for appropriate flexibility through binding at a more restrictive level than the existing situation particularly in relation to the individual level of development of the Party;]

- the need for negotiation on sectors and modes of delivery of priority interest to developing countries;

[(c) as a first step, and as part of these initial commitments, bind existing levels of market access and the existing extent of national treatment in all sectors.] [This provision does not apply to developing countries nor to economies in transition.]

(d) appropriate flexibility shall be negotiated for Parties, in particular for developing countries, to phase in on the basis of agreed time-frames the implementation of negotiated commitments under paragraph 3;
3. Negotiations shall take place among participants on the following:

   (a) commitments to bind the existing levels of market access and/or new market access undertakings, by indicating specifically limitations and conditions on market access, in its different forms prescribed in the Agreement and/or by positively indicating the specific liberalization undertaking;

   (b) commitments to bind existing conditions and qualifications on national treatment, and/or to bind the total or partial elimination of such conditions and qualifications;

   [(c) any additional measures to achieve market access.]

4. Special consideration shall be given to the difficulties of least-developed countries in accepting specific liberalization commitments. [Least developed countries are not expected to make any intitial commitments.]
[ANNEX III]

[AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS]

[The Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods forms an integral part of the Uruguay Round results.]¹

¹The text of this agreement is as it appears in the corresponding section of Annex 1.
ANNEX IV

[BASIC ELEMENTS OF AN ORGANIZATIONAL AGREEMENT]

[The Organizational Agreement should include provisions on:

(a) the establishment of a permanent institutional structure along the lines of the structure established for the negotiations;

etc.]
### APPENDIX

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#### Annex I

**Trade in Goods**

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¹Including Natural Resource-Based Products and Tropical Products.
²Cf. paragraph 1 of the Final Act.
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\(^1\)Cf. paragraph 16 of the Report of the Chairman of the Surveillance Body (MTN.SB/14).
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For Belize:
For the Republic of Benin:
For the Republic of Bolivia:
For the Republic of Botswana:
For the Federative Republic of Brazil:
For Burkina Faso:
For the Republic of Burundi:
For the Republic of Cameroon:
For Canada:
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For the Czech and Slovak Federal Republic:
For the Kingdom of Denmark:
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For the United States of America:
For the Eastern Republic of Uruguay:
For the Republic of Venezuela:
For the Socialist Federal Republic of Yugoslavia:
For the Republic of Zaire:

For the Republic of Zambia:

For the Republic of Zimbabwe:

For the European Communities: