

ANNEX F

**JOINT PANEL REQUEST AND MINISTERIAL DECLARATION ON
TRADE IN INFORMATION TECHNOLOGY PRODUCTS (WT/MIN(96)/16)**

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ANNEX F-1

**REQUEST FOR THE ESTABLISHMENT OF A PANEL BY
THE UNITED STATES, JAPAN AND CHINESE TAIPEI
(WT/DS375/8, WT/DS376/8 AND WT/DS377/6)**

**WORLD TRADE
ORGANIZATION**

**WT/DS375/8
WT/DS376/8
WT/DS377/6**
19 August 2008

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**EUROPEAN COMMUNITIES AND ITS MEMBER STATES – TARIFF TREATMENT
OF CERTAIN INFORMATION TECHNOLOGY PRODUCTS**

Request for the Establishment of a Panel by the United States, Japan and
the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

The following communication, dated 18 August 2008, from the delegations of the United States, Japan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the Chairman of the Dispute Settlement Body, is circulated pursuant to Articles 4.7 and 6.2 of the DSU.

Pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (GATT 1994), the United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu requested consultations with the European Communities (EC) and its member States regarding the tariff treatment the EC and its member States accord to certain information technology products. The United States requested consultations with the EC and its member States on 28 May 2008, and the request was circulated on 2 June 2008 as document WT/DS375/1, G/L/851. Japan requested consultations with the EC and its member States on the same matter on 28 May 2008, and the request was circulated on 2 June 2008 as document WT/DS376/1, G/L/852. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu requested consultations with the EC and its member States on the same matter on 12 June 2008, and the request was circulated on 18 June 2008 as document WT/DS377/1, G/L/853.

The United States and the EC and its member States held consultations on 25-26 June 2008 and 14-15 July 2008 in Geneva. Japan and the EC and its member States held consultations on

26 June 2008 and 16-17 July 2008 in Geneva. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the EC and its member States held consultations on 3 July 2008, 18 July 2008, and 25 July 2008 in Geneva. Those consultations were held with a view to reaching a mutually satisfactory solution. Unfortunately, those consultations failed to find such a solution.

Therefore, the United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, acting jointly and severally, each in the exercise of the rights accruing to it as a member of the WTO, hereby request that a panel be established pursuant to Article 6 of the DSU and Article XXIII of the GATT 1994 regarding the measures specified below and any amendments or extensions thereto as well as any related or implementing measures.

As participants in the *Ministerial Declaration on Trade in Information Technology Products*, or "ITA" (Information Technology Agreement),¹ the EC and its member States modified their Schedules of Concessions to the GATT 1994 (EC Schedules) to reflect the commitments made under the ITA.² Such modifications became effective 2 July 1997.³ Accordingly, the EC and its member States shall grant duty-free treatment for flat panel displays, set-top boxes (STBs) with a communication function, and "input or output units" of "automatic data processing machines" and facsimile machines. However, as a result of the application of certain EC measures, the EC and its member States impose duties on these products.

Flat panel displays

Customs authorities of EC member States impose duties on flat panel displays. The measures at issue through which they do so include:

1. Council Regulation (EC) No. 493/2005 of 16 March 2005;
2. Commission Regulation (EC) No. 634/2005 of 26 April 2005;
3. Commission Regulation (EC) No. 2171/2005 of 23 December 2005;
4. Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended;⁴ and
5. Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 133/01 (May 30 2008), alone or in combination with Council Regulation (EEC) No. 2658/87 of 23 July 1987,

as well as any amendments or extensions and any related or implementing measures.⁵

¹ *Ministerial Declaration on Trade in Information Technology Products*, 13 December 1996 (WT/MIN(96)/16), see also *Implementation of the Ministerial Declaration on Trade in Information Technology Products*, 2 April 1997 (G/L/160).

² G/MA/TAR/RS/16 (2 April 1997).

³ WT/Let/156 (15 August 1997).

⁴ Including amendments adopted pursuant to Commission Regulation No. 1214/2007 of 20 September 2007.

⁵ Including the actual application by customs authorities of EC member States of a 14% customs duty on imports of certain flat panel displays.

On 2 July 1997, the EC modified Schedule LXXX – European Communities to the *Marrakesh Agreement Establishing the World Trade Organization* (the Marrakesh Agreement). Those concessions include the concession for "[i]nput or output units...Other" as in HS item 8471 60 90. This subcategory carries a zero duty rate. The Schedule also provides in a headnote that "[w]ith respect to any product described in or for Attachment B to the Annex to the Ministerial Declaration on Trade in Information Technology Products, to the extent not specifically provided for in this Schedule, the customs duties on such product, as well as any other duties and charges of any kind ... shall be bound and eliminated, as set forth in paragraph 2(a) of the Annex to the Declaration, wherever the product is classified." Attachment B includes "[f]lat panel display devices (including LCD, Electro Luminescence, Plasma, Vacuum-Fluorescence and other technologies) for products falling within this agreement and parts thereof." The bound duty rate for this product, as set forth in HS items 8471 60 90, 8473 30 10, 8473 30 90, 8531 20 30, 8531 20 51, 8531 20 59, 8531 20 80, 8531 80 30, 8531 90 10, 8531 90 30, 9013 80 11, 9013 80 19, 9013 80 30 and 9013 90 10, and as specified in the headnote, is zero.

As a result of these concessions, the EC and its member States are obliged to grant duty-free treatment to flat panel displays. Nevertheless, the EC and its member States impose duties on these products, as explained below.

On 31 March 2005, the EC published Council Regulation (EC) No 493/2005 which provides that certain flat panel displays using LCD technology that are "capable of reproducing video images from a source other than an automatic data-processing machine" are not covered by the ITA or the Communication on its implementation (Council Decision 97/359/EC of 24 March 1997).⁶

On 26 April 2005, the EC published Commission Regulation (EC) No 634/2005, which provides that flat panel displays with certain attributes, including digital visual interface (DVI), would be classified as dutiable.⁷

Also, on 29 December 2005, the EC published Commission Regulation (EC) No 2171/2005, which also provides that flat panel displays with certain attributes, including DVI, would be classified as dutiable.⁸

On 20 September 2007, the EC published Commission Regulation 1214/2007, amending Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, and establishing Combined Nomenclature (CN) 8528 59 10 and 8528 59 90, which provided a duty rate of 14% on certain flat panel displays.

Furthermore, on 30 May 2008, the EC published an amendment to the Explanatory Notes to the Combined Nomenclature of the European Communities (2008/C 133/01) providing that flat panel displays with certain attributes, such as DVI, would be classified as dutiable.⁹

As a result, customs authorities of EC member States have been applying a 14% duty to certain flat panel displays, instead of providing duty-free treatment as required by the EC Schedules. The United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

⁶ Council Regulation (EC) 493/2005 of 16 March 2005, O.J. L 82 (31 March 2005), pp. 1-2.

⁷ Commission Regulation (EC) No 634/2005 of 26 April 2005, O.J. L 106 (27 April 2005), pp. 7-9.

⁸ Commission Regulation (EC) No 2171/2005 of 23 December 2005, O.J. L 346 (29 December 2005), pp. 7-9.

⁹ Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 133/01, O.J. C 133 (30 May 2008), pp. 352-3.

consider that their commerce has been accorded treatment less favourable than that provided in the EC Schedules, and that ordinary customs duties, or other duties and charges, in excess of those set forth in the EC Schedules have been applied to certain flat panel displays, inconsistent with the obligations of the EC and its member States under Articles II:1(a) and II:1(b) of the GATT 1994. While the EC has temporarily suspended the collection of duties on some flat panel displays pursuant to Council Regulation (EC) No 493/2005 of 31 March 2005 and Council Regulation (EC) No 301/2007 of 22 March 2007, it fails to accord tariff treatment that is no less favourable than that provided for in the EC Schedules. The measures at issue nullify or impair, within the meaning of GATT Article XXIII, benefits accruing directly or indirectly to the United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu under the GATT 1994.

STBs with a communication function

Customs authorities of EC member States impose duties on STBs with a communication function. The measures at issue through which they do so include:

1. Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended;¹⁰ and
2. Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 112/03, (7 May 2008), alone or in combination with Council Regulation (EEC) No. 2658/87 of 23 July 1987,¹¹

as well as any amendments or extensions and any related or implementing measures.¹²

On 2 July 1997, the EC modified Schedule LXXX – European Communities to the Marrakesh Agreement. The Schedule provides in a headnote that "[w]ith respect to any product described in or for Attachment B to the Annex to the Ministerial Declaration on Trade in Information Technology Products, to the extent not specifically provided for in this Schedule, the customs duties on such product, as well as any other duties and charges of any kind...shall be bound and eliminated, as set forth in paragraph 2(a) of the Annex to the Declaration, wherever the product is classified." Attachment B includes "set-top boxes which have a communication function: a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange." The bound duty rate for this product, as set forth in HS items 8517 50 90, 8517 80 90, 8525 20 99, and 8528 12 91, and as specified in the headnote, is zero.

As a result of these concessions, the EC and its member States are obliged to grant duty free treatment to STBs with a communication function. Nevertheless, the EC and its member States impose duties on these products, as explained below.

On 7 May 2008, the EC published an amendment to the Explanatory Notes to the EC's CN, which provides that the duty-free heading CN 8528 71 13 ("set-top boxes with a communication function") does not include STBs with modems of certain types (e.g., Ethernet modems) or STBs which incorporate a device performing a recording or reproducing function (e.g., a hard disk or DVD

¹⁰ Including amendments adopted pursuant to Commission Regulation No. 1214/2007 of 20 September 2007.

¹¹ See also the decisions of the Customs Code Committee discussed on page 5, *infra*.

¹² Including the actual application by customs authorities of EC member States of customs duties on imports of STBs with a communication function.

drive).¹³ Moreover, in the same amendment, the EC added an explanatory note to accompany CN 8521 90 00 indicating that this subheading includes STBs which incorporate a device performing a recording or reproducing function (e.g., a hard disk or DVD drive).¹⁴ The duty rate for CN 8521 90 00 is 13.9%.

As a result, customs authorities of EC member States have been applying duties on STBs with a communication function, instead of providing duty-free treatment as required by the EC Schedules. The United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu consider that their commerce has been accorded treatment less favourable than that provided in the EC Schedules, and that ordinary customs duties, or other duties and charges, in excess of those set forth in the EC Schedules have been applied to STBs with a communication function, inconsistent with the obligations of the EC and its member States under Articles II:1(a) and II:1(b) of the GATT 1994. The measures at issue nullify or impair, within the meaning of GATT Article XXIII, benefits accruing, directly or indirectly, to the United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu under the GATT 1994.

In addition, with respect to STBs with a communication function, the Tariff and Statistical Nomenclature Section of the Customs Code Committee delivered favorable opinions with respect to the proposed amendments to the Explanatory Notes contained in 2008/C 112/03 in October 2006 and May 2007, respectively. It did not publish the amended explanatory notes in the EC Official Journal until 7 May 2008. Furthermore, EC member States were applying duties to STBs using the approach specified in 2008/C 112/03 prior to 7 May 2008. We consider that these actions are inconsistent with the EC's obligations under Articles X:1 and X:2 of the GATT 1994.

MFMs ("multifunctional digital machines")¹⁵

Customs authorities of EC member States impose duties on MFMs. The measures at issue through which they do so include:

1. Commission Regulation (EC) No. 517/1999 of 9 March 1999;
2. Report of the Conclusions of the 360th meeting of the Customs Code Committee, Tariff and Statistical Nomenclature Section, TAXUD/555/2005-EN (March 2005);
3. Commission Regulation (EC) No. 400/2006 of 8 March 2006; and
4. Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended,¹⁶

¹³ Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 112/03, O.J. C 112 (7 May 2008), pp. 8-9.

¹⁴ Explanatory Notes to the Combined Nomenclature of the European Communities, 2008/C 112/03, O.J. C 112 (7 May 2008), pp. 8-9.

¹⁵ In this panel request, the United States, Japan and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu use the term "MFMs" to refer to machines which perform two or more of the functions of printing, copying, or facsimile transmission, capable of connecting to an automatic data processing machine or to a network (including devices commercially known as MFPs (multifunctional printers), other "input or output units" of "automatic data processing machines", and facsimile machines).

¹⁶ Including amendments adopted pursuant to Commission Regulation No. 1214/2007 of 20 September 2007.

as well as any amendments or extensions and any related or implementing measures.¹⁷

On 2 July 1997, the EC modified Schedule LXXX – European Communities to the Marrakesh Agreement, including the concessions for "[f]acsimile machines", as contained in HS 8517 21 00 and "input or output units" of "automatic data processing machines", as in HS category 8471 60. The bound duty rate for both products is zero.

As a result of these concessions, the EC and its member States are obliged to grant duty free treatment to MFMs. Nevertheless, the EC and its member States impose duties on these products, as explained below.

On 9 March 1999, the EC published Commission Regulation (EC) No 517/1999, which provides that certain MFMs would be classified as indirect process electrostatic photocopiers under CN 9009 12 00 with a duty rate of 6%.¹⁸

In January of 2005, the Customs Code Committee issued a statement providing that "if a multifunctional device has the capability of photocopying in black and white 12 or more pages per minute (A4 format)," it would be classified in heading 9009 as photocopying apparatus.¹⁹ Photocopying apparatus classified in heading 9009 was subject to a 6% duty.

On 9 March 2006, the EC published Commission Regulation (EC) No 400/2006, which provides that certain MFMs would be classified as photocopying apparatus, and would be subject to a 6% duty.²⁰

On 31 October 2006, the EC amended Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, creating CN 8443 31 10 ("[m]achines performing the functions of copying and facsimile transmission, whether or not with a printing function, with a copying speed not exceeding 12 monochrome pages per minute"), CN 8443 31 91 ("[o]ther; [m]achines performing a copying function by scanning the original and printing the copies by means of an electrostatic engine") and CN 8443 31 99 ("[o]ther"). By virtue of these subcategories, MFMs with copying speeds of more than 12 monochrome pages per minute and with an electrostatic engine are classified under CN 8443 31 91. The duty rate for CN 8443 31 91 is 6%.²¹

As a result, customs authorities of EC member States have been applying a 6% duty on imports of certain MFMs, instead of providing duty-free treatment as required by the EC Schedules. The United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu consider that their commerce has been accorded treatment less favourable than that provided in the EC Schedules, and that ordinary customs duties, or other duties and charges, in excess of those set forth in the EC Schedules have been applied to certain "input or output units" of "automatic data processing machines" and facsimile machines, inconsistent with the obligations of the EC and its member States under Articles II:1(a) and II:1(b) of the GATT 1994. The measures at issue nullify or impair, within the meaning of GATT Article XXIII, benefits accruing directly or indirectly to the

¹⁷ Including the actual application by customs authorities of EC member States of a 6% duty on imports of certain MFMs.

¹⁸ Commission Regulation (EC) No 517/1999 of 9 March 1999, O.J. L 61 (10 March 1999), pp. 23-24.

¹⁹ Customs Code Committee, Tariff and Statistical Nomenclature Section, *Report of conclusions of the 360th meeting of the Committee*, TAXUD/555/2005-EN, Annex VII (March 2005).

²⁰ Commission Regulation (EC) No 400/2006 of 8 March 2006, O.J. L 70 (9 March 2006), pp. 9-11.

²¹ Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended.

United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu under the GATT 1994.

* * * * *

The United States, Japan, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu request, pursuant to Articles 4.7 and 6 of the DSU, that a panel be established with standard terms of reference as set out in Article 7.1 of the DSU, in order to examine the matter described above.

ANNEX F-2

MINISTERIAL DECLARATION ON TRADE IN INFORMATION TECHNOLOGY
PRODUCTS (WT/MIN(96)/16)

WORLD TRADE
ORGANIZATION

WT/MIN(96)/16
13 December 1996

(96-5438)

MINISTERIAL CONFERENCE
Singapore, 9-13 December 1996

**MINISTERIAL DECLARATION ON TRADE IN
INFORMATION TECHNOLOGY PRODUCTS**

SINGAPORE, 13 DECEMBER 1996

Ministers,

Representing the following Members of the World Trade Organization ("WTO"), and States or separate customs territories in the process of acceding to the WTO, which have agreed in Singapore on the expansion of world trade in information technology products and which account for well over 80 per cent of world trade in these products ("parties"):

Australia	Norway
Canada	Separate Customs Territory of Taiwan,
European Communities	Penghu, Kinmen and Matsu
Hong Kong	Singapore
Iceland	Switzerland ¹
Indonesia	Turkey
Japan	United States
Korea	

Considering the key role of trade in information technology products in the development of information industries and in the dynamic expansion of the world economy,

Recognizing the goals of raising standards of living and expanding the production of and trade in goods;

¹On behalf of the customs union Switzerland and Liechtenstein.

Desiring to achieve maximum freedom of world trade in information technology products;

Desiring to encourage the continued technological development of the information technology industry on a world-wide basis;

Mindful of the positive contribution information technology makes to global economic growth and welfare;

Having agreed to put into effect the results of these negotiations which involve concessions additional to those included in the Schedules attached to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994, and

Recognizing that the results of these negotiations also involve some concessions offered in negotiations leading to the establishment of Schedules annexed to the Marrakesh Protocol,

Declare as follows:

1. Each party's trade regime should evolve in a manner that enhances market access opportunities for information technology products.

2. Pursuant to the modalities set forth in the Annex to this Declaration, each party shall bind and eliminate customs duties and other duties and charges of any kind, within the meaning of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, with respect to the following:

(a) all products classified (or classifiable) with Harmonized System (1996) ("HS") headings listed in Attachment A to the Annex to this Declaration; and

(b) all products specified in Attachment B to the Annex to this Declaration, whether or not they are included in Attachment A;

through equal rate reductions of customs duties beginning in 1997 and concluding in 2000, recognizing that extended staging of reductions and, before implementation, expansion of product coverage may be necessary in limited circumstances.

3. Ministers express satisfaction about the large product coverage outlined in the Attachments to the Annex to this Declaration. They instruct their respective officials to make good faith efforts to finalize plurilateral technical discussions in Geneva on the basis of these modalities, and instruct these officials to complete this work by 31 January 1997, so as to ensure the implementation of this Declaration by the largest number of participants.

4. Ministers invite the Ministers of other Members of the WTO, and States or separate customs territories in the process of acceding to the WTO, to provide similar instructions to their respective officials, so that they may participate in the technical discussions referred to in paragraph 3 above and participate fully in the expansion of world trade in information technology products.

Annex: Modalities and Product Coverage

Attachment A: list of HS headings

Attachment B: list of products

ANNEX

Modalities and Product Coverage

Any Member of the World Trade Organization, or State or separate customs territory in the process of acceding to the WTO, may participate in the expansion of world trade in information technology products in accordance with the following modalities:

1. Each participant shall incorporate the measures described in paragraph 2 of the Declaration into its schedule to the General Agreement on Tariffs and Trade 1994, and, in addition, at either its own tariff line level or the Harmonized System (1996) ("HS") 6-digit level in either its official tariff or any other published versions of the tariff schedule, whichever is ordinarily used by importers and exporters. Each participant that is not a Member of the WTO shall implement these measures on an autonomous basis, pending completion of its WTO accession, and shall incorporate these measures into its WTO market access schedule for goods.

2. To this end, as early as possible and no later than 1 March 1997 each participant shall provide all other participants a document containing (a) the details concerning how the appropriate duty treatment will be provided in its WTO schedule of concessions, and (b) a list of the detailed HS headings involved for products specified in Attachment B. These documents will be reviewed and approved on a consensus basis and this review process shall be completed no later than 1 April 1997. As soon as this review process has been completed for any such document, that document shall be submitted as a modification to the Schedule of the participant concerned, in accordance with the Decision of 26 March 1980 on Procedures for Modification and Rectification of Schedules of Tariff Concessions (BISD 27S/25).

(a) The concessions to be proposed by each participant as modifications to its Schedule shall bind and eliminate all customs duties and other duties and charges of any kind on information technology products as follows:

(i) elimination of such customs duties shall take place through rate reductions in equal steps, except as may be otherwise agreed by the participants. Unless otherwise agreed by the participants, each participant shall bind all tariffs on items listed in the Attachments no later than 1 July 1997, and shall make the first such rate reduction effective no later than 1 July 1997, the second such rate reduction no later than 1 January 1998, and the third such rate reduction no later than 1 January 1999, and the elimination of customs duties shall be completed effective no later than 1 January 2000. The participants agree to encourage autonomous elimination of customs duties prior to these dates. The reduced rate should in each stage be rounded off to the first decimal; and

(ii) elimination of such other duties and charges of any kind, within the meaning of Article II:1(b) of the General Agreement, shall be completed by 1 July 1997, except as may be otherwise specified in the participant's document provided to other participants for review.

(b) The modifications to its Schedule to be proposed by a participant in order to implement its binding and elimination of customs duties on information technology products shall achieve this result:

(i) in the case of the HS headings listed in Attachment A, by creating, where appropriate, sub-divisions in its Schedule at the national tariff line level; and

(ii) in the case of the products specified in Attachment B, by attaching an annex to its Schedule including all products in Attachment B, which is to specify the detailed HS headings for those products at either the national tariff line level or the HS 6-digit level.

Each participant shall promptly modify its national tariff schedule to reflect the modifications it has proposed, as soon as they have entered into effect.

3. Participants shall meet periodically under the auspices of the Council on Trade in Goods to review the product coverage specified in the Attachments, with a view to agreeing, by consensus, whether in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature, the Attachments should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products. Such consultations shall be without prejudice to rights and obligations under the WTO Agreement.

4. Participants shall meet as soon as practicable and in any case no later than 1 April 1997 to review the state of acceptances received and to assess the conclusions to be drawn therefrom. Participants will implement the actions foreseen in the Declaration provided that participants representing approximately 90 per cent of world trade² in information technology products have by then notified their acceptance, and provided that the staging has been agreed to the participants' satisfaction. In assessing whether to implement actions foreseen in the Declaration, if the percentage of world trade represented by participants falls somewhat short of 90 per cent of world trade in information technology products, participants may take into account the extent of the participation of States or separate customs territories representing for them the substantial bulk of their own trade in such products. At this meeting the participants will establish whether these criteria have been met.

5. Participants shall meet as often as necessary and no later than 30 September 1997 to consider any divergence among them in classifying information technology products, beginning with the products specified in Attachment B. Participants agree on the common objective of achieving, where appropriate, a common classification for these products within existing HS nomenclature, giving consideration to interpretations and rulings of the Customs Co-operation Council (also known as the World Customs Organization or "WCO"). In any instance in which a divergence in classification remains, participants will consider whether a joint suggestion could be made to the WCO with regard to updating existing HS nomenclature or resolving divergence in interpretation of the HS nomenclature.

6. The participants understand that Article XXIII of the General Agreement will address nullification or impairment of benefits accruing directly or indirectly to a WTO Member participant through the implementation of this Declaration as a result of the application by another WTO Member participant of any measure, whether or not that measure conflicts with the provisions of the General Agreement.

7. Each participant shall afford sympathetic consideration to any request for consultation from any other participant concerning the undertakings set out above. Such consultations shall be without prejudice to rights and obligations under the WTO Agreement.

²This percentage shall be calculated by the WTO Secretariat on the basis of the most recent data available at the time of the meeting.

8. Participants acting under the auspices of the Council for Trade in Goods shall inform other Members of the WTO and States or separate customs territories in the process of acceding to the WTO of these modalities and initiate consultations with a view to facilitate their participation in the expansion of trade in information technology products on the basis of the Declaration.

9. As used in these modalities, the term "participant" shall mean those Members of the WTO, or States or separate customs territories in the process of acceding to the WTO, that provide the document described in paragraph 2 no later than 1 March 1997.

10. This Annex shall be open for acceptance by all Members of the WTO and any State or any separate customs territory in the process of acceding to the WTO. Acceptances shall be notified in writing to the Director-General who shall communicate them to all participants.

There are two attachments to the Annex.

Attachment A lists the HS headings or parts thereof to be covered.

Attachment B lists specific products to be covered by an ITA wherever they are classified in the HS .

Attachment A, Section 1

	HS96		HS description
	3818		Chemical elements doped for use in electronics, in form of discs, wafers or similar forms; chemical compounds doped for use in electronics
	8469	11	Word processing machines
	8470		Calculating machines and pocket-size data recording, reproducing and displaying machines with a calculating function; accounting machines, postage franking machines, ticket-issuing machines and similar machines, incorporating a calculating devices; cash registers:
	8470	10	Electronic calculators capable of operating without an external source of electric power and pocket size data recording, reproducing and displaying machines with calculating functions
	8470	21	Other electronic calculating machines incorporating a printing device
	8470	29	Other
	8470	30	Other calculating machines
	8470	40	Accounting machines
	8470	50	Cash registers
	8470	90	Other
	8471		Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:
	8471	10	Analogue or hybrid automatic data processing machines
	8471	30	Portable digital automatic data processing machines, weighing no more than 10 kg, consisting of at least a central processing unit, a keyboard and a display
	8471	41	Other digital automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined
	8471	49	Other digital automatic data processing machines presented in the form of systems
	8471	50	Digital processing units other than those of subheading 8471 41 and 8471 49, whether or not in the same housing one or two of the following types of units : storage units, input units, output units
	8471	60	Input or output units, whether or not containing storage units in the same housing

	8471	70	Storage units, including central storage units, optical disk storage units, hard disk drives and magnetic tape storage units
	8471	80	Other units of automatic data processing machines
	8471	90	Other
ex	8472	90	Automatic teller machines
	8473	21	Parts and accessories of the machines of heading No 8470 of the electronic calculating machines of subheading 8470 10, 8470 21 and 8470 29
	8473	29	Parts and accessories of the machines of heading No 8470 other than the electronic calculating machines of subheading 8470 10, 8470 21 and 8470 29
	8473	30	Parts and accessories of the machines of heading No 8471
	8473	50	Parts and accessories equally suitable for use with machines of two or more of the headings Nos. 8469 to 8472
ex	8504	40	Static converters for automatic data processing machines and units thereof, and telecommunication apparatus
ex	8504	50	Other inductors for power supplies for automatic data processing machines and units thereof, and telecommunication apparatus
	8517		Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones:
	8517	11	Line telephone sets with cordless handsets
	8517	19	Other telephone sets and videophones
	8517	21	Facsimile machines
	8517	22	Teleprinters
	8517	30	Telephonic or telegraphic switching apparatus
	8517	50	Other apparatus, for carrier-current line systems or for digital line systems
	8517	80	Other apparatus including entry-phone systems
	8517	90	Parts of apparatus of heading 8517
ex	8518	10	Microphones having a frequency range of 300 Hz to 3,4 KHz with a diameter of not exceeding 10 mm and a height not exceeding 3 mm, for telecommunication use
ex	8518	30	Line telephone handsets
ex	8518	29	Loudspeakers, without housing, having a frequency range of 300 Hz to 3,4 KHz with a diameter of not exceeding 50 mm, for telecommunication use
	8520	20	Telephone answering machines
	8523	11	Magnetic tapes of a width not exceeding 4 mm
	8523	12	Magnetic tapes of a width exceeding 4 mm but not exceeding 6,5 mm
	8523	13	Magnetic tapes of a width exceeding 6,5 mm

	8523	20	Magnetic discs
	8523	90	Other
	8524	31	Discs for laser reading systems for reproducing phenomena other than sound or image
ex	8524	39	Other : - for reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine
	8524	40	Magnetic tapes for reproducing phenomena other than sound or image
	8524	91	Media for reproducing phenomena other than sound or image
ex	8424	99	Other : - for reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine
ex	8525	10	Transmission apparatus other than apparatus for radio-broadcasting or television
	8525	20	Transmission apparatus incorporating reception apparatus
ex	8525	40	Digital still image video cameras
ex	8527	90	Portable receivers for calling, alerting or paging
ex	8529	10	Aerials or antennae of a kind used with apparatus for radio-telephony and radio-telegraphy
ex	8529	90	Parts of: transmission apparatus other than apparatus for radio-broadcasting or television transmission apparatus incorporating reception apparatus digital still image video cameras, portable receivers for calling, alerting or paging
	8531	20	Indicator panels incorporating liquid crystal devices (LCD) or light emitting diodes (LED)
ex	8531	90	Parts of apparatus of subheading 8531 20
	8532		Electrical capacitors, fixed, variable or adjustable (pre-set):
	8532	10	Fixed capacitors designed for use in 50/60 Hz circuits and having a reactive power handling capacity of not less than 0,5 kvar (power capacitors)
	8532	21	Tantalum fixed capacitors
	8532	22	Aluminium electrolytic fixed capacitors
	8532	23	Ceramic dielectric, single layer fixed capacitors
	8532	24	Ceramic dielectric, multilayer fixed capacitors
	8532	25	Dielectric fixed capacitors of paper or plastics
	8532	29	Other fixed capacitors
	8532	30	Variable or adjustable (pre-set) capacitors

	8532	90	Parts
	8533		Electrical resistors (including rheostats and potentiometers), other than heating resistors:
	8533	10	Fixed carbon resistors, composition or film types
	8533	21	Other fixed resistors for a power handling capacity not exceeding 20 W
	8533	29	Other fixed resistors for a power handling capacity of 20 W or more
	8533	31	Wirewound variable resistors, including rheostats and potentiometers, for a power handling capacity not exceeding 20 W
	8533	39	Wirewound variable resistors, including rheostats and potentiometers, for a power handling capacity of 20 W or more
	8533	40	Other variable resistors, including rheostats and potentiometers
	8533	90	Parts
	8534		Printed circuits
ex	8536	50	Electronic AC switches consisting of optically coupled input and output circuits (Insulated thyristor AC switches)
ex	8536	50	Electronic switches, including temperature protected electronic switches, consisting of a transistor and a logic chip (chip-on-chip technology) for a voltage not exceeding 1000 volts
ex	8536	50	Electromechanical snap-action switches for a current not exceeding 11 amps
ex	8536	69	Plugs and sockets for co-axial cables and printed circuits
ex	8536	90	Connection and contact elements for wires and cables
	8541		Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezo-electric crystals:
	8541	10	Diodes, other than photosensitive or light-emitting diodes
	8541	21	Transistors, other than photosensitive transistors, with a dissipation rate of less than 1 W
	8541	29	Transistors, other than photosensitive transistors, with a dissipation rate of 1 W or more
	8541	30	Thyristors, diacs and triacs, other than photosensitive devices
	8541	40	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes
	8541	50	Other semiconductor devices
	8541	60	Mounted piezo-electric crystals
	8541	90	Parts

	8542		Electronic integrated circuits and microassemblies
	8542	12	Cards incorporating an electronic integrated circuit ('smart' cards)
	8542	13	Metal oxide semiconductors (MOS technology)
	8542	14	Circuits obtained by bipolar technology
	8542	19	Other monolithic digital integrated circuits, including circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology)
	8542	30	Other monolithic integrated circuits
	8542	40	Hybrid integrated circuits
	8542	50	Electronic microassemblies
	8542	90	Part
	8543	81	Proximity cards and tags
ex	8543	89	Electrical machines with translation or dictionary functions
ex	8544	41	Other electric conductors, for a voltage not exceeding 80 V, fitted with connectors, of a kind used for telecommunications
ex	8544	49	Other electric conductors, for a voltage not exceeding 80 V, not fitted with connectors, of a kind used for telecommunications
ex	8544	51	Other electric conductors, for a voltage exceeding 80 V but not exceeding 1000 V, fitted with connectors, of a kind used for telecommunications
	8544	70	Optical fibre cables
	9009	11	Electrostatic photocopying apparatus, operating by reproducing the original image directly onto the copy (direct process)]
	9009	21	Other photocopying apparatus, incorporating an optical system
	9009	90	Parts and accessories
	9026		Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading No 9014, 9015, 9028 or 9032:
	9026	10	Instruments for measuring or checking the flow or level of liquids
	9026	20	Instruments and apparatus for measuring or checking pressure
	9026	80	Other instruments and apparatus for measuring or checking of heading 9026
	9026	90	Parts and accessories of instruments and apparatus of heading 9026
	9027	20	Chromatographs and electrophoresis instruments
	9027	30	Spectrometers, spectrophotometers and spectrographs using optical radiations (UV, visible, IR)

	9027	50	Other instruments and apparatus using optical radiations (UV, visible, IR) of heading No 9027
	9027	80	Other instruments and apparatus of heading No 9027 (other than those of heading No 9027 10)
ex	9027	90	Parts and accessories of products of heading 9027, other than for gas or smoke analysis apparatus and microtomes
	9030	40	Instruments and apparatus for measuring and checking, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)

Attachment A, Section 2

Semiconductor manufacturing and testing equipment and parts thereof

	HS Code	Description	Comments
ex	7017 10	Quartz reactor tubes and holders designed for insertion into diffusion and oxidation furnaces for production of semiconductor wafers	For Attachment B
ex	8419 89	Chemical vapor deposition apparatus for semiconductor production	For Attachment B
ex	8419 90	Parts of chemical vapor deposition apparatus for semiconductor production	For Attachment B
ex	8421 19	Spin dryers for semiconductor wafer processing	
ex	8421 91	Parts of spin dryers for semiconductor wafer processing	
ex	8424 89	Deflash machines for cleaning and removing contaminants from the metal leads of semiconductor packages prior to the electroplating process	
ex	8424 89	Spraying appliances for etching, stripping or cleaning semiconductor wafers	
ex	8424 90	Parts of spraying appliances for etching, stripping or cleaning semiconductor wafers	
ex	8456 10	Machines for working any material by removal of material, by laser or other light or photo beam in the production of semiconductor wafers	
ex	8456 91	Apparatus for stripping or cleaning semiconductor wafers	For Attachment B
	8456 91	Machines for dry-etching patterns on semiconductor materials	
ex	8456 99	Focused ion beam milling machines to produce or repair masks and reticles for patterns on semiconductor devices	
ex	8456 99	Lasercutters for cutting contacting tracks in semiconductor production by laser beam	For Attachment B
ex	8464 10	Machines for sawing monocrystal semiconductor boules into slices, or wafers into chips	For Attachment B
ex	8464 20	Grinding, polishing and lapping machines for processing of semiconductor wafers	
ex	8464 90	Dicing machines for scribing or scoring	

		semiconductor wafers	
ex	8466 91	Parts for machines for sawing monocrystal semiconductor boules into slices, or wafers into chips	For Attachment B
ex	8466 91	Parts of dicing machines for scribing or scoring semiconductor wafers	For Attachment B
ex	8466 91	Parts of grinding, polishing and lapping machines for processing of semiconductor wafers	
ex	8466 93	Parts of focused ion beam milling machines to produce or repair masks and reticles for patterns on semiconductor devices	
ex	8466 93	Parts of lasercutters for cutting contacting tracks in semiconductor production by laser beam	For Attachment B
ex	8466 93	Parts of machines for working any material by removal of material, by laser or other light or photo beam in the production of semiconductor wafers	
ex	8456 93	Parts of apparatus for stripping or cleaning semiconductor wafers	For Attachment B
ex	8466 93	Parts of machines for dry-etching patterns on semiconductor materials	
ex	8477 10	Encapsulation equipment for assembly of semiconductors	For Attachment B
ex	8477 90	Parts of encapsulation equipment	For Attachment B
ex	8479 50	Automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices	For Attachment B
ex	8479 89	Apparatus for growing or pulling monocrystal semiconductor boules	
ex	8479 89	Apparatus for physical deposition by sputtering on semiconductor wafers	For Attachment B
ex	8479 89	Apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8479 89	Die attach apparatus, tape automated bonders, and wire bonders for assembly of semiconductors	For Attachment B
ex	8479 89	Encapsulation equipment for assembly of semiconductors	For Attachment B

ex	8479 89	Epitaxial deposition machines for semiconductor wafers	
ex	8479 89	Machines for bending, folding and straightening semiconductor leads	For Attachment B
ex	8479 89	Physical deposition apparatus for for semiconductor production	For Attachment B
ex	8479 89	Spinners for coating photographic emulsions on semiconductor wafers	For Attachment B
ex	8479 90	Part of apparatus for physical deposition by sputtering on semiconductor wafers	For Attachment B
ex	8479 90	Parts for die attach apparatus, tape automated bonders, and wire bonders for assembly of semiconductors	For Attachment B
ex	8479 90	Parts for spinners for coating photographic emulsions on semiconductor wafers	For Attachment B
ex	8479 90	Parts of apparatus for growing or pulling monocrystal semiconductor boules	
ex	8479 90	Parts of apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8479 90	Parts of automated machines for transport, handling and storage of semiconductor wafers, wafer cassettes, wafer boxes and other material for semiconductor devices	For Attachment B
ex	8479 90	Parts of encapsulation equipment for assembly of semiconductors	For Attachment B
ex	8479 90	Parts of epitaxial deposition machines for semiconductor wafers	
ex	8479 90	Parts of machines for bending, folding and straightening semiconductor leads	For Attachment B
ex	8479 90	Parts of physical deposition apparatus for for semiconductor production	For Attachment B
ex	8480 71	Injection and compression moulds for the manufacture of semiconductor devices	
ex	8514 10	Resistance heated furnaces and ovens for the manufacture of semiconductor devices on semiconductor wafers	
ex	8514 20	Inductance or dielectric furnaces and ovens for the manufacture of semiconductor devices on semiconductors wafers	
ex	8514 30	Apparatus for rapid heating of semiconductor	For

		wafers	Attachment B
ex	8514 30	Parts of resistance heated furnaces and ovens for the manufacture of semiconductor devices on semiconductor wafers	
ex	8514 90	Parts of apparatus for rapid heating of wafers	For Attachment B
ex	8514 90	Parts of furnaces and ovens of Headings No 8514 10 to No 8514 30	
ex	8536 90	Wafer probers	For Attachment B
	8543 11	Ion implanters for doping semiconductor materials	
ex	8543 30	Apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8543 90	Parts of apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays	For Attachment B
ex	8543 90	Parts of ion implanters for doping semiconductor materials	
	9010 41 to 9010 49	Apparatus for projection, drawing or plating circuit patterns on sensitized semiconductor materials and flat panel displays	
ex	9010 90	Parts and accessories of the apparatus of Headings No 9010 41 to 9010 49	
ex	9011 10	Optical stereoscopic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9011 20	Photomicrographic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9011 90	Parts and accessories of optical stereoscopic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9011 90	Parts and accessories of photomicrographic microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9012 10	Electron beam microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	For Attachment B
ex	9012 90	Parts and accessories of electron beam	For

		microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles	Attachment B
ex	9017 20	Pattern generating apparatus of a kind used for producing masks or reticles from photoresist coated substrates	For Attachment B
ex	9017 90	Parts and accessories for pattern generating apparatus of a kind used for producing masks or reticles from photoresist coated substrates	For Attachment B
ex	9017 90	Parts of such pattern generating apparatus	For Attachment B
	9030 82	Instruments and apparatus for measuring or checking semiconductor wafers or devices	
ex	9030 90	Parts and accessories of instruments and apparatus for measuring or checking semiconductor wafers or devices	
ex	9030 90	Parts of instruments and appliances for measuring or checking semiconductor wafers or devices	
	9031 41	Optical instruments and appliances for inspecting semiconductor wafers or devices or for inspecting masks, photomasks or reticles used in manufacturing semiconductor devices	
ex	9031 49	Optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers	
ex	9031 90	Parts and accessories of optical instruments and appliances for inspecting semiconductor wafers or devices or for inspecting masks, photomasks or reticles used in manufacturing semiconductor devices	
ex	9031 90	Parts and accessories of optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers	

Attachment B

Positive list of specific products to be covered by this agreement wherever they are classified in the HS.

Where parts are specified, they are to be covered in accordance with HS Notes 2(b) to Section XVI and Chapter 90, respectively.

Computers: automatic data processing machines capable of 1) storing the processing program or programs and at least the data immediately necessary for the execution of the program; 2) being freely programmed in accordance with the requirements of the user; 3) performing arithmetical computations specified by the user; and 4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

The agreement covers such automatic data processing machines whether or not they are able to receive and process with the assistance of central processing unit telephony signals, television signals, or other analogue or digitally processed audio or video signals. Machines performing a specific function other than data processing, or incorporating or working in conjunction with an automatic data processing machine, and not otherwise specified under Attachment A or B, are not covered by this agreement.

Electric amplifiers when used as repeaters in line telephony products falling within this agreement, and parts thereof

Flat panel displays (including LCD, Electro Luminescence, Plasma and other technologies) for products falling within this agreement, and parts thereof.

Network equipment: Local Area Network (LAN) and Wide Area Network (WAN) apparatus, including those products dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units - including adapters, hubs, in-line repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof.

Monitors : display units of automatic data processing machines with a cathode ray tube with a dot screen pitch smaller than 0,4 mm not capable of receiving and processing television signals or other analogue or digitally processed audio or video signals without assistance of a central processing unit of a computer as defined in this agreement.

The agreement does not, therefore, cover televisions, including high definition televisions.¹

Optical disc storage units, for automatic data processing machines (including CD drives and DVD-drives), whether or not having the capability of writing/recording as well as reading, whether or not in their own housings.

Paging alert devices, and parts thereof .

Plotters whether input or output units of HS heading No 8471 or drawing or drafting machines of HS heading No 9017.

Printed Circuit Assemblies for products falling within this agreement, including such assemblies for external connections such as cards that conform to the PCMCIA standard.

Such printed circuit assemblies consist of one or more printed circuits of heading 8534 with one or more active

¹ Participants will conduct a review of this product description in January 1999 under the consultation provisions of paragraph 3 of the Declaration

elements assembled thereon, with or without passive elements "Active elements" means diodes, transistors, and similar semiconductor devices, whether or not photosensitive, of heading 8541, and integrated circuits and micro assemblies of heading 8542.

Projection type flat panel display units used with automatic data processing machines which can display digital information generated by the central processing unit.

Proprietary format storage devices including media therefor for automatic data processing machines, with or without removable media and whether magnetic, optical or other technology, including Bernoulli Box, Syquest, or Zipdrive cartridge storage units.

Multimedia upgrade kits for automatic data processing machines, and units thereof, put up for retail sale, consisting of, at least, speakers and/or microphones as well as a printed circuit assembly that enables the ADP machines and units thereof to process audio signals (sound cards).

Set top boxes which have a communication function: a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange
