

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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TRADE POLICY REVIEW MECHANISM

REPUBLIC OF KENYA

MINUTES OF MEETING

Chairman: Mr. A. Szepesi (Hungary)

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I. INTRODUCTORY REMARKS BY THE CHAIRMAN OF THE COUNCIL

1. The Trade Policy Review of Kenya was held on 7 and 8 September 1993. The Chairman, introducing the review, welcomed members of the Council, the Kenyan delegation headed by Ambassador D.D.C. Don Nanjira, and the discussants, Mr. Peter May and Mr. Suboh Yassin.

2. The Chairman recalled the objectives of the Trade Policy Review Mechanism, as decided by the CONTRACTING PARTIES on 12 April 1989 (BISD 36S/403). The Council was to base its work on two reports, one by the Government of Kenya (C/RM/G/39) and the other by the GATT Secretariat (C/RM/S/39). He reminded the Council of the revised procedures for review meetings, circulated in document L/7208. An outline of the main issues the discussants intended to address had been circulated in document C/RM/W/10. Advance questions submitted by Australia, Canada, Hong Kong and the Nordic countries had been transmitted to the delegation of Kenya and copies were available to Council members.

## II. OPENING STATEMENT BY THE REPRESENTATIVE OF KENYA

1. The representative of Kenya noted that during the comparatively short period of thirty years since independence in 1963, Kenya's guiding philosophy had been to improve the welfare of the people of Kenya, especially those who were economically disadvantaged by the long years of colonialization and the bitter armed struggle for independence. The Government's first development priority was laid out in the Sessional Paper No. 10 of 1965, which evolved the policy of African socialism and its application to planning. The tenets of this paper formed the basis of Kenya's national development strategy up to today. Reforms should be seen as adjustments in light of prevailing and new circumstances, but were not reversals of this developmental policy.

2. Three key factors in the now famous sessional paper deserved to be mentioned. Firstly, it gave recognition to the national unity of the diverse Kenyan people. Secondly, agriculture was, and would continue to be, the backbone of the economy and of the country's trade and investment strategy. The third parameter that affected national policy was the creation of employment, particularly for the country's youth. Improvements in health and education had produced a qualified labour force. From one university college at independence, Kenya presently had four national universities with a combined student population of over 40,000 every year. It also had three polytechnics, eighteen technical training institutes and seventeen institutes of technology, with a total enrolment of some 22,300 students.

3. In the 1986 Sessional Paper No. 1 on Planning for Reviewed Growth, the Government set out priorities for sustained development to the year 2000. One was divestiture by the Government from the process of investment and production; thanks to the educational and entrepreneurial development undertaken over the years, Kenya had produced a competent stock of its own private sector management that could undertake the process of production and trade without direct government participation. The Government should confine itself to the provision of the conducive, enabling environment for investment and leave it to the private sector to undertake the necessary investment risks.

4. The implementation of the bold plan contained in Sessional Paper No. 1 of 1986 was carried out in a very unconducive world economic environment, where most developing economies, especially those endowed with natural resources, started to suffer rapid deterioration in their terms of trade. These adverse external factors had their effect on the domestic Kenyan economic situation. Agriculture, industry, commerce and tourism performed badly. Unemployment in the wage sector stagnated or declined. Increases in self-employment, in the informal sector, were not sufficient to stem the tide of unemployment.

5. In 1992, the economy registered a minimal 0.4 per cent real growth rate, the lowest since independence. Inflation rose to an all-time high of 27.5 per cent while agricultural production declined due to a prolonged drought for almost two consecutive years. Coupled with these two main factors were an influx of refugees, the cost of conducting multi-party elections, adverse publicity that scared away tourism receipts and the withholding of balance-of-payments support by overseas donors.

6. Despite these odds following elections, Kenya decided to undertake a number of major economic reforms. The major elements were:

- (i) Complete liberalization of the import and export trading licensing régimes. Kenya now operated a policy of free importation with no quantitative controls. Tariffs had also been brought down to a maximum level of 50 per cent from 135 per cent in 1988. Some 3 per cent of all tariff lines bore zero rates.
- (ii) Liberalization of the foreign exchange régime and the introduction of the retention accounts.
- (iii) Programmed divestiture from the productive and investment sectors of the economy. The Government of Kenya intended to confine itself to the provision of conducive atmosphere for development.
- (iv) Development of an export-led economy that would be able to grow sufficiently strongly to address current socio-economic problems.

7. Kenya would continue to support relevant multilateral actions that would assist in enhancing export growth. He looked forward to the successful conclusion of the long-stalled Uruguay Round.

8. On the regional scene, Kenya would continue to support the implementation of the Lagos plan of action, as manifested in the instruments setting up the Preferential Trade Area for East and Central African countries, in which the country had a particular interest.

9. The Government of Kenya was committed to operating an open and transparent trading régime, and was supported by a dynamic private sector which now worked closely and in confidence with the Government. The representative of Kenya hoped that bilateral and multilateral trading partners would understand this choice.

### III. STATEMENT BY THE FIRST DISCUSSANT

10. The first discussant (Mr Peter May) noted that Kenya's economic and trade policy history in the 30 years since independence had flowed through a similar evolution to many other contracting parties but that the process in Kenya had taken a much longer time. After much trial and error, Kenya had now moved from inward looking to outward looking policies, a policy direction which was being proved to be correct and appropriate for most contracting parties.

11. The Council should recognise that the Kenyan Government's decisions to re-direct its policies were taken at a time of a weakening world economy, greater uncertainty and in a region plagued with many difficulties. The results of the changes would take some time to come to fruition. As this process would demonstrate, further policy changes would be required.

12. The nature of Kenya's economy and thrust of its trade and economic policies were well documented in both the Government's and Secretariat's reports, indicating that Kenya had made a good start. There had been some policy reversals but these appeared to be now in the past. Further policy changes would strengthen the economy's performance and should increase the confidence of the international community, particularly the international financial institutions and foreign investors, all of which would play an important rôle in Kenya's future economic progress.

13. Policies to liberalize Kenya's trade régime commenced in 1989. Reversals since then did not achieve their intended objectives, but delayed the transition process. He raised the following questions:

- One of the key policy objectives of the Kenyan Government was that of self-sufficiency in agriculture, a policy which had its origins in the concept of food security. There was however evidence demonstrating that the drive to self-sufficiency was often accompanied by significant government intervention of the wrong kind. Furthermore, more often than not self-sufficiency could only be achieved through the increased use of imported inputs such as feedstuffs. The agricultural sector already accounted for 80 per cent of employment and was the most significant earner of foreign exchange. Within this sector there were a number of success stories, e.g. cut flowers. He therefore asked whether there was not a potential conflict between self-sufficiency in foodstuffs and diversification of the economy.
- In an attempt to ease the "cost" of moving to a more liberalized trade régime, Kenya had used interventionist measures, including partial liberalization of its foreign exchange régime, pre-shipment financing and a range of export incentives. Experience showed that these rarely achieve their policy objective.
- In May 1993, Kenya significantly liberalized its foreign exchange régime, introducing partial convertibility of the shilling. What were the government's first impressions regarding the impact of this liberalization? Did the government remain committed to the convertibility of the shilling? Was this convertibility going to become total in the near future?
- What were the main causes of the recent growth of over 20 per cent per annum in Kenya's money supply? What was the target range for future money supply growth, and how would it be achieved? To what extent had the provision of export credits of various sorts contributed to this growth?

- What types of government expenditure on imports, and which types of public companies would be financed at the official exchange rate?
- The government announced in May that a surrender requirement would remain in place for 50 per cent of export proceeds. Would proceeds be surrendered to the Central Bank at the official rate? If so, and if the official rate was higher than the market rate, this would translate into a net loss for the exporters: did the government therefore intend to maintain a close spread between the official and market rate to minimise this loss?
- How far had macroeconomic imbalances (e.g. fiscal deficits) been a cause for demands by industry for increased protection, as ensuing inflation was not neutralized by sufficient devaluation of the shilling, thereby making imports more attractive?
- What were the government's objectives concerning foreign direct investment? Did the government intend to maintain restrictions on transfers of capital gains abroad?

IV. STATEMENT BY THE SECOND DISCUSSANT

14. The second discussant (Mr Suboh Yassin) noted that since independence in 1963, Kenya had been able to provide an increasing standard of living for its population in spite of certain difficulties, such as falling commodity prices. These had put a tremendous strain on the economy, and were further aggravated by other difficulties including natural calamities (drought), the low level of development and having to play host to refugees from neighbouring countries.

15. When Kenya became a contracting party to GATT on 5 February 1964, its main trade policy instruments were tariff, duty drawback and import licensing, complemented by abolition of exchange rate and domestic indirect taxes. In May 1993, Kenya again had committed itself to liberalization of trade and foreign exchange régimes and import licensing procedures and requirements. Maintenance of a stable and even policy was essential, as frequent changes may have a dampening effect on the economy.

16. Notwithstanding, the report by the Government of Kenya seemed to imply the continuation of a licensing system: he asked for clarification. The Secretariat Report gave the notion that liberalization had been irregular: he asked whether the Government would follow through the latest shift in policy towards liberalization.

17. He welcomed the impressive programme to encourage investment. Foreign investors could be viewed as development partners because of their contribution to the eradication of poverty and nation building. When investment was successful, the Government also benefited through the collection of revenue.

18. He asked which industrial and agricultural products remained subject to government approval prior to importation and the main reasons for this approval, aside from health and safety reasons.

19. He asked how long export taxes would be maintained, and on which products?

20. Kenya had undertaken commendable steps in tariffication in the late 1980s, in line with the tariffication principle of the Uruguay Round negotiations. Subsequently, tariff peaks and dispersion had been lowered, but unweighted tariff average was still high. Did Kenya intend to bind its tariffs in the Uruguay Round?

21. He asked for further explanations on the PTA scheme, particularly the factors that stimulated its formation and constrained its function and expansion.

22. Kenya had introduced numerous schemes to encourage exports. These programmes, if properly implemented, would enhance Kenya's export performance. In this connection, he asked whether any evaluation had been undertaken to determine the effectiveness of the programmes.

23. In conclusion, he considered that the future economic development of Kenya required an effective implementation of the economic reform programme. Ways had also to be found to reduce export dependence on a limited number of primary commodities. Structural transformation and economic diversification should not be implemented by curtailing imports. The level of foreign direct investment had been disappointingly low, despite policy reform. Equally important was the need to upgrade educational standards, to meet the need for new investment and technology.

V. STATEMENTS BY MEMBERS OF THE COUNCIL

24. The representative of the European Communities described Kenya as a low-income developing country which until recently had succeeded in raising the standard of living of a rapidly growing population despite a difficult environment, particularly the low level of development in all its neighbouring countries and, during the 1980s, a decline in the world price for its main export products. The reports by the GATT Secretariat and the Kenyan Government showed an economy which had isolated itself from world trade, followed inward-looking policies and become progressively uncompetitive, while recently embarking on the inevitable reforms in an indecisive and hesitant manner.

25. He pointed out three worrying features in Kenya's trade performance:

- ratios of trade to GDP had collapsed: during the 1980s, exports of goods fell from 20 per cent to 12 per cent of GNP, while imports declined from 27 per cent to 22 per cent. Imports by the private sector fell because of the stagnation in investment and restrictions on imports, while public sector imports rose, fuelled by the flow of foreign aid;
- the lack of diversification of exports aggravated Kenya's vulnerability to external shocks. Two-thirds of revenue from exports came from coffee, tea and tourism, while two-thirds of exports of goods were agricultural products;
- the geographical distribution of Kenya's exports was highly concentrated with half going to only six countries. Dependence on regional markets in Sub-Saharan Africa was increasing: Uganda and Rwanda alone represented about a quarter of Kenyan exports. In contrast, the proportion of exports of manufactured goods sent to developed markets had declined.

26. During the last twenty years, Kenya's trade policy had mainly relied on a system of licences applicable to all imports and exports, together with import duties. The system of licences for allocating foreign exchange had also had a strong impact on trade in goods and had been the main obstacle to trade for many products.

27. The period since 1988 had seen repeated changes in trade policy, brought about by temporary deteriorations in the balance-of-payments. Without harking back to the episodes in 1988, 1989 (easing of the import licensing system), 1991 (introduction of foreign exchange restrictions) and 1992 (shortages of inputs in the processing industry), the Community wanted to express clearly its support for the reforms Kenya recently decided upon at the end of the first half of 1993, as long as the new Government kept firmly on track in carrying out the essential structural measures of rationalization of the budget, identification of genuine priority projects, better financial discipline by parastatal companies, civil service reforms, good government practices, combating corruption and accountability.

28. Since 1990 the Kenyan import system had been liberalized up to a point. However, there remained a number of questions:

- quantitative restrictions were initially replaced by tariffs: to what extent had this replacement been achieved?

- the tariff structure had been rationalized by a reduction in the number of rates, a reduction in the simple and weighted average tariff and by a lowering of the tariff ceilings; Kenya had however still not bound any tariffs under the General Agreement;
- there was still substantial effective protection through tariff escalation.

29. The Community representative recalled that there was still much to do in the area of economic and trade reforms and that the fundamental problem remained that of restoring donor confidence. It was essential that the Kenya Government should now demonstrate its determination to keep firmly on track, both on the economic front and as regards setting its internal affairs in order.

30. The representative of Canada observed that Kenya had initiated several types of reform in its trade policy régime but had, in many cases, been unable to maintain the liberalization process. The business uncertainty, both domestically and internationally, that was created by wavering policies of reform could not be helpful in attracting either new investment or the establishment of longer-term trading relations with Kenya.

31. Despite recent efforts at reform, Kenya's trade régime still lacked transparency, and the regulatory environment constrained the abilities of foreign exporters to enter the market, and those of Kenyan exporters to reach international markets.

32. He congratulated Kenya for its intention to consider accession to the MTN Agreements on Import Licensing Procedures, Government Procurement, Subsidies and Countervailing Duties, and Anti-Dumping, and encouraged Kenya to also consider acceding to the Customs Valuation Code.

33. He welcomed the significant liberalization of Kenya's foreign exchange allocation system in May 1993. It was important that the Government of Kenya build on these reforms to develop business confidence. However, the reversal of the policy regarding foreign exchange restrictions in 1992 had done little to promote business confidence. This type of volatility could only lead to uncertainty in domestic sectors reliant upon imports for final production of goods. The Government of Canada urged Kenya to further liberalize its foreign-exchange régime by building on the initiatives announced in May 1993.

34. Canada also encouraged Kenya to continue in its efforts to shift the focus of its trade policy régime from quantitative restrictions applied through licensing arrangements to tariffs. In this context, and bearing in mind that Kenya had not bound any of its tariffs under the GATT, he urged the Government of Kenya to bind as high a percentage of tariffs as possible within the context of the Uruguay Round. He noted also that the tariff schedule was still complex and, that with the introduction of automatic licensing in some areas, tariff rates had increased sharply when imported products competed with domestic production.

35. In some cases, tariff protection was combined with restrictive licensing or administrative requirements which effectively prevent the entry of imports in certain sectors. This appears to be the case for some products listed in Schedule 3B which have a high average ad valorem tariff and are subject to government approval. Canada encouraged the Government of Kenya to simplify its tariff schedules and examine carefully the rationale for administrative regulations which impeded imports.

36. Kenya's efforts to gradually reduce the system of administered pricing and distribution for agricultural products was also encouraging; however, more remained to be done in this area.

37. High levels of government intervention in most sectors of the economy appeared to have delayed the development of a competitive domestic industry. Certain sectors where government intervention had been constrained seemed to have been more successful than those where high levels of government involvement still remained. The Kenyan Government should continue with its efforts in deregulation, especially in the parastatal sector where significant levels of government involvement remained.

38. The Kenyan trade régime also appeared to allow considerable discretionary power in tariffs, customs valuation and import licensing. Although efforts had been made to reduce the use of discretionary power, it was essential that Kenya continue to seek greater transparency in the administration of its trade régime should it wish to develop the business certainty required for a more prosperous economy.

39. He asked for more explanation regarding the preferential trading arrangement referred to in both the Secretariat and Government reports; in this respect, he asked whether the PTA had in fact been notified to the GATT. If not, when would this happen?

40. The representative of Australia saw Kenya as a country of considerable potential and one which was in a good position to benefit from an opening of the multilateral trading system. Kenya deserved to be commended for the rising standards of living it had achieved for its people since 1963 and also for its recent move towards more outward-oriented production and trade. This move would need to be supported by a stable macroeconomic environment; it was encouraging that the Government had at the same time adopted more disciplined fiscal and monetary policies. Australia also appreciated the fact that this change in Kenya's policies had not taken place in the easiest environment, with the world, including Kenya's own region, going through a period of unprecedented change.

41. He asked whether the Kenyan authorities had considered establishing an independent review body to advise the Government on the economic impact of trade and industry policies. Second, did Kenya have a plan to reduce, systematically, tariff and other industry protection measures? Third, was there scope for exporters to Kenya and Kenyan importers to register their particular interests in the tariff-setting process? Fourth, were there circumstances in which import licensing was used to provide protection to domestic industries?

42. He sought information on the possibility of future liberalization of trade in agriculture and whether Kenya meant to abolish the export compensation scheme, which was a direct subsidy on exports. He also wondered whether it might be necessary to reintroduce foreign exchange licences in the future.

43. The representative of Japan noted that since to August 1992, exporters of traditional products and of services could hold 50 per cent of their export proceeds in a foreign currency retention account. However, Japan believed that it was preferable for exporters to retain 100 per cent of their export proceeds in foreign currency to develop further liberalization.

44. He welcomed the abolition of foreign exchange allocation licences from the Central Bank, which had caused problems of delay in allocation, and noted that the use of the official exchange rate was limited to the government and government-guaranteed debt service, as well as to other central government operations. All private imports are now financed on the interbank foreign exchange market. The import licence requirement had been abolished, with a limited number of exceptions. The tariff reform of 1993/94 simplified the tariff structure and cut the average overall tariff rate.

45. He believed, however, that more needed to be done to realize actual liberalization. In many cases importers were avoiding tariff and value-added taxes. Such illegal imports impeded fair market competition. For example, importers were able to disguise invoices or could claim the products as being component parts in order to have a low tariff rate applied. Small retail merchants, who do not register themselves as entities applicable for value-added tax, sold imported products at a discount rate by escaping the imposition of the value-added tax of around 18 per cent. Moreover, the new measures had apparently not been thoroughly implemented and brought about certain confusion for the relevant authorities or banks. He also spoke of heavy red tape procedures by such authorities as customs, which enforced the trade régime. He hoped that Kenya would continue to make further liberalization efforts, and would contribute to a successful conclusion of the Uruguay Round.

46. The representative of the United States hoped that the trade liberalization programme would lead to greater access for all those who wished to increase their commerce with Kenya. He welcomed the recent abolition of import licences for most categories of imports and the lifting of foreign exchange controls, as well as the foreign exchange retention scheme for exporters. He believed the Kenyan economy should benefit from these export-oriented measures, and encouraged the Government to ensure they were not only adhered to, but implemented in a fully transparent manner.

47. He noted however that, while the top two tariff bands were reduced 10 per cent to 60 per cent and 50 per cent respectively, the bottom band duty was increased from 2 per cent to 10 per cent, and several items which had previously been duty-free were placed in the bottom range. Furthermore, duties on manufactured goods remained very high. Thus he believed the overall level of tariffs remained too high and called upon the Government of Kenya to lower them.

48. He asked what specific functions the pre-shipment inspection (PSI) company was performing. Did they verify the price of goods? He called upon Kenya to adhere to the disciplines contained in the draft Uruguay Round PSI Agreement.

49. Noting that Kenya was a member of the Preferential Trade Area for Eastern and Southern African States (PTA), he asked for information regarding the Group's efforts to become a customs union. He also called upon PTA members which were contracting parties to comply with GATT procedures for notification and review of this arrangement under Article XXIV of the General Agreement. The United States took the provisions of Article XXIV very seriously, and it was for this reason the United States intended to submit the NAFTA Agreement to this review.

50. He also encouraged Kenya to participate fully in the Uruguay Round, and hoped that Kenya would soon be able to undertake obligations contained in the various GATT codes, particularly the Customs Valuation and Import Licensing codes.

51. Turning to some specific aspects of Kenya's trade policies and practices, he raised the following issues and questions:

- Scarcity of foreign exchange had a negative impact on the ability of foreign investors to repatriate profits and dividends. Delays by the Central Bank in authorizing repatriation of dividends continued to cause foreign firms to suffer financial losses because of erosion in the value of dividends. There was also a problem with transparency in the process as some firms received approvals for repatriation routinely, while others were forced to wait for as long as three years. This unpredictability

damaged Kenya's business climate in the eyes of potential investors. What were Kenya's plans to improve transparency in the area of investment?

- Although Kenya had long been a party to numerous international agreements on intellectual property rights, there was a flourishing market for pirated books, records, videos and software there. For example an estimated 90 per cent of the audio cassette market was pirated. In 1989, the Kenyan Parliament passed a new copyright law, but those prosecuted for pirating had received only light fines. What were Kenya's intentions for improving its protection of intellectual property rights?
- The United States believed strongly that contract awards for government procurement should be made in an open, transparent and competitive manner. Unfortunately, the government procurement system in Kenya suffered from lack of transparency which was harming the rest of the economy.
- In the services area, he understood that the Government of Kenya was considering requiring that 10 per cent of all re-insurance be placed with a parastatal company. If this was correct, he urged Kenya not to put such a requirement into place and instead to rely on market forces to spread the risks at the most efficient price.

52. The delegation of Mexico was optimistic that the efforts made by the Government of Kenya to liberalize its economy would soon resolve the serious imbalances and inefficiencies in its industrial base, which were largely due to its highly protected and somewhat unstable trade régime. There was cause for concern in the constant changes which had taken place in Kenya's trade policy since 1988, which meant that both internal and external economic operators could have no certainty as to the permanency of policies. Kenya should signal that the policy direction was irreversible.

53. Kenya must also liberalize its trade even further. High levels of protection remaining for industry and the highly restrictive import policy in the agricultural sector were a source of concern. The prices of a large number of products were still regulated; some measures had been a backward step, for example, in 1992, the reintroduction of the government monopoly on maize.

54. It was notable that Kenya had not signed any of the agreements issuing from the Tokyo Round. Was the Government intending to accede to the Code on Government Procurement and the Arrangement Regarding Bovine Meat, where it was currently an observer, as well as other Codes?

55. He welcomed the intention of the Kenyan authorities to revise their offer in the Uruguay Round and to bind an appropriate percentage of its tariff. While the latter was indeed a benefit for Kenya's trading partners, he believed it was even more so for Kenya itself, in terms of the growing credibility and permanency of its policy. If the course of economic reforms was to develop, however, the firm support of the international community would also be crucial.

56. The representative of Switzerland joined other participants in welcoming the way in which Kenya had implemented reforms in the trade system and the exchange rate system at the beginning of the year, after a period of economic and political difficulties and natural disasters. She was confident that these reforms would soon bear fruit.

57. She noted that the system of import licences and exchange rates had been liberalized in a first stage in 1992 but that economic difficulties prevented that liberalization from being long maintained.

In May 1993, Kenya took a second step towards liberalization by introducing an automatic import licensing system. This was an essential element in a free and open trading system and she hoped that the economic environment would make it possible to sustain this automatic import licensing system in the longer term.

58. She asked whether approximately 12 per cent of tariff lines in specific sectors were still subject to the system of prior ministerial approval in order to obtain import licences. If this requirement still existed, she asked whether the Kenyan authorities intended to abolish these non-tariff barriers during the next stage of liberalization.

59. While noting that the Kenyan authorities could not sustain a reduction in the arithmetic mean of duties, which was 41.7 per cent in 1988, 23 per cent in 1991 and 33.6 per cent in 1992, she expressed satisfaction at the decrease in tariff peaks from a maximum rate of 135 per cent in 1988 to 50 per cent now. A general effort to achieve harmonization seemed essential if the significant efforts to liberalize were to be effective. She also urged binding of the Kenyan tariff, preferably at a relatively low level such as 30 per cent. The Uruguay Round negotiations were an appropriate context in which to carry out this task. She joined others in seeking Kenya's rapid accession to the Tokyo Round Codes, notably those relating to government procurement, customs valuation, import licensing and anti-dumping and subsidies procedures.

60. Not all products had benefitted from import liberalization. Kenya still prohibited the import of a certain number of products for reasons of security, public morality and protection of human and animal health. Was there a precise list of all products whose import was prohibited? Was Kenya intending to reduce or abolish these controls and prohibitions in the near future?

61. The representative of Finland, noting that Kenya had been a GATT contracting party since its independence and had subscribed to the main principles of free trade, asked how the membership of GATT had contributed to Kenya's development, and how the Government was planning to proceed with the trade liberalization process.

62. Like other developing countries, Kenya could enjoy the considerable benefits of the Generalized System of Preferences market access in many industrialized countries. The GSP provided an important opportunity for the developing countries to expand their exports of manufactures. To grasp that opportunity, however, the prices and quality of the products must meet certain criteria applied in the export markets. Moreover, an active sales promotion policy was often needed to penetrate highly competitive markets often developing countries' awareness concerning the possibilities of the GSP had not been sufficiently high. Perhaps, even in Kenya, better information about the nature and practical requirements of the GSP could enable the business community to use the already existing possibilities fully.

63. Countries like Kenya which had undertaken structural adjustment programmes had often, in the beginning, experienced considerable difficulties in liberalizing trade. The import bill may rise more rapidly than export earnings, causing foreign exchange shortages, and several other problems may complicate the implementation of structural adjustment programmes. Nevertheless the examples of many other developing countries showed that a consistent programme leads to positive results. He thus hoped that Kenya, despite difficulties encountered, would continue its liberalization programme.

64. The reciprocal lowering of tariff and non-tariff protective barriers of primary commodities resulting from a successful conclusion of the Uruguay Round, together with the continued preferential

treatment should bring Kenya, and other developing countries substantial benefits from trade liberalization, especially in agriculture and tropical products. This naturally implied that Kenya, as other participants, should contribute to the outcome. In this context, he noted that none of Kenya's tariffs were bound in GATT. He therefore urged Kenya to bind its tariffs, preferably the entire schedule, as a result of the Uruguay Round.

65. The representative of Madagascar viewed regional trade cooperation in Africa as complementary to the rules of the multilateral trading system, and asked for clarification regarding Kenya's policies in the area of regional trade cooperation.

66. The representative of Austria welcomed the liberalization measures introduced in May 1993, especially the abolition of the import licences and the phasing-out of foreign exchange restrictions. He spoke of the need to streamline the financial sector, which in the past had been weighed down by insolvent banks, widely known as "political banks". As far as the current trade régime was concerned, his delegation wished to make the following remarks and ask the following questions:

- (i) In 1992, the simple average of Kenya's m.f.n. tariffs was 33.6 per cent, which was very high even for a developing country. Furthermore, until now, none of Kenya's tariffs were bound in the GATT. Could the delegation of Kenya in this respect indicate their intention in the context of the Uruguay Round?
- (ii) According to paragraph 187 of the Secretariat report, government approval to import certain products was still required. This approval was - as noted in the Government Report on page 28 - determined mostly by health and safety criteria. He asked the delegation of Kenya to provide a list of such items meeting neither health nor safety requirements.

67. The representative of Tanzania commended the delegation of Kenya for having offered its economy and trade policies to be examined in the context of the TPRM, as the first Eastern and Southern African country to undertake this obligation.

68. Tanzania and Kenya maintained good relations, including in the field of trade, whereby, among others, both belonged to the preferential trade area for Eastern and Southern Africa, a major development effort by the Eastern and Southern African countries. He welcomed the efforts made by Kenya, aimed at increasing the share of manufactured exports, including, through the promotion of non-traditional exports to new markets. The efforts of Kenya through this structural adjustment programme and autonomous liberalization measures were indeed commendable.

69. He pointed out the important impact on the Kenyan economic performance of falls and fluctuations in primary product prices. These brought immediate foreign exchange shortages which jeopardized the development efforts of those countries, even in such sectors as tourism.

70. He stressed the rôle of multilateral institutions, especially the GATT, in ensuring that developing countries were further helped in their efforts to integrate the international trading system. It was his hope that the recognition of special and differential treatment provided for and agreed by Ministers at Punta del Este would be taken into account by all participants in their negotiations.

71. The representative of Israel noted with pleasure that, despite difficulties, the Government of Kenya intended to progress in its programme of liberalization. Israel, with a population of less than

5 million, took nearly 12 per cent of Kenya's exports, and was quite proud of its share in the export progress of Kenya. Israel had contributed, through transfer of agricultural techniques, to the expansion of these exports, particularly of flowers.

72. He noted that two issues in the Uruguay Round were of concern to Kenya: first was the erosion of Kenya's preferential margins, both within the GSP and other preferential arrangements, stemming from any reduction of third country tariffs. The second issue was the possible increase of food prices, which would reflect negatively on Kenya's balance-of-payments.

73. With respect to the Uruguay Round, he asked whether Kenya intended to sign the General Agreement on Services, where he saw possibilities both for exports and for imports which so far in this field had been rather limited. Also, he considered that the arrangements, as far as tropical products are concerned within the Uruguay Round had not been very satisfactory. He therefore asked what were the desiderata of the delegation of Kenya with respect to these negotiations on tropical products.

74. He finally asked how far the International Coffee Agreement and its future would reflect on Kenya's exports. Was it true that there had been demands that Kenya restrict its exports of this product?

## VI. COMMENTS AND RESPONSES BY THE REPRESENTATIVE OF KENYA

75. The representative of Kenya first commented on Kenya's broad macro-economic policies and addressed questions expressed by some delegations about foreign direct investment, privatization and the process of liberalization.

76. The main causes of recent growth in the money supply were the expansion of credit to both Government and private sector; the inappropriate use of export pre-shipment financing by commercial banks, which was particularly marked in 1992; and the recourse by commercial banks to the Central Bank liquidity support facilities, namely direct advances, re-discounts and overdraft.

77. In evaluating proposed new foreign direct investments, the Government gave highest priority to investments which contributed to job-creation. Labour intensive industries such as textiles, component assembly and data processing were encouraged. Investments which utilized domestic raw materials, intermediate goods, and components were also encouraged. Local resources-based activities such as agroprocessing, mining and leather production were accorded particularly high priority. The Government furthermore encouraged projects likely to generate foreign exchange earnings. Thus export oriented operations were given top priority while manufacturing operations based on import substitution, which proved little or no net foreign exchange savings, were accorded low priority. Foreign investment was particularly encouraged in activities involving introduction of new skills or technologies. At the same time, the Government gave strong encouragement to investments leading to increased capital formation and at the same time ensured protection of the environment. Lastly, high priority was given to investments which made major contributions to food security through investments in irrigation or introduction of new crops or technologies which improve small farmer output.

78. The Government recognized that appropriate incentives for investment should allow private investors to make attractive profits while contributing to the development of Kenya. The incentive structure was designed to remain stable over a long period. The Government planned to use broad fiscal and monetary policies, as well as market based incentives, to ensure a healthy economy in which the private sector could flourish. It also aimed at providing an enabling environment through the development of appropriate infrastructure. While all sectors of the economy remained open to foreign investment, the general policy was to discourage foreign ownership of agricultural land, unless for irrigation or other major reclamation and upgrading purposes.

79. The new exchange régime allowed exporters of goods and services to retain 50 per cent of goods and earnings for services in foreign currency accounts at authorized banks in Kenya. The balance of 50 per cent was surrendered to the Central Bank at the official exchange retention accounts and all interest earnings were subject to 10 per cent withholding tax. The foreign exchange in the export retention accounts stood at K Sh. 6.3 billion in June 1993.

80. Account holders could use their funds to finance importation of goods and services, business travel and remittance of post-tax dividends. They may also authorize commercial banks to sell the foreign exchange on their behalf at market determined exchange rates to buyers wishing to make eligible payments. The banks may also purchase foreign exchange from retention accounts for their own account or to sell to other commercial banks. All funds in retention accounts must be utilized within 90 days, otherwise they were sold to the Central Bank at the official exchange rate.

81. Payments could be made in accordance with exchange control regulations. Adequate documentation to support external transactions must be produced by the party making external payments.



Although no document was initially forwarded to the Central Bank for approval, the commercial banks effecting payments must produce these on request and were subject to audits by the Central Bank at any time. In addition, copies of the bank statements relating to retention account transactions were forwarded to the Central Bank on a monthly basis.

82. The reform had created an environment conducive to economic activity by facilitating exports and the procurement of import products. Producers could now access the foreign exchange they needed to import their inputs at internationally competitive prices. Competitive bidding for the foreign exchange on an interbank market had replaced the cumbersome administrative mechanisms. The perceived sustainability of the reform had, in addition, stemmed the fall of the shilling's exchange rate and returned stability.

83. Foreign investors could now repatriate their dividends, an important factor explaining the increasing new entrants in the production for exports particularly in non-traditional product lines.

84. The reform had relieved the Government from the burden and responsibility of providing foreign exchange to the private sector. Foreign exchange liberalization had made the investment and business environment relatively competitive, in light of the competing incentives offered by neighbouring countries.

85. The Government remained committed to the ultimate convertibility of the shilling and to appropriate macroeconomic measures designed to control the government deficit and money supply.

86. The divestiture and privatization programme of parastatal enterprises had been progressing fairly satisfactorily. Altogether, 207 companies fell under this programme. Up to August 1993, 34 firms had been disposed of through public advertisement, five had been disposed through exercise of preemption rights, four had been sold off through the Nairobi Stock Exchange, six had been closed through voluntary liquidation and one firm had been disposed of through passing of the controlling interest. All divestiture was, and would continue to be made through public advertisement. Offers from overseas interests, including domestic based foreign interest were welcome. Overall, the response to the divestiture programme had been encouraging and the exercise was expected to be successful.

87. Tariff reforms had been going on since 1988. Rates for raw materials were lower than those for finished products, respectively from zero to 25 per cent and from zero to 40 per cent. This had helped eliminate illegal imports. Use of pre-shipment bodies had also helped in the control of disguised imports as the Clean Report of Findings (CRF) showed the description, quantity, quality and the price of imported goods and the country of origin. The CRF price was an indicator of the market price of the goods in the exporting country.

88. Prior to May, 1993 the government of Kenya operated a system of import licensing using import licensing schedules. For import licensing, products were classified into three schedules, I, II, and III. Schedule I consisted of high priority capital goods, raw materials, and intermediate inputs. Those in schedule II were also high priority items which, however, required ministerial approval because they had to meet certain technical criteria.

89. With the liberalization measures announced in May, 1993, import licensing requirements were abolished. Since then three simple schedules had been gazetted. Schedule A consisted of 13 items whose importation was prohibited absolutely in order to protect wildlife and environment. Schedule B

detailed 32 items whose importation required prior approval due to reasons of state security and public safety. In addition, there were 63 items whose importation did not require prior approval, but which required special clearance on arrival to meet required phytosanitary, health and environmental standards. Telecommunication equipment imports were no longer subject to licensing.

90. Variable import duties made up the difference between domestic and import reference prices of maize, sugar, wheat, rice, jaggery and milk powder. These goods were liable to import duty at the rate of 10 per cent ad valorem or the specific rate of duty, if any in the first schedule of the Customs and Excise Act, whichever was higher. Such goods would enjoy partial duty remission as long as the rate of duty applicable in the first schedule was more than 10 per cent. The Commissioner of Monopolies and Trade normally had to confirm the Customs and domestic reference prices.

91. Tariffs were reviewed annually, and the necessary revisions were published in the Finance Bill which was issued with the budget speech. There was a possibility that reductions in the tariffs affecting imports on non-ferrous metals would be considered, if the private sector, through the Kenya Association of Manufacturers (KAM) put a formal proposal to the government.

92. The tariff structure was reviewed in close consultation with relevant private sector organization. New aircraft entered duty-free while locomotives were dutiable at 10 per cent. There was, however a duty of 20 per cent on used aircraft. The import licence processing fee on imported motor vehicles was abolished when import licences were abolished when import licences were abolished.

93. In his budget presentation delivered to the National Assembly on 10 June 1993, the Minister for Finance had stated that the number of duty rates would be reduced from 9 to 6 and that the tariff rates will be gradually lowered to 40,30,25,20 10, and 0 per cent. The practical consequences of this process so far had been a reduction of government revenue, an increase in the inflow of consumer goods, and a threat to domestic industry of losses which may represent as much as 30 per cent of production and employment. Therefore, the Government intended to study the situation before taking any other reduction measures.

94. By the end of 1993/94, price control on all items would be abolished (these now included petroleum products, some pharmaceutical products, maize and maize flour remaining under specific price control). The programme was proceeding smoothly and it was hoped that by the year 1994, Kenya would have achieved complete price decontrol.

95. The tax structure had been restructured to emphasize promotion of exports. Kenya did not administer any export subsidies. The Export Compensation Scheme, which was erroneously viewed as an export subsidy, had been abolished with effect from 1 September 1993. However, Kenya had in place a Duty/VAT Exemption Scheme whereby import duties and VAT on the portion of raw materials that went into manufacturing for export were remitted. This was also done so as to avoid double taxation.

96. Imports with an f.o.b. value of more than K Sh. 100,000 were subject to preshipment inspection for quality, quantity and price comparison.

97. The import liberalization measures were designed to stimulate import competition and thereby encourage domestic manufacturers to become more efficient. The measures had been welcomed by manufacturing industry, demands for protection under the liberalized environment were relatively few. Appropriate instruments would be instituted to counter the risk of dumping on the Kenyan market.

98. Although there was not as such an independent review body to advise the government on the economic impact of trade and industry policies, the Government of Kenya worked in close liaison with the private sector through the following joint Government of Kenya and Private Sector agencies:

- (a) The Joint Industrial and Commercial Consultative Committee (JICCC), under the Ministry of Commerce and Industry, drew a 50/50 membership from the Government and private sector. The JICCC advised on long-term investment and trade policies;
- (b) The Kenya External Trade Authority and Export Promotion Council were two advisory bodies to the Government on exports policy and promotion. Both were over 80 per cent private sector and were chaired by private sector persons; and
- (c) Private Sector trade and investment Associations, including the Kenya Association of Manufacturers, Kenya National Chamber of Commerce and Industry, Kenya Employers Association, Kenya Bankers Association and Kenya Association of Tour Operators were also involved in trade policy advice.

The Kenyan private sector was free to register interests to the Government of Kenya through these bodies.

99. All government procurement of goods and services must be through open tenders or quotations, and were subject to the approval of the appropriate tender board before orders could be placed. However, in order to encourage rural development, inputs for district-specific projects, produced or fabricated within the district, were allowed up to 5 per cent bias, so as to be procured in the district. Similarly, up to 10 per cent preference was allowed for Kenyan firms in which indigenous Kenyans owned at least 51 per cent of the share capital. However, all international traders were advised internationally and awards were given in accordance with the normal adjudication procedure.

100. In Kenya, there was an established commission for insurance whose jurisdiction was limited within the Kenyan territorial borders. This commission could only handle claims arising from the confines of Kenyan territory. However, there was an active insurance and reinsurance market in Kenya. There was also the PTA yellow card insurance service for transit goods. There were therefore many international insurance bodies, and private companies were free to operate insurance companies of their choice.

101. Kenya's export development policy, as first enunciated in the 1986 Sessional paper, aimed at export diversification, in order to provide employment opportunities and foreign exchange resources. Kenya was aware that its exports were still dominated by a few commodities vulnerable to external fluctuations external factors and dependent on a limited number of developed country markets, while having to compete with similar products from the rest of the world.

102. Sectoral export targets were being set, including for agro-processing, textiles and intermediate goods. Success had been recorded in exports of textile goods from bonded factories and in manufactured exports to neighbouring countries.

103. In all these efforts, private sector participation in the planning and execution of the Export Plans was given the highest priority. Consultations were made at all levels, through established private sector - Government fora, including the Kenya External Trade Authority (KATA), the Export Promotion Council (EPC) and the Joint Industrial Commercial Consultative Committee (JICCC).

104. In 1992, special measures were introduced to encourage investment in export industries. Companies established within Export Processing Zones began to receive tax and investment allowances. Export processing zones had been successful, as witnessed by their full occupancy rate; they had been successful in attracting and retaining domestic and foreign private investment. Production had started and 2,000 new jobs had been created. All the products of the Export Processing Zones, which were predominantly textile goods, were exported. Export earnings from textile products had grown from K Sh 200 million in 1992 to K Sh 532 million in the first six months of 1993.

105. Consequently, several other private zones had been developed in Dandora (Nairobi), Nakuru and Mombasa. The Government was also putting up an Export Processing Zone Complex at Athi River, 20 kms from Nairobi which would accommodate close to 100 units. Even though construction of the complex was due to be completed in mid 1994, all the sheds had already been rented out.

106. Kenya's ultimate goal was to completely liberalize all aspects of production and trade, including the agricultural sector. Restrictions in agricultural trade, such as movement permits, were intended for food security purposes. They were, however, reviewed from time to time depending on the surplus status of food production.

107. The Kenyan economy was agro-based. The sector accounted for more than 30 per cent of GDP, 80 per cent of the labour force and 70 per cent of export earnings. Its performance was therefore critical for the totality of the economy and the welfare of the Kenyans.

108. In the Sessional paper No. 1 of 1986, the government undertook to divest itself from public trading parastatals, albeit on a gradual basis, in order to ensure provision of basic goods and services. Private participation through cooperative movements was being encouraged. The authorities aimed to maintain a number of priorities in the privatisation process:

- infrastructural development and maintenance;
- provision of appropriate fiscal policy instruments to encourage private enterprise;
- development of suitably attractive investment incentives;
- maintenance of adequate security for investment;
- involvement of the private sector in influencing decisions which affect industrial development;
- encouragement industries to the rural areas.

109. The Government had committed itself to the liberalization of pricing and marketing. However, in order to ensure internal food security, the government retained certain regulatory measures, such as price control on a number of essential staple foods like maize.

110. Regarding the potential conflict between self-sufficiency in agriculture and a policy of diversification of the economy as a whole, the ban on food exports was implemented with the objective of food security. Similarly, any restrictions on imports were either health or environmental related. Despite the food self-sufficiency objective, substantial quantities of rice, wheat and sugar were imported every year, even during normal weather. Within the agricultural sector, diversification from the traditional export cash crops of tea and coffee had taken place. Horticulture now contributed significantly to the foreign exchange earnings of the economy.

111. Tourism had developed into one of the principal foreign exchange earners for Kenya. Its future growth would depend on assured availability of security in national parks and on continued conservation

of the country's wildlife. Other factors of growth were the development and maintenance of tourist infrastructure like roads, clean water and telecommunications.

112. Kenya had committed itself to the tenets of GATT and would continue to work towards the conclusion of the Uruguay Round.

113. Regarding customs valuation, the value to be declared in the case of imported goods, whether or not liable to duty, was that determined in accordance with section 127, 127b, 127c and the seventh (7th) schedule to the Act. These sections were in accordance to the Brussels Definition of Value (BDV). Therefore to accede to the GATT Customs Valuation Codes, the law had to be changed through an Act of Parliament.

114. The representative of Kenya considered that rules 1 to 6 of the GATT Code did not permit the customs department enough leverage to deal with the persistent tendency on the part of traders to undervalue goods and hence understate revenue, because the onus of proof of transaction was vested on the trader. The rules were not flexible enough to enable officers to deal with the above case and hence could lead to serious declines in revenue collection. The transaction value method was a good idea to the extent that it reflected market prices. The GATT Code applied mostly to developed countries where duty rates were less than 5 per cent in most cases, and contributed very little to government revenue. In the case of Kenya, where the duty frequently exceeded 25 per cent, the transaction value could easily be manipulated to favour the importer.

115. Under the BDV system, if the commercial invoice (transaction value) was suspected to be understated, the customs authority could impose a value which was higher than the transaction value by use of a value slip making the dutiable value equal to that prevailing in the open market at the point of importation. To apply Articles 1 to 6 of the Code effectively would require an automated system and administration procedure, where an officer at a glance could check the prices of similar, identical goods.

116. The Treaty establishing the PTA was signed on 21 December 1981 within the framework of the Lagos Plan of Action. It entered into force on 30 September 1982. The PTA was Lagos a first step towards the establishment of a common market for Eastern and Southern African States. Its aim was to assist member States attain economic transformation and social advancement. It also sought to attain higher rates of sustainable growth and cover the fields of trade, customs, industry, transfer, communications, agriculture, natural resources and monetary affairs.

117. Some of the economic and social problems facing the individual member countries were:

- (i) social and economic dislocation arising from the collapse of the prices of primary commodities of export interest to the PTA;
- (ii) persistent decreases in export earnings, leading to increased external borrowing and high indebtedness;
- (iii) inability to deal with recurring droughts and desertification, with consequent widespread food shortages.

118. Since the introduction of the PTA, tangible progress had been made in the fields of both trade and investment through the establishment of the PTA Trade and Development Bank; the introduction

of the PTA Travellers cheques; establishment of the PTA Clearing House; formation of the PTA Federation of Chambers of Commerce and Industry; publication of trade directories and business letters; installation of the PTA Trade information network (TINET); organization of buyers' and sellers' meetings; harmonization of Transport and road charges and introduction of Motor Vehicle Insurance (Yellow Card).

The PTA was slated to expand, especially with the adoption of the PTA Strategy for Development, as well as the planned transformation of this institution into a common market by the year 2000.

119. The PTA Treaty was ratified by the Kenyan Parliament in 1992. Thus, the treaty was now part of Kenyan law. Kenya was therefore in a position to notify the CPs, and would do so as soon as possible.

120. Trade within the Preferential Trade Area had been liberalized and Kenya was leading the way in the process of multi-tier tariff reduction. Kenya was one of the few member States of the PTA that had effected a third tariff reduction. This was done with full understanding and trust that the PTA would become a full common market, and eventually an economic community.

VII. FURTHER COMMENTS AND QUESTIONS

121. The representative of the United States asked how long it currently took to clear expatriation of funds from Kenya, for example dividends. In reply, the representative of Kenya said that there was no longer any delay following the foreign exchange reform.

122. The representative of Poland asked whether there was a clear relationship between the introduction of 50 per cent retention quota and the appreciation of the shilling, independently of the inflation rate. Second, might the limitation to 90 days of the right to retain money on the foreign exchange retention accounts not provoke additional unnecessary imports, due only to the fact that there was a constraint in using this money within a limited period of time? What were the reasons for introducing a time limit on this account? In reply, the representative of Kenya explained that the exchange rate had appreciated when the foreign exchange reform was perceived to be durable. The time limit was designed to ensure that the scarce foreign exchange resources would be used productively.

123. The representative of the European Communities sought clarification on Foreign Exchange Bill Certificates (FEBC). Was it true that the premium on FEBC had continued to fall as the Kenyan Central Bank was no longer prepared to redeem them? In reply, the representative of Kenya confirmed that the FEBCs were legal Kenyan tender and that the Central Bank was indeed prepared to redeem them.

124. The first discussant asked for information on the current spread between the official and market rate, and whether foreign currency was legal tender within Kenya. In reply, the representative of Kenya said that the official exchange rate stood at K Sh 65 per dollar, while the market rate fluctuated around K Sh 67 per dollar. Foreign exchange could be exchanged freely into shillings but was not legal tender.

125. The first discussant, noted that according to the Secretariat report, some foreign investment had been subject to review and that certain projects had been discouraged in areas where they might compete with existing companies that had been granted exclusive privileges on the domestic market. The representative of Kenya confirmed that this was no longer the case, and that all sectors were now open to foreign investment.

126. The second discussant asked whether the Government expected several large industries to be seriously affected following import liberalisation, or did would these instead regain competitiveness and be able to compete with imports? Had a timeframe been established for tariff reduction? Had import licensing been completely abolished? Had changes been made to the marketing system? In reply, the representative from Kenya noted that domestic industries had not expressed numerous complaints about the liberalization process, and many were satisfied about the increased facility to procure imported inputs. Import licensing had indeed been completely abolished, but there were no plans for further tariff cuts at the moment.

127. The representative of the European Communities noted that the complete liberalization of the marketing of maize was part of the reform programme agreed with the IMF and the World Bank and it was supposed to be conducted by the end of 1993. What were the intentions of the Kenyan Government about this commitment? In reply, the representative from Kenya explained that this commitment had been made in a normal climatic context. For the last two years, there had been a drought in Kenya, and it had been necessary to import and distribute more food. Thus the commitment could not be maintained in this environment, as market forces could not be relied upon alone to ensure adequate distribution, notably in the remote areas.

128. The representative of Australia asked what would be the reaction of the Minister for Finance, if in fact an imported product, with a clear dumping margin was to be imported and it was not a like good, or not a good that was manufactured in Kenya: would the Minister proceed with a dumping case in those circumstances? In reply, the representative from Kenya pointed out that dumping was a criminal act under Kenyan law, and would be accordingly dealt with.

129. The representative from the European Communities asked whether the Government of Kenya had effectively enforced its legislation on dumping? If so, how was this legislation working? The representative from Kenya answered that the legislation had never been used.

130. The second discussant asked for clarifications regarding the foreign exchange retention scheme and its economic impact. Also, were any export controls still in place? The representative from Kenya answered that a list of goods subject to export control had been distributed to the delegations.

131. The representative of Poland, referring to the efficiency of the export promotion policy, questioned the causes of the fall in the export diversification index between 1980 and 1990. The representative of Kenya said that he would answer this question in writing.

132. The representative of the United States asked whether the price verification carried out in the context of the preshipment inspection scheme could be used to monitor dumping practices. In reply, the representative of Kenya explained that the pre-shipment inspection had not been used for this purpose, but to identify potential under-invoicing.

133. Regarding Kenya's dependence on exports of a few equatorial products such as coffee and tea, the representative of the European Communities asked further news of the Kenya Government on the recent agreement on coffee between African producers? Could one expect Kenya's position to improve? The representative replied that it was too early at this point to assess the effects of the agreement on the economic situation in Kenya.

134. The representative of the United States asked first whether or not the Government of Kenya actually was going to institute the 10 per cent reinsurance requirement to be placed with parastatals and second whether intellectual property rights legislation would be better enforced. In reply, the representative from Kenya said that no measures were in place restricting reinsurance. Kenya attached utmost importance to the protection of intellectual property rights. The Government's strategy was therefore to ensure that new productions arriving on the Kenyan market would conform with the legislation, recognizing that it was difficult to deal with material which had been on market for some time.

135. The second discussant pointed to the flurry of regional cooperation agreements happening all over the world. He nevertheless considered that regional cooperation such as the PTA could offer economies of scale and provide opportunities for those members participating to specialize, and therefore act as a magnet for foreign investment, in addition to providing a collective voice in fora such as the GATT.

VIII. CONCLUDING REMARKS BY THE CHAIRMAN OF THE COUNCIL

136. These concluding remarks are, as usual, made on my own responsibility. They are not intended to be a complete record of the meeting, but rather reflect my personal assessment of the main points raised in this first Trade Policy Review of Kenya. The full report of the discussion will be circulated in the Minutes of the meeting.

137. I should like to thank the delegation of Kenya for the written replies they have provided to the questions asked and to congratulate them on the lively, professional debate they conducted in this review. The written replies by Kenya to specific questions will be circulated in document form.

(i) Broad economic aspects, including development objectives and structural adjustment policies

138. Council members recognized that Kenya had, in May 1993, taken a bold, positive step by liberalizing its trade and foreign exchange régimes, after many years of inward-looking policies and a number of reversals. It was seen as important that the Government clearly demonstrate its determination to pursue its present policy direction, and to ensure that reforms undertaken in the trade and investment fields were consistent, stable and supported by appropriate macroeconomic policies.

139. Some participants recognized the difficulties that had been caused over many years for Kenya, as a major commodity producer, by fluctuations in its terms of trade; these and other economic problems had been exacerbated by the effects on Kenya of political and economic difficulties in neighbouring countries.

140. In reply, the representative of Kenya said that the Government was committed to maintaining the recent liberalization measures of the foreign exchange and trading régime. In particular, the authorities were committed to the ultimate convertibility of the shilling. This would go together with the implementation of appropriate macroeconomic measures to control the government deficit and money supply growth.

(ii) Trade policy trends and approaches

(a) The import régime, including foreign exchange regulations

141. Participants welcomed the liberalization of the import licensing régime and the important steps taken to rationalize Kenya's tariff structure, although the tariff was still complex, with a high level of effective protection. Kenya was urged to bind its tariffs to the greatest degree possible, in the context of the Uruguay Round, to provide greater stability and predictability. Some participants asked Kenya to provide a list of products still covered by import licensing, and sought clarification of the rôle played by automatic approval of import licences.

142. The liberalization of the foreign exchange régime was also welcomed; some questions were asked concerning the foreign exchange retention scheme. In this connection, some members noted that the foreign exchange régime had been subject to frequent changes and asked how likely it was that foreign exchange licences might again be reintroduced.

143. In reply, the representative of Kenya said that maximum duties had been reduced from 135 per cent in 1988 to 50 per cent in 1993; although no tariffs were currently bound under the GATT, the Kenyan authorities would soon make some formal proposals regarding this issue. Import licences

had been abolished except on 106 items, where licensing was maintained for conservation, environmental and national security considerations, as well as health and sanitary purposes. For all other products, monitoring was carried out only for statistical purposes at the time of purchasing foreign exchange.

144. The foreign exchange régime had been almost completely liberalized: after a sharp initial depreciation, the value of the Kenya shilling had risen. Now, there was virtually no premium on holding foreign exchange in Kenya.

(b) Export policies, including those relating to sectoral and geographic export diversification

145. Participants recognized that Kenya's export structure was still heavily dependent on a few basic commodities. Questions were posed regarding the schemes in being to promote and diversify exports, including the export compensation scheme; the export pre-shipment financing scheme; the availability of foreign exchange retention accounts; the manufacturing under bond scheme; and the export credit insurance scheme. It was asked whether the Government had analyzed the efficacy of these programmes. Information was also sought concerning the maintenance of export taxes by Kenya with a view to promoting local processing.

146. In reply, the representative of Kenya said that growth in non-traditional exports was a priority, with agro-processing, textiles and intermediate goods as core sectors. Some success had been recorded in exports of textiles. Export processing zones were being successfully developed. The advisory bodies in export policy, largely composed of private sector representatives, were very active. The export compensation scheme had been abolished but duty drawback schemes remained in force.

(iii) Sectoral aspects

147. Agriculture was recognized as the "backbone" of the Kenyan economy, with 80 per cent of employment in the sector. It was questioned whether the objectives of self-sufficiency and food security might have led to an undesirable degree of Government intervention and created a potential conflict with Kenya's policy of economic diversification. The question was raised to what extent macroeconomic imbalances had given rise to demands for greater sectoral protection.

148. Kenya's rôle as a major exporter of tropical products was recognized; in this context, the need for adequate liberalization in this area in the Uruguay Round was stressed.

149. In reply, the representative of Kenya said that the policy of Kenya was now to move away from the protective system, a move that had been welcomed by manufacturing industry. Self-sufficiency remained, however, a major goal of the country's basic food policy.

(iv) Multilateral and regional relationships with trading partners

150. It was noted that Kenya had been a contracting party to GATT since its independence; some participants asked the delegation of Kenya to outline how GATT participation had helped the country's economic development. Several members asked Kenya to clarify its intentions with regard to accession to the Tokyo Round agreements and its participation in the Uruguay Round.

151. Kenya was also asked to provide information concerning progress in the Preferential Trading Area (PTA), involving Kenya and other eastern and southern African countries. Some members noted that the PTA should be notified to GATT for examination.

152. In reply, the representative of Kenya said that accession to the Customs Valuation Code would require a change of law through an act of Parliament. The Government had not yet adopted the Customs Valuation Code for a number of reasons, including the risk of under-invoicing, as customs duties continued to provide the Government's main source of revenue. Plans were underway to accede to the Codes which Kenya considered most relevant.

153. The Preferential Trading Area had been established in 1982. Aside from economic and social development, the main goal of the PTA was to expand economic and trade links among its members. Its long term aim was the establishment of a common market for eastern and southern African States by the year 2000.

(v) Other issues

154. Members raised questions concerning the rôle of pre-shipment inspection companies in Kenya's trade. Questions were also posed concerning the operation of Government procurement in Kenya. Doubts were expressed concerning the efficacy of Kenya's intellectual property laws, in the light of evidence of considerable piracy and counterfeiting.

155. The unpredictability of permission by the Central Bank for dividend repatriation, and of other aspects of foreign direct investment, was seen by some members as a hindrance to further foreign direct investment.

156. In reply, the representative of Kenya said that his authorities had been satisfied with the operation of the preshipment inspection firms, in verifying prices and quantities of goods exported to Kenya. They had not experienced any shortcomings with the scheme.

157. The recently enacted patent and copyright laws would be enforced thoroughly. In particular, an effort would be made to ensure that new products entering the Kenyan market would not be pirated.

158. The issue of delays in dividend repatriation would no longer be a problem following the reform of the foreign exchange régime. Dividends could be freely converted into foreign currency as and when they accrue. The Government was committed to a stable policy environment conducive to encouraging foreign direct investment. No sectors of the economy were any longer closed to foreign investment.

159. Finally, I would note that, after a number of policy reversals, the changes in Kenya's trade policies since May 1993 have been highly appreciated by members of the Council. The Kenyan authorities are strongly encouraged to continue on the path they have chosen. A successful conclusion to the Uruguay Round would provide a healthier environment for liberalization of the Kenyan economy. Kenya's active participation in Uruguay Round commitments would, in turn, make a major contribution to Kenya's own policy reforms and to its standing in the multilateral trading system.