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ON TARIFFS AND TRADE

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A DESCRIPTION OF THE PROVISIONS RELATING TO DEVELOPING COUNTRIES IN THE URUGUAY ROUND AGREEMENTS, LEGAL INSTRUMENTS AND MINISTERIAL DECISIONS

Note by the Secretariat

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LIST OF ABBREVIATIONS USED

AMS	Aggregate Measurement of Support (in Agreement on Agriculture)
BISD	Basic Instruments and Selected Documents (published by GATT)
Dispute Settlement Understanding/ DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
DSB	Dispute Settlement Body
FAO	Food and Agriculture Organization of the United Nations
GATS	General Agreement on Trade in Services
GATT 1994	General Agreement on Tariffs and Trade 1994
IMF	International Monetary Fund
ISO	International Organization for Standardization
ISO/IEC	ISO/International Electrotechnical Commission
MFA	Arrangement Regarding International Trade in Textiles
Secretariat	Secretariat of the World Trade Organization
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TSB	Textile Surveillance Body
World Bank	International Bank for Reconstruction and Development
WTO	World Trade Organization
WTO Agreement	Agreement Establishing the World Trade Organization

A DESCRIPTION OF THE PROVISIONS RELATING TO DEVELOPING COUNTRIES IN THE URUGUAY ROUND AGREEMENTS, LEGAL INSTRUMENTS AND MINISTERIAL DECISIONS

The purpose of this document is to describe, in a concise manner, the substance of those provisions in the Agreements, Legal Instruments and Ministerial Decisions resulting from the Uruguay Round negotiations which specifically refer to developing countries. In order to provide background to the description of the provisions, each of the Agreements, Legal Instruments and Ministerial Decisions is briefly summarized, even if specific reference is not made to developing countries. The document does not, however, describe those provisions that are of particular interest to developing countries but which do not refer to them specifically

For ease of reference, the descriptions of the provisions referring to developing countries have been broadly grouped under four headings; those which recognize developing countries' interests; those that require developing countries to meet fewer obligations; those that provide a longer time-frame for the implementation of certain obligations; and those that provide for technical assistance. Provisions classified under the heading of Recognition of Interests are those which are of a best endeavour nature or those which request Members, within their own trade policy, to grant a more favourable treatment to developing country Members.

Provisions that specifically related to least-developed countries are also described. To facilitate the identification of texts relating to **least-developed countries**, each such reference has been highlighted in bold type. Under each of the headings, the text is identified according to the Article, paragraph etc. to which it relates in the Agreement, Legal Instrument or Ministerial Decision concerned. While some of the text involves direct quotations from the Uruguay Round results, in other instances the document contains a simplified explanation of more complex provisions. It should be emphasized that this is not a legal document.

I

1. AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (WTO)

The Agreement Establishing the World Trade Organization (WTO) envisages a common institutional framework encompassing the GATT as modified by the Uruguay Round (i.e. the GATT 1994), all Agreements and Arrangements concluded under GATT auspices and other Agreements and Ministerial Decisions resulting from the Uruguay Round. The GATT dated 30 October 1947 will remain in force, but will be legally distinct from the GATT 1994. This common institutional framework provided by the WTO will cover:

- The Multilateral Trade Agreements (MTAs) - i.e. Agreements and associated legal instruments which form an integral part of the Agreement Establishing the WTO included in Annexes 1, 2 and 3 of the WTO Agreement[1] - which will be binding on all WTO Members; and

- the Plurilateral Trade Agreements (PTAs), which will be binding only on Members which have accepted them. The PTAs include Agreements and Arrangements on Civil Aircraft, Government Procurement, Dairy Products and Bovine Meat.

The WTO framework will serve as a vehicle to ensure a "single undertaking approach" to the results of the Uruguay Round. Thus, membership in the WTO will automatically entail accepting all the results of the Uruguay Round with exception only for the PTAs.

The WTO will have five main functions:

(i) To facilitate the implementation, administration, operation and further the objectives of the Agreement Establishing the WTO. It shall also provide the framework for the implementation, administration and operation of the PTAs.

(ii) To provide the forum for negotiations concerning the multilateral trade relations of its Members.

(iii) To administer the Understanding on Rules and Procedures Governing the Settlement of Disputes.

(iv) To administer the Trade Policy Review Mechanism.

(v) To cooperate, as appropriate, with the International Monetary Fund, the International Bank for Reconstruction and Development and its affiliated agencies.

According to the WTO Agreement, the most senior body of the WTO will be the Ministerial Conference meeting at least once every two years. A General Council will be established to oversee the operation of the WTO Agreement and Ministerial Decisions on a regular basis. This General Council will itself act as a Dispute Settlement Body and a Trade Policy Review Body, both of which will concern

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[1]For the purposes of this section, the terms "Agreement Establishing the WTO" and the "WTO Agreement", refer to the provisions of the WTO Agreement and the MTAs. This practice is in accordance with Article II:2 of the WTO Agreement, which stipulates that the Annexes 1, 2 and 3 are integral parts of the Agreement. Annex 4, containing the PTAs, is also part of the WTO Agreement for those Members that have accepted them.

themselves with the full range of trade issues covered by the WTO. There are also subsidiary bodies such as a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights and these can, on their side, establish other subsidiary bodies.

The WTO shall continue the practice of decision-making by consensus followed under the GATT 1947. When voting is necessary, the decisions shall be taken by a majority of the votes cast, unless otherwise provided for. For any decision on the interpretation of the WTO Agreement, as well as in most cases where a waiver is to be granted, approval by a three-fourths majority of the Members is required. The WTO Agreement also contains detailed rules concerning the submission for acceptance, the voting and the obligations of each Member with respect to amendments to the WTO Agreement and the PTAs.

The Agreement Establishing the WTO provides for non-application to allow a Member not to apply the WTO Agreement vis-à-vis a newly acceding country, and vice-versa. Original Members of the WTO who were contracting parties to the GATT, may only invoke this provision, if, at the time of entry into force of the WTO, the non-application provision was already being invoked in respect of GATT 1947.

Contracting parties to the GATT 1947 which accept the WTO Agreement will automatically become original Members of the WTO only if they have schedules of market access concessions and commitments (with respect to tariffs and non-tariff measures in industrial goods as well as undertakings in agriculture), and schedules of specific commitments in the area of services.

Countries and territories possessing full autonomy in the conduct of external commercial relations may accede on terms agreed and approved by the Ministerial Conference. Accession of new Members will be approved by a two-thirds majority of votes cast. The provision that the WTO Agreement shall remain open for acceptance by Members qualifying for original membership for a two-year period following its entry into force applies to all contracting parties. The possibility of this option was a special concern on the part of developing countries.

Recognition of Interests

Preamble

Members of the World Trade Organization recognize that one of the objectives of the WTO will be to ensure that developing country Members, and especially the **least-developed countries**, secure a share in the growth of international trade that is commensurate with their economic development needs. They also recognize that this objective will require a number of positive efforts from all Members.

Structure of the WTO: Article IV:7

As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the **least-developed countries** and report to the General Council for appropriate action.

Original Membership: Article XI:2

The requirement that original Members must have schedules of market access concessions and specific services commitments applies to all categories of Members. An additional period of one year has been provided for **least-developed countries** to submit their schedules in the Decision in Favour of **Least-Developed Countries** (see Section 7.1 of this part of the paper). Those developing country Members recognized as **least-developed countries** by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities.

II

2. MULTILATERAL AGREEMENT ON TRADE IN GOODS

2.1 General Agreement on Tariffs and Trade 1994

Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994

The Understanding clarifies and makes more effective the disciplines and procedures in the General Agreement governing the use of balance-of-payments safeguard measures while safeguarding existing rights and obligations. It stipulates that Members imposing restrictions for balance-of-payments purposes should do so in the least trade-disruptive manner and should favour price-based measures, such as import surcharges and import deposits, rather than quantitative restrictions. It requires Members to seek to avoid the imposition of new quantitative restrictions unless, because of a critical balance-of-payments situation, price based measures cannot arrest a sharp deterioration in the internal payments situation. It also includes procedures for consultations with the WTO Balance-of-Payments (BOP) Committee, as well as for notification of BOP measures.

Recognition of Interests

Notification and Documentation: paragraph 12
In the case of developing country Members, Secretariat background documentation will include relevant background and analytical material on the external trading environment, as well as on the balance-of-payments situation and prospects of the consulting Member.

Fewer Obligations

Procedures for Balance-of-Payments consultations: paragraph 8
Consultations with the Balance-of-Payments Committee may be held under simplified procedures in the case of -

- **least-developed countries**; or
- a developing country Member pursuing liberalization efforts in conformity with a time-schedule already presented to the BOP Committee; or
- a developing country Member for which a Trade Policy Review is scheduled for the same year as the BOP consultations.

The Committee is to decide on the type of procedure for consultations based on the factors enumerated in the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes.

The Understanding provides for more than two successive consultations under simplified procedures only in the case of **least-developed countries**.

Technical Assistance

Notification and Documentation: paragraph 12
The Understanding provides that the technical assistance services of the WTO Secretariat shall be available to assist any developing country Member in preparing documentation for the consultations.

Other Understandings on GATT 1994 Articles

While the texts on other GATT Articles subject to revision during the Uruguay Round do not make reference to either developing countries or **least-developed countries**, they have been included in this background paper for the sake of completeness. The Understanding on Article XXVIII is of particular interest to developing countries (see below).

Schedules of Concessions: Article II:1(b)

The Understanding requires Members to record in their schedules duties or charges levied in addition to the recorded tariff in national schedules. These are to be bound at the levels prevailing on 15 April 1994.

State-trading Enterprises: Article XVII

The Understanding establishes a working definition of state-trading enterprises for the purpose of notification. Further, it increases the surveillance of the activities of state-trading enterprises through stronger notification and review procedures.

Customs Unions and Free-Trade Areas: Article XXIV

The Understanding clarifies and reinforces the criteria and procedures for the review of new or enlarged customs unions or free-trade areas. It establishes the methodology for the evaluation of the incidence of duties and regulations before and after the formation of the regional trading arrangement. It also clarifies the procedure for compensatory adjustment should Members form a customs union and seek to increase a bound tariff. The obligations of Members in regard to measures taken by regional or local governments or authorities within their territories are also clarified.

Waivers: Article XXV:5

The Understanding specifies expiry dates for existing waivers. It also clarifies the situations where Members may invoke dispute settlement procedures for waivers that have been granted.

Modification of GATT Schedules: Article XXVIII

The Understanding establishes additional rules for the negotiation of compensation when tariff bindings are modified or withdrawn. These concern the determining of Members with negotiating rights; in particular, considerations relating to new products and the basis of trade used to make such a determination. A new negotiating right is created for the Member for which the exports affected account for the highest proportion of its exports. This is expected to secure a redistribution of negotiating rights in favour of small and medium sized exporting Members.

Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994

Commitments to eliminate or reduce tariffs and non-tariff measures applicable to trade in goods are recorded in Members' schedules of concessions. They are annexed to the Marrakesh Protocol and form an integral part of the Final Act. The Schedule of a Member comprises of four parts. The first part contains m.f.n. tariff concessions and tariff quotas for agricultural products, as well as m.f.n. tariff concessions for non-agricultural products. The second part contains preferential tariffs (if applicable), while part three contains concessions on non-tariff measures. The fourth part relates to commitments limiting subsidization on agricultural products. This in turn is divided into domestic support (i.e. total AMS commitments), export subsidies (i.e. budgetary outlay and quantity reduction commitments), and commitments limiting the scope of export subsidies. For each Member, the schedule annexed to the Marrakesh Protocol will become a Schedule to the GATT 1994 on the day on which the Agreement Establishing the WTO enters into force for that Member.

For non-agricultural products the tariff reductions will be implemented in five equal rate reductions, except as may be otherwise specified in a Member's Schedule. The first reduction will be effective on the date of entry into force of the Agreement Establishing the WTO. Each successive reduction will be on 1 January of each of the following years, and the final rate will become effective no later than four years after the entry into force of the Agreement Establishing the WTO. Members may, however, implement reductions in fewer stages, or at earlier dates than those indicated in the Protocol, if they so wish.

For agricultural products, the reduction will be implemented as specified in the relevant parts of the schedules. (See in the section of this document concerning the Agricultural Agreement.)

A related Decision on Measures in Favour of **Least-Developed Countries** establishes, among other things, that these countries will not be required to undertake any commitments and concessions which are inconsistent with their individual development, financial and trade needs. Alongside other provisions for flexible and favourable treatment, the Decision allows for the completion of their schedules for goods and services by April 1995 rather than 15 December 1993.

Implementation Period

Paragraph 1
Schedules of **least-developed country Members** may be submitted by 15 April 1995 (rather than 15 December 1993 as for other countries). Their schedules will also be annexed to the Marrakesh Protocol.

2.2 Agreement on Agriculture

While trade in agricultural products has in the past been governed by both general and specific GATT disciplines, they are less operational and less effective than for industrial goods. In practice, this has had two effects. First, it has contributed to uncompetitive production and growing surpluses shielded behind a wide variety of market restrictions and subsidy practices in many countries. Second, agricultural products have been largely excluded from the reductions in tariffs and non-tariff measures made in previous negotiating rounds.

The recognition of these facts by governments is reflected in the long-term objectives as agreed at the Mid-Term Review - i.e. to establish a fair and market-oriented agricultural trading system. The Agreement on Agriculture is based on a two-pronged approach: (i) re-instrumentation; that is, a conversion of all non-tariff measures into tariffs ("tariffication"); and (ii) binding commitments in the areas of market access, domestic support and export competition.

The results of the Uruguay Round negotiations on agriculture comprise two components:

- The Uruguay Round Agreement on Agriculture; and,
- schedules of commitments undertaken by Members and established according to the guidelines for negotiations contained in document MTN.GNG/MA/W/24.

(a) The Agreement

The Agreement on Agriculture stipulates that Members must undertake specific binding and reduction commitments in the areas of market access, domestic support and export subsidies. **Least-developed countries** are exempted from undertaking reduction commitments. All commitments are

recorded in each Member's Schedule of agricultural concessions and commitments. This initial reform of trade in agriculture will be made over an implementation period of six years (10 years for developing countries).

Market access concessions include bindings and reductions of tariffs and the introduction of tariff quotas at reduced tariff rates. Recourse or reversion to non-tariff measures is not allowed since this would nullify the concessions (in the sense of this paragraph, "non-tariff measures" exclude general non-agriculture-specific provisions of GATT 1994 such as those measures maintained under balance-of-payments provisions). For products that have been subject to tariffication, the Agreement allows Members to have recourse to a special safeguard mechanism, on a temporary basis, so as to limit imports in the event of a surge of imports or significant falls in the import price. Such safeguard measures are to take the form of increased tariffs. The trigger in the safeguard for import surges depends on the "import penetration" currently existing in the market (i.e. where imports make up a large proportion of consumption, the import surge required to trigger the special safeguard is lower). This special safeguard mechanism will remain in force for the duration of the reform process, as defined in the continuation clause (see below).

In order to facilitate the implementation of tariffication in particularly sensitive situations, a "special treatment" clause of the Agreement allows, under certain carefully and strictly defined conditions, a Member to maintain import restrictions up to the end of the implementation period. Negotiations on any possible extension of such special treatment must be completed before the end of the six-year implementation period (or ten year in the case of developing countries).

The Agreement provides for commitments on all domestic support in favour of agricultural producers, with the exception of three groups of policies. The first are those policies that have no, or at most minimal, trade distortion effects or effects on production, and which meet basic and policy-specific criteria. These are designated as "green box" policies. Second are those policies involving direct payments under production-limiting programmes that conform to certain criteria. These are designated as "blue box" measures. Finally, those policies that involve specified types of assistance, whether direct or indirect, to encourage agricultural and rural development which are an integral part of the development programmes of developing countries. The Agreement also creates disciplines to ensure that any domestic support measure in favour of agricultural producers, including any modification of existing measures, is applied in conformity with the disciplines of the Agreement.

The types of policies in operation that may be classified as green box policies include: general service policies (research, training services, stockholding for food security objectives, domestic food-aid, etc.) and direct payments to producers (decoupled income support, income insurance, disaster relief, environmental programmes, regional assistance programmes, etc.). Production-limiting programmes included in the blue box are those for which the payments are based on fixed areas and yields, or are made on 85 per cent or less of the base level of production, or that livestock payments are made on a fixed number of head. Policies that may be classified as development policies which are exempt from reduction comprise generally available investment subsidies, domestic support to encourage diversification from the growing of illicit narcotic crops, and agricultural input subsidies provided to low-income or resource-poor producers. Any other measures comprising domestic support in favour of agricultural producers - that is, "amber box" policies - are subject to commitments through the reduction of the Total Aggregate Measurement of Support (AMS). Domestic support policies that do not exceed 5 per cent of the total value of production of a product, or product sector, will not be included in the Total AMS (*de minimis* provision). In the case of developing countries, the 5 per cent ceiling is increased to a 10 per cent ceiling.

With respect to export competition, the Agreement specifies the export subsidies which are subject to reduction commitments. There are direct subsidies contingent on export performance, the

sale or disposal for export of stocks at a price lower than that in the domestic market, payments on exports financed by producers by virtue of governmental action, subsidies to reduce the costs of marketing exports i. ing handling, upgrading and other processing costs, and the costs of international transport (but excluding widely available export promotion and advisory services), internal transport subsidies on export shipments; and subsidies on agricultural products contingent on their incorporation in exported products. Developing countries are not required to undertake commitments on subsidies to reduce the cost of marketing exports and internal transport subsidies. Some limited flexibility between years in terms of implementing export subsidy reduction commitments is provided for in the Agreement. Provisions aimed at preventing the circumvention of the export subsidy commitments are also elaborated. Food-aid (granted according to specific rules) is explicitly excluded from these provisions. An Article containing disciplines in the case of imposition by Members of export prohibitions and restrictions completes obligations in the area of export competition.

Further, the Agreement includes a continuation clause which calls for new negotiations to continue the reform process to commence one year prior to the end of the six year implementation period. It also contains "peace" provisions under which, during nine years, Members agree, with respect to products included in the reform programme:

- that certain actions available under the Subsidies Agreement (i.e. recourse to countervailing measures and to dispute settlement) will not be applied with respect to green box policies;

- that "due restraint" will be used in the application of countervailing duty rights under the General Agreement with respect to domestic support and export subsidies maintained in conformity with the commitments;

- that limits are established in terms of the applicability of nullification and impairment actions under Article XXIII:1(b) of GATT 1994; and

- domestic support (subject to limits) and export subsidies conforming to reduction commitments will not be subject to action under Article XVI of GATT 1994 or Articles 3, 5 and 6 of the Subsidies Agreement.

The Agreement establishes a Committee on Agriculture.

Many developing countries are efficient producers of agricultural products from both temperate and tropical zones. With the implementation of the results of the Uruguay Round, these countries would benefit not only from improved market access opportunities in developed and other developing country markets, but also from the reduction of subsidized exports and trade distorting production incentives in other countries. It is likely that the share of developing countries in the world market for agricultural products will increase.

As increases in the level and stability of world prices for many agricultural products are passed through to producers, domestic production levels in developing countries, including the **least-developed** and net food-importing countries, would be expected to increase. Possible negative effects of the reform programme on **least-developed** and net food-importing developing countries are addressed in a Ministerial Decision (see section seven of this document).

Recognition of Interests

Preamble

It is stated that special and differential treatment to developing country Members is an integral element of the Uruguay Round negotiations. In addition, account is to be taken of the possible negative effects of the implementation of the reform programme on **least-developed** and net-food importing developing country Members.

Special and Differential Treatment: Article 15:1

It is re-stated that special and more favourable treatment for developing country Members was an integral part of the negotiation, and commitments shall be applied accordingly, including ten-year implementation period

Least-developed and Net-Food Importing Developing Countries: Article 16.1

Developed country Members are to take actions as provided for within the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on **Least-Developed** and Net-Food Importing Developing Countries.

Continuation of the Reform Programme: Article 20(c)

Within the negotiations for continuing the reform in agricultural trade, Members are to take into account special and differential treatment to developing country Members.

Fewer Obligations

Domestic Support Commitments: Article 6:2

The following domestic support policies adopted by developing country Members are excluded from the reduction commitments -

- investment subsidies generally available to agriculture;
- agricultural input subsidies generally available to low-income or resource-poor producers; and
- support to producers to encourage diversification from growing illicit narcotic crops.

Domestic Support Commitments: Article 6:4

Under the *de minimis* provision, domestic support policies of developing country Members which do not exceed 10 per cent of the total value of production (product-specific or non-product-specific) are excluded from reduction commitments (the *de minimis* figure for developed country Members is 5 per cent).

Export Subsidy Commitments: Article 9:2(b)(iv)

The flexibility granted for implementing export subsidy commitments apply both to developed and developing country Members. It is, however, restated that the final reduction is smaller for developing countries.

Export Subsidy Commitments: Article 9:4

Developing country Members may use the following subsidies, which are subject to reduction commitments in the case of developed country Members, to promote exports -

- subsidies to reduce the costs of marketing exports, including handling, upgrading and other processing costs, and the costs of international transport; and

- internal transport charges on export shipments on terms more favourable than for domestic shipment.

Disciplines on Export Prohibition and Restriction: Article 12:2

The provision that states that any Member applying an export prohibition or restriction on foodstuffs has to give due consideration to the effect of such a measure on importing Members' food security, and have to be previously notified to the Committee on Agriculture does not apply to developing country Members unless the Member is a net-exporter of the concerned foodstuff.

Special and Differential Treatment: Article 15:2

Least-developed countries are not required to undertake reduction commitments in any area of the negotiations.

Public stockholding for food security purposes: Annex 2, paragraph 3 and Footnotes 5 and 6

The criteria and conditions to consider this policy as green box policy are more flexible for developing countries. Accordingly, they include all governmental stockholding programmes for food security, including those where foodstuff stocks are acquired and released at administered prices and those where foodstuffs are provided at subsidized prices for urban and rural poor on a regular basis.

Domestic food aid: Annex 2, paragraph 4 and Footnote 6

As above, more flexible criteria apply to such programmes held in developing countries. Thus, programmes aimed at granting foodstuffs for urban and rural poor on a regular basis at reasonable (subsidized) prices shall be considered as green box policies.

(b) Schedules of Commitments

The modalities for Members to adopt in establishing their Schedules of concessions and commitments in the three areas of market access, domestic support and export competition are stipulated in the Modalities for the Establishment of Specific Binding Commitments Under the Reform Programme (Document MTN.GNG/MA/W/24).

In terms of market access, the Modalities require the binding of all tariff lines, and, for developed countries, an average reduction of 36 per cent from the base tariff rate with a minimum reduction of 15 per cent per tariff line over a six year period. For developing countries, the implementation period is ten years and the required tariff reduction two-thirds of that applying to developed countries.

Different modalities were provided for products with duties that are currently bound, and products with duties that are currently unbound. For currently bound duties, tariff reductions were applied to the present bound rate, or, where the product concerned is subject to border measures other than ordinary customs duties - with the exception of those products receiving "special treatment" - the "tariffication" package will apply (see below). For currently unbound duties, tariff reductions were applied to the normally applicable rate in September 1986, a tariff equivalent (see below), or, in the case of developing participants, a ceiling binding offer was sometimes used as the basis for tariff reductions. Developing countries have the flexibility to make a ceiling binding offer across the entire tariff schedule in lieu of reduction commitments.

Products subject to the tariffication "package" were those agricultural products affected by any of the following border measures: quantitative import restrictions; variable import levies; minimum import prices; discretionary import licensing; non-tariff measures maintained through state-trading enterprises; voluntary export restraints; and any other schemes that have border effects similar to the measures listed. However, the package does not include measures taken for balance-of- payments

reasons, or those taken under general safeguard and exception provisions (Articles XII, XVIII, XIX, XX and XXI of the General Agreement).

The tariffication package includes the replacement of the non-tariff measure by a tariff equivalent - that is, a customs duty designed to provide a level of protection equivalent to the existing level. The tariff equivalent was generally calculated using the difference between the domestic price and the world price for the product concerned in the 1986 to 1988 base period. The tariff equivalent is the base tariff to which tariff reductions are applied.

The tariffication package also includes current access provisions, requiring the maintenance of import opportunities representing at least the quantity of imports in the 1986-88 base period, and minimum access provisions where current access quantities represent less than 5 per cent of domestic consumption of the same product in the base period. These latter provisions require that new tariff quotas, provided on a most-favoured-nation basis, be implemented at a low or minimal tariff rate. The initial quantity of the tariff quota will represent 3 per cent of domestic consumption and will rise to 5 per cent by the end of the implementation period. The special safeguard provisions of the Agreement may be applied to the tariffication products if a note to this effect is included in a Member's Schedule (tariff-only products are not eligible for special safeguard treatment).

With respect to domestic support, the Modalities state that only the amber box policies will be subject to commitments, through the reduction of the Total AMS. The AMS captures principally the effects of administered price policies and non-exempt direct payments through an internal/external price difference. It must be reduced by 20 per cent over the implementation period (13.3 per cent reduction over 10 years for developing countries) and bound at its final level at the end of the implementation period. The base period for domestic support is 1986-88. If the support for a product is at low levels (i.e. 5 per cent of the value of production for developed countries and 10 per cent for developing countries), the *de minimis* clause operates allowing a Member not to include in their calculation of Current Total AMS that support.

With respect to export competition, the Modalities provide for the reduction of direct export subsidies by 36 per cent in terms of budgetary outlays and by 21 per cent in terms of quantity. Reductions by developing countries are two-thirds of those applying to developed countries. The base period for the export subsidy commitments is the 1986-90 average, and reduction commitments are to be implemented by developed and developing countries over 6 and 10 years respectively. Where subsidized exports have increased since the 1986-90 base period, 1991-92 average, or the average between 1986-90 and 1991-92 may be used, in certain circumstances, as the beginning point of the reduction, although the end-point remains that based on the 1986-90 level. Commitments on export subsidies include undertakings not to introduce or reintroduce subsidies on commodities that did not receive such subsidies during the base period.

Recognition of Interests

Special and Differential Treatment: Paragraph 17

Developed country Members are to provide greater market access for agricultural products of particular interest to developing country Members, including the fullest liberalization of trade in tropical agricultural products and products substituting for illicit narcotic crops.

Fewer Obligations

Special and Differential Treatment: Paragraph 14

Developing country Members have the flexibility to offer ceiling bindings on unbound products in lieu of taking reduction commitments on the tariff levels applied in 1986.

Special and Differential Treatment: Paragraph 15
Rates of reduction applying to developing country Members in the areas of market access, domestic support and export competition will be two-thirds of those applying to developed country Members.

Special and Differential Treatment: Paragraph 16
Least-developed countries are exempted from the reduction commitments.

Special and Differential Treatment: Paragraph 18
There is a re-statement of the special and differential treatment for developing country Members related to amber-box policies contained in Article 6:2 of the Agreement on Agriculture (see above).

Special and Differential Treatment: Paragraph 19
There is a re-statement of the special and differential treatment for developing country Members related to the *de minimis* clause contained in Article 6:4 of the Agreement on Agriculture (see above).

Special and Differential Treatment: Paragraph 20
There is a re-statement of the special and differential treatment for developing country Members related to export subsidies contained in Article 9:4 of the Agreement on Agriculture (see above).

Public stockholding for food security purposes: Annex 4, paragraph 3 and Footnotes 2 and 3
The same provision as in Annex 2, paragraph 3 of the Agreement on Agriculture.

Domestic food aid: Annex 4, paragraph 4 and Footnote 3
The same provision as in Annex 2, paragraph 4 of the Agreement on Agriculture.

Implementation Period

Special and Differential Treatment: Paragraph 15
Developing country Members will be able to implement the reduction commitments over a period of 10 years compared with 6 years for developed country Members.

2.3 Agreement on the Application of Sanitary and Phytosanitary Measures

The basic aim of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is to maintain the sovereign right of any government to provide the level of health protection it deems appropriate, but to ensure that these rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade.

Under the SPS Agreement, Members can apply only those sanitary and phytosanitary measures necessary for the protection of food safety and animal and plant health. Such measures shall be based, as far as possible, on the analysis and assessment of objective scientific data. The SPS Agreement encourages governments to establish national SPS measures consistent with international standards, guidelines and recommendations (i.e. to "harmonize" their requirements). Specifically, the Agreement refers to the standards and guidelines developed for food safety by the FAO/WHO Codex Alimentarius Commission, for animal health by the International Office of Epizootics, and for plant health by the FAO International Plant Protection Convention. These standards are developed by leading scientists in the field and governmental experts on health protection. Further, they are subject to international scrutiny and review.

In cases where no relevant international standard exists, or if Members choose not to base their measure on an international standard, Members shall establish SPS measures on the basis of an appropriate assessment of the actual risks involved. The Agreement clarifies which factors shall be taken into account in the risk assessment. If a national requirement results in a greater restriction of trade than if based on an international standard, Members may be challenged to show a scientific justification for the measure. Alternatively, they may demonstrate that the relevant international standard would not result in the level of health protection the country considered acceptable.

Furthermore, Members will have to accept that different methods used in exporting Members may provide equivalent health protection. In addition, in many instances an importing Member can use any one of a number of alternatives to ensure an acceptable level of risk. In deciding among alternative measures which provide the same level of food safety or animal and plant health, governments are to apply those which *least restrict trade* if they are technically and economically feasible.

The SPS Agreement requires Members to recognize geographic areas free of specific pests or diseases, and to adapt their requirements on the basis of the area from which the product originates and the area to which it is destined. *Unjustified discrimination*, however, whether in favour of domestic producers or among foreign suppliers, is not permitted.

Sanitary and phytosanitary requirements which restrict trade will have to be notified through the WTO Secretariat, and national inquiry points set up to respond to requests for information. Members will also need to open to scrutiny how they apply their food safety and animal and plant health regulations.

A Committee will be established to review compliance with the Agreement, discuss matters with potential trade impacts, and maintain close co-operation with the appropriate technical organizations. In a trade dispute regarding a sanitary or phytosanitary measure, the normal WTO dispute settlement procedures will be used, and advice from appropriate scientific experts may be sought.

Developing countries have at times found access to markets for their agricultural exports unexpectedly blocked by sanitary and phytosanitary restrictions which they had no means of challenging. The SPS Agreement requires that all such restrictions be transparent and justified, and encourages Members to use internationally developed standards. In addition, different means of achieving certain levels of health protection must be recognized as being equivalent, which should result in greater acceptance of the safety practices of developing countries. Many developing countries have based their sanitary and phytosanitary measures on the standards developed by international bodies, particularly the Codex standards for food safety, so their requirements would generally be considered as justified under the terms of the SPS Agreement.

Recognition of Interests

Preamble

There is a recognition that developing country Members may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing countries and thus have a limited access to external markets. Members agree that there is a need to assist these countries in reacting to this situation, and in formulating and applying sanitary and phytosanitary measures in their own territories.

Special and Differential Treatment: Article 10:1

Members are to take into account the special needs of developing country Members, and in particular of the **least-developed countries**, in the preparation and application of sanitary or phytosanitary measures.

Special and Differential Treatment: Article 10:2

Members should accord longer time-frames for compliance with their new sanitary or phytosanitary measures on products of interest to developing country Members, where there is scope for a phased introduction of these new measures.

Annex B - Publication of Regulations: Paragraph 2

Except in urgent circumstances, Members are to allow a reasonable interval between the publication and entry into force of a sanitary or phytosanitary regulation for producers in exporting Members, particularly in developing country Members, to adapt their products and methods of production to these requirements.

Implementation Period

Special and Differential Treatment: Article 10:3

Upon request, the Committee on Sanitary and Phytosanitary Measures is enabled to grant to a developing country Member, specified, time-limited exceptions in whole or in part, from obligations under this Agreement, taking into account its financial, development and trade needs.

Final Provisions: Article 14

The **least-developed countries** may delay the application of all of the provisions of this Agreement related to their measures affecting imports for a period of five years following the entry into force of the WTO. Other developing country Members may delay application for two years with respect to their existing import requirements, where this is justified by a lack of technical expertise, infrastructure or resources. However, there is no delay envisaged for the application of their obligation to provide, upon request, an explanation of the reasons for the introduction of a sanitary or phytosanitary measure and the obligation to notify and provide information on such measures.

Technical Assistance

Technical Assistance: Article 9:1

Members agree to facilitate the provision of technical assistance to developing country Members, either bilaterally or multilaterally, so as to comply with their trading partners' requirements. This may be in the areas of processing technologies, research and infrastructure and training, and may take the form advice, credits, donations and grants.

Technical Assistance: Article 9:2

Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter is to consider providing the necessary technical assistance.

Annex B - Notification procedures: Paragraph 9

The WTO Secretariat will draw the attention of developing country Members to any notification relating to products of particular interest to them.

Special and Differential Treatment: Article 10:4

Members should encourage and facilitate the active participation of developing country Members in international organizations related to sanitary and phytosanitary regulations.

2.4 Agreement on Textiles and Clothing

The Multifibre Arrangement (MFA) has been in force for 20 years as a derogation from the basic principle of non-discrimination of GATT. During this period, MFA quotas have been applied almost exclusively to exports of developing countries. The Agreement on Textiles and Clothing has been generally recognized as an important achievement for developing countries as it establishes an integration process whereby, during a ten-year, three-stage transitional period, products covered by the Agreement will be progressively integrated into the rules of the GATT. Concurrent with this integration process there will be a programme for liberalizing existing quotas; that is, the quotas carried over from the former MFA on products not yet integrated. In addition, other restrictions on textiles and clothing, not consistent with GATT, must be either brought into conformity or phased out.

The Agreement also provides for a special transitional safeguard mechanism, which applies in respect of any product not yet integrated into GATT and not already under restraint, if , as a result of an import surge, there should be serious damage or actual threat thereof to the domestic industry. To ensure transparency and the proper functioning of the Agreement, a Textiles Monitoring Body comprising a Chairman and ten Members will supervise all aspects of its operation, report at regular intervals and deal with dispute settlement matters. There are also provisions to deal with instances of circumvention of quotas by transshipment, re-routing, false declaration of country or place of origin, or falsification of official documents.

At the end of the transitional period, the era of discriminatory, bilateral quota measures will have ceased, and only normal GATT rules, as strengthened in the Uruguay Round, will apply.

Recognition of Interests

Preamble

The Preamble recalls that **least-developed countries** should be accorded special treatment.

Article 1:2, 3, 4 and Footnote 1

This Article refers to three categories of Members which should receive treatment better than the norms otherwise prescribed in the Agreement:

- Paragraph 2 reinforces the provisions of Articles 2:18 and 6:6(b) (see below), by emphasizing that small suppliers must be given meaningful increases in access possibilities, while new entrants to trade in this sector must be allowed to develop commercially significant trading opportunities. In a footnote to this paragraph, it is stated that exports from **least-developed Members** may, to the extent possible, also benefit from such provision.

- Paragraph 3 recognizes that, to the extent possible, Members who did not participate in the MFA IV warrant special treatment. This is reflected in specific terms in the time periods for making notifications.

- Paragraph 4 recognizes that cotton producing exporting Members have particular interests which should be reflected, in consultation with them, in the implementation of the Agreement.

Article 2:18

Small exporters who are subject to MFA quotas and whose restrictions in volume terms are 1.2 per cent, or less, of total restrictions in an importing Member as of 31 December 1991, move ahead

one stage in the growth process (or an equivalent benefit by mutual agreement). In other words, such Members will benefit from the growth factor of 25 per cent as from the first year of operation, and 27 per cent as of the fourth year (instead of 16 per cent, 25 per cent and 27 per cent in the 3-4-3 year periods).

Article 6:6

The transitional safeguard lists three categories of exporters, and one particular form of trade, which are to be given consideration beyond the norms set out in Article 6:

- Paragraph 6(a) singles out the **least-developed countries** for significantly more favourable treatment than that provided in that Article for small suppliers, wool producing exporting countries and countries having a significant proportion of their trade in outward processing. This more favourable treatment should be preferably with respect to all the elements of the Article, but at least in overall terms.

- Paragraph 6(b) recognizes the needs of small suppliers through provision for more favourable treatment in the application of quota base levels, growth rates and flexibility. It also recognises the need to take into account the future possibilities for the development of their trade and to allow commercial quantities of imports from them.

- Paragraph 6(c) highlights the special situation of developing country Members which are comparatively small textiles and clothing exporters, whose economies are dependent on the wool sector, and whose trade in textiles and clothing consists almost exclusively of wool products. Their export needs shall be given special consideration when applying the safeguard in terms of the quota levels, growth rates and flexibility.

- Paragraph 6(d) provides that for Members having a significant portion of their exports in outward processing trade, more favourable treatment is to be given to such trade.

List of Products Covered by this Agreement: Annex, paragraph 3

Transitional safeguard actions cannot be taken against exports of handloom fabrics from developing country Members; hand-made cottage industry products or folklore handicrafts when properly certified; historically traded products such as bags, sacks, etc. from jute and some other fibres; and pure silk products. Any safeguard action taken in respect of such products (of interest to developing countries) shall be based on Article XIX of GATT 1994.

Implementation Period

Article 2:7

Longer time-frames for implementing certain obligations are provided for Members which did not have restraints under the MFA. Therefore, for the Members with MFA restraints (all of which are developed countries), full details of their first integration programme must be notified not later than 1 October 1994. For other former MFA members (most of which are developing countries), such notification is required not later than 60 days following the entry into force of the Agreement, and for non-MFA members, not later than the end of first year of operation.

Article 6:1

MFA members without restraints (most of which are developing countries) have 60 days after entry into force of the Agreement, and non-MFA members have 6 months, to give notice as to whether they wish to have the right to use the special transitional safeguard mechanism. (MFA members with restraints have automatically the right to use such a mechanism.)

2.5 Agreement on Technical Barriers to Trade

The Uruguay Round Agreement on Technical Barriers to Trade (TBT) clarifies and expands upon the Tokyo Round Agreement, but does not fundamentally alter its objectives or principal obligations. The Tokyo Round Agreement has attracted more developing country support than any other Tokyo Round Code; Argentina, Brazil, Chile, Egypt, Hong Kong, India, Indonesia, Israel, Korea Malaysia, Mexico, Morocco, Pakistan, Philippines, Romania, Rwanda, Singapore, Thailand, Tunisia and Yugoslavia are signatories and sixteen more are observers.

It is generally felt that the Tokyo Round Agreement provides developing countries with valuable rights without imposing arduous obligations. This is primarily because the non-tariff barriers covered by the Agreement are applied preponderantly by industrialized countries; developing countries make limited use of technical regulations and standards, and those that they do apply are generally set at a relatively low level which overseas suppliers do not find difficult to meet.

The main benefits to developing countries derive from the very high degree of transparency imposed by the Agreement on the preparation and administration of technical regulations and standards in industrialized countries, and their right to intervene during the preparation stage to ensure that the measures are drafted in such a way as to take account of their trade interests (i.e. "no more trade restrictive than necessary").

The Uruguay Round Agreement improves on the Tokyo Round Agreement by (i) tightening obligations to ensure that technical regulations and conformity assessment procedures do not create unnecessary non-tariff barriers to trade; (ii) extending those obligations more clearly to sub-national government authorities and non-governmental bodies; (iii) encouraging mutual recognition of other countries' own technical regulations, standards, and conformity assessment procedures; and (iv) imposing new disciplines on voluntary standard setting.

The provisions for technical assistance to, and special and differential treatment for, developing countries, have not been changed in the Uruguay Round Agreement. They provide, in particular, additional flexibility to developing countries in applying the Agreement and require industrialized countries to pay special attention to the trade interests of developing countries when applying their technical regulations, standards, and conformity assessment procedures.

Recognition of Interests

Preamble

There is a recognition that international standardization can contribute to the transfer of technology from developed to developing country Members. It is also recognized that developing country Members, which may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for the assessment of conformity, may need assistance from Members of the Agreement.

Preparation, Adoption and Application of Technical Regulations by Central Government Bodies: Article 2:12

Except in cases of safety, health, environmental protection or national security urgencies, Members are to allow a reasonable interval between the publication and entry into force of technical regulation for producers in exporting Members, particularly in developing country Members, to adapt their products or methods of production to these requirements.

Procedures for Assessment of Conformity by Central Government Bodies: Article 5:9

Except in cases of safety, health, environmental protection or national security urgencies, Members shall allow a reasonable interval between the publication and entry into force of requirements concerning conformity assessment procedures for producers in exporting Members, particularly in developing country Members, to adapt their products or methods of production to these requirements.

Special and Differential Treatment of Developing Countries: Article 12

The special development, financial and trade needs of developing country Members shall be taken into account -

(i) by all Members -

- in the implementation and operation of the Agreement both nationally and multilaterally (Article 12:2); and

- in the preparation and application of their technical regulations, standards and conformity assessment procedures so as to ensure that they do not create unnecessary obstacles to exports from developing country Members (Article 12:3).

(ii) by developed Members, during consultation with respect to the special difficulties of developing country Members in formulating and implementing standards, technical regulations and conformity assessment procedures (Article 12:9).

Special and Differential Treatment for Developing Countries: Article 12

Members shall take such reasonable measures as may be available to them to ensure that:

- the organization and operation of international standardizing bodies and international systems for conformity assessment facilitate participation of relevant bodies in developing country Members (Article 12:5); and

- upon request of developing country Members, international standardizing bodies will examine the possibility of preparing international standards concerning products of special interest to developing country Members. (Article 12:6).

Special and Differential Treatment of Developing Countries: Article 12:10

The Committee on Technical Barriers to Trade will periodically examine the special and differential treatment granted to developing country Members.

Fewer Obligations

Special and Differential Treatment of Developing Countries: Article 12:4

Developing country Members should not be expected to use international standards which are not appropriate to their situation as a basis for their technical regulations, standards or test methods.

Implementation Period

Special and Differential Treatment of Developing Countries: Article 12:8

Upon request, a developing country Member may be granted, by the Committee on Technical Barriers to Trade, specified, time-limited exceptions in whole or in part from obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the **least-developed countries**.

Technical Assistance

Information About Technical Regulations, Standards and Conformity Assessment Procedures: Article 10:6

The WTO Secretariat will draw the attention of developing country Members to any notification relating to products of particular interest to them.

Technical Assistance to Other Members: Article 11

Technical assistance and advice, especially for developing country Members, will be provided by Members upon request on mutually agreed terms and conditions. Priority shall be given to the needs of **least-developed countries** in providing technical assistance. The Article establishes two levels of obligations in this respect:

(i) Full obligation for all Members to provide technical assistance to developing country Members regarding -

- the preparation of technical regulations (Article 11:1);
- the establishment of national standardizing bodies and participation in international standardizing bodies (Article 11:2);
- the steps to be taken by developing country producers to have access to systems for conformity assessment within the territory of the Member receiving the request (Article 11:5); and
- the establishment of the institutions and legal framework necessary to fulfil the obligations of membership or participation in international or regional systems for conformity assessment. The granting of this technical assistance applies only for those Members participating in these systems (Article 11:6).

(ii) Best endeavours or second level obligation where Members shall take all reasonable measures as may be available to them -

- to grant technical assistance regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member (Article 11:4);
- with respect to the regulatory bodies within their territories, to arrange for the granting of technical assistance regarding the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations, and the methods by which their technical regulations can be best met (Article 11:3);
- with respect to the regulatory bodies within their territories which are members or participants of international or regional systems for conformity assessment, to encourage these bodies to advise and consider requests for technical assistance regarding the establishment of the institutions which enable bodies in developing country Members to fulfil the obligations of membership or participation (Article 11:7);

- with respect to the national standardizing bodies within their territories, to grant technical assistance regarding the establishment of national standardizing bodies and participation in the international standardizing bodies (Article 11:2).

Special and Differential Treatment of Developing Countries: Article 12:7

Members are to grant technical assistance to developing country Members so as to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the exports of developing country Members. Terms and conditions of technical assistance will be determined in light of the stage of development of the Member, particularly in the case of **least-developed countries**.

2.6 Agreement on Trade-Related Investment Measures

The Agreement on Trade-Related Investment Measures (TRIMs) requires that no Member shall apply any TRIM that is inconsistent with the provisions of Article III (National Treatment) or Article XI (General Elimination of Quantitative Restrictions) of the GATT, unless it can be justified under GATT exceptions. An Illustrative List of five types of TRIMs which are agreed to be inconsistent with Articles III or XI is annexed to the Agreement. The list mainly involves measures which require particular levels of purchase or use of products of domestic origin (i.e. local content requirements), or which restrict the volume or value of imports to an amount related to the level of exports (i.e. trade-balancing requirements).

All TRIMs inconsistent with the Agreement have to be notified within ninety days of its entry into force. TRIMs which are so notified must be eliminated within a transition period; two years for developed country Members and longer for developing and **least-developed country** Members (see below). A Committee on Trade-Related Investment Measures will be established to monitor the implementation of the Agreement.

It is provided that, within five years of entry into force of the WTO Agreement, consideration shall be given as to whether the TRIMs Agreement should be complemented with provisions on investment and competition policies.

Recognition of Interests

Preamble

It is recognized that the expansion and progressive liberalization of trade and investment across international frontiers, aimed at increasing economic growth of all Members and especially that of developing country Members, is to take into account the particular trade, development and financial needs of developing country Members, particularly those of the **least-developed countries**.

Fewer Obligations

Developing Country Members: Article 4

Particular recognition is given to the right of developing country Members to temporarily apply TRIMs figuring in the Illustrative List in accordance with Article XVIII:C (protection of infant industries) and GATT rules on balance-of-payments safeguard measures (i.e. GATT Article XVIII:B, the 1979 Declaration and the Uruguay Round Understanding).

Implementation Period

Notification and Transitional Arrangements: Article 5:2

Developing country Members will have five years to eliminate all GATT inconsistent TRIMs, whilst developed country Members will have only two years. **Least-developed country** Members will have a seven-year transitional period.

Notification and Transitional Arrangements: Article 5:3

A developing country Member which demonstrates particular difficulties in implementing the provisions of the Agreement may have this transitional period extended by a decision by the Council for Trade in Goods. When analysing this question, the Council will take into account the individual development, financial and trade needs of the Member concerned.

2.7 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

The Anti-Dumping Agreement elaborates the rules for applying the provisions of Article VI of the General Agreement and the Tokyo Round Code. It provides greater uniformity and certainty in the implementation of rules on anti-dumping, thus protecting the interests of exporting countries, including developing countries. The additional disciplines in the Agreement include:

- more detailed methodology for calculating the dumping margin and, in general, stricter discipline on the data to be used for such a calculation;
- more detailed requirements for the determination of injury, in particular, threat of injury;
- a definition of producers related to exporters or importers;
- a specification of *de minimis* dumping margin and volume for terminating proceedings (i.e. anti-dumping cases are to be terminated if the margin of dumping or the share of the volume of imports from particular countries in the importing market are below the specified threshold levels);
- stricter disciplines on the initiation and subsequent investigation, imposition of provisional measures and price undertakings entered into by exporters;
- time limits on the duration of an investigation, the period within which refunds are to be provided and the duration of anti-dumping measures;
- increased transparency for the procedures to be followed by the investigating authorities and in the public notice;
- disciplines on the imposition of anti-dumping duties on exporters or producers who have not been investigated individually;
- an accelerated review for producers who did not export the product in question during the period of investigation;
- a review of anti-dumping measures by the authorities of the importing country; and
- a provision for domestic judicial review.

Article 6:13 states that the investigating authorities must take due account of any difficulties experienced by interested parties, in particular small companies, in supplying the information requested. As they should provide assistance to such parties, this provision is of particular interest to developing countries.

Because of the extensive nature of the new obligations, some developing countries may find it difficult to meet these obligations when taking anti-dumping actions, and they are likely to require technical assistance. Though the Agreement does not provide for technical assistance specifically to developing countries, the importance of such assistance has already been recognized and emphasized, for example, in the Decision of the Committee on Anti-Dumping Practices (Decision of 5 May 1980, ADP/2; BISD 27S/16). This Decision provides for technical assistance from developed countries to developing countries which are Parties to the Tokyo Round Code.

Recognition of Interests

Developing Country Members: Article 15
As in the case of Article 13 of the Tokyo Round Code, this Article provides the following:

(i) Special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures.

(ii) The possibility of finding constructive remedies provided by the Agreement has to be explored before applying anti-dumping duties which affect the essential interests of developing country Members.

2.8 Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

The provisions of this Agreement were not subject to negotiation in the Uruguay Round. However, the Agreement has been included for reasons of completeness and because of its relation to the Decision and the two texts described in the section of this paper relating to Ministerial Decisions.

Customs valuation practices have on occasion been found to have a more restrictive effect on trade than the customs duty itself. In some instances, they have created uncertainty and led to price increases which effectively undermined the value of a tariff binding and raised the amount of duty paid. The Tokyo Round Agreement on Customs Valuation resolved some of these difficulties. The Agreement provides a neutral, fair and precise system of customs valuation which eliminates uncertainty and arbitrariness, facilitates customs clearance operations, minimizes disputes between the importer and the Customs Administration and creates a climate of confidence. More specifically, in relation to developing countries, one of the objectives of the Agreement is to provide improved customs valuation systems which would be applied to developing countries' exports when they reach their principal markets; in particular, those of developed countries.

The system of valuation embodied in the Agreement follows commercial realities as closely as possible. It sets out five methods of valuation which are to be applied in the following hierarchical order: transaction value of the good itself; that of identical goods; that of similar goods; the deductive method and the computed method. Detailed rules have been established regarding the application of these five valuation methods. In addition, general rules relating to the rights of customs officials and importers, the conversion of currency, the treatment of confidential information, the right to appeal

against valuation determination, and the publication of national laws, regulations and judicial decisions have been formulated.

Recognition of Interests

Preamble

There is a recognition that the Agreement attempts to secure additional benefits for the trade of developing country Members.

Fewer Obligations

Annex III:3

The importer may request the reversal of the order of the fourth and fifth methods of valuation (i.e. deductive and computed value methods respectively). Developing country Members may make a reservation permitting them to refuse this request from the importer.

Annex III:4

A developing country Member may reserve the right to value imported goods on the basis of the unit price of post-importation sale if the goods have undergone further processing in the country of importation. In such cases, this method of valuation shall be applied whether or not the importer so requests (developed country Members can do so only upon request of the importer).

Implementation Period

Special and Differential Treatment: Article 20:1

Developing country Members which are not signatories of the Tokyo Round Agreement, but which have accepted the WTO, have a grace period of five years before applying the provisions of the Agreement.

Special and Differential Treatment: Article 20:2

Developing country Members which are not signatories of the Tokyo Round Agreement but which have accepted the WTO, have - over and above the five years mentioned above - an additional delay period of three years for the application of the Articles relating to the computed value methodology.

Annex III:1

Developing country Members have the possibility of requesting an extension of the delay period referred to in Article 20:1.

Annex III:2

While the system of minimum customs value is prohibited, developing country Members may make a reservation to retain the system of officially established minimum values on a limited and transitional basis under such terms and conditions as may be agreed by the Committee.

Technical Assistance

Special and Differential Treatment: Article 20:3

Developing country Members have the right to request, and obtain, technical assistance from developed country Members. This may include the training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of the Agreement.

Annex III:5

If a developing country Member finds it is encountering a problem regarding the non-inclusion in the customs value of special discounts and commissions obtained by sole agents, sole concessionaires and sole distributors, it can request that a study be made with a view to finding appropriate solutions.

2.9 Agreement on Preshipment Inspection

The Agreement applies to preshipment inspection (PSI) mandated by an importing government Member of the WTO, recognizing that such inspection is carried out on the territory of an exporter Member. The importing government Member is referred to as the user Member. The Preamble refers only to developing countries as users of PSI.

The Agreement sets out an international framework of rights and obligations of exporter Members and user Members. It recognizes that the principles and obligations of the GATT 1994 apply to those activities of PSI entities that are mandated by governments Members of the WTO. The provisions of the Agreement further aim to ensure that PSI does not create difficulties for traders beyond what is strictly necessary to carry out the inspection, setting out the parameters within which PSI agencies mandated by one government can operate on the territory of other governments. Thus, with respect to user governments, the Agreement includes provisions on non-discrimination, national treatment, publication of laws and regulations relating to PSI, ease of access by exporters to all information necessary to enable them to comply with the PSI requirements of the importing country, avoidance of unnecessary delays due to inspection, protection of confidential business information, standards to be used in quality and quantity inspections, and avoidance of conflicts of interest. Exporter governments are also bound by obligations relating to transparency and non-discrimination, as well as an obligation to provide technical assistance on request, on a bilateral, plurilateral or multilateral basis.

With respect to the price-verification element of PSI, other than in connection with customs valuation, the Agreement stipulates that: only prices providing a valid basis of comparison shall be used; the price of goods offered for export to countries other than the importing country mandating the inspection shall not be used to arbitrarily impose the lowest price; the selling price in the country of importation shall not be used for price verification purposes; nor shall the price of goods for export from a country other than the country of exportation. With respect to price verification carried out for customs valuation purposes, the obligations of user Members are those which they have accepted in the GATT 1994 and the other Multilateral Trade Agreements included in Annex 1A of the Agreement Establishing the WTO.

With respect to dispute settlement, the Agreement establishes a three-tier system. First, an internal procedure within the PSI agencies considers grievances raised by exporters. Second, an independent review procedure administered jointly by an organization representing PSI agencies and an organization representing exporters. The objective is to provide a speedy resolution of disputes arising between an exporter and a PSI agency should the internal review fail to do so. The results of such independent review are binding on the exporter and the PSI agency. Third, the normal WTO dispute settlement procedures for the resolution of disputes between governments relating to the operation of the PSI Agreement.

Recognition of Interests

Preamble

The Preamble refers only to developing country Members as users of PSI. It notes that developing country Members have recourse to PSI and recognizes their need to do so for so long and insofar as it is necessary to verify the quality, quantity or price of imported goods.

Technical Assistance

Obligations of Exporter Members - Technical Assistance: Article 3:3

Exporter Members shall offer to provide to user Members - i.e. developing country Members - upon request, technical assistance on mutually agreed terms on a bilateral, plurilateral or multilateral basis.

2.10 Agreement on Rules of Origin

This Agreement does not specifically refer to developing or **least-developed countries**. However, a summary of the Agreement has been included in this document for the sake of completeness.

The Agreement covers rules of origin applied in all situations (such as granting of most-favoured-nation status, anti-dumping and countervailing actions, safeguard measures, discriminatory restrictions), other than in the context of trade regimes granting trade preferences. Thus, the provisions in the main body of the Agreement do not apply in the context of schemes granting preferences to developing countries, such as the Generalized System of Preferences or the Lomé Convention. However, a Common Declaration With Regard to Preferential Rules of Origin annexed to the Agreement applies some of its more general guidelines to preferential rules of origin.

The Agreement itself contains two sets of provisions. On the one hand, it sets out a work programme to be carried out jointly with the Customs Co-operation Council, leading to the harmonization of all rules of origin applied in the context of non-preferential trade regimes. Thus, under such trade regimes, for any single product, the same rule of origin will apply in all countries and in all contexts. The harmonized rules will, as far as possible, be based on the criterion of change of tariff classification for the product, using the Harmonized System nomenclature.

On the other hand, the Agreement contains provisions relating to the administration of rules of origin. They aim to ensure that rules of origin are not used as trade policy instruments and do not have restrictive or distorting effects on trade. The Agreement further includes provisions to ensure: precise definition of the criteria upon which the rules of origin are based, including a statement of what does (rather than what does not) confer origin; publication of laws and regulations relating to rules of origin; non-discrimination; impartiality; non-retroactive application of new rules of origin and of amendments to existing rules; independent judicial review of determinations of origin; protection of confidential information; and notification to the WTO Secretariat. The differences between the provisions relating to the administration of rules of origin before and after completion of the harmonization work programme reflect the fact that, while different rules of origin apply before the implementation of the results of the work programme, all WTO Members should be applying the same, harmonized rules of origin thereafter.

The Common Declaration annexed to the Agreement, takes up those provisions in the Agreement which can also be applied in the context of preferential trade regimes. These are provisions relating to a precise definition of the criteria upon which the rules of origin are based, including a statement of what does (rather than what does not) confer origin; the publication of laws and regulations relating to rules of origin; the non-retroactive application of new rules of origin and of amendments to existing rules; the independent judicial review of determinations of origin; the protection of confidential information; and the notification to the WTO Secretariat.

2.11 Agreement on Import Licensing Procedures

The principal aim of the Tokyo Round Agreement on Import Licensing Procedures is to ensure that the procedures applied for granting import licences do not act as additional restrictions on imports over and above those which the licensing system administers. It interprets the relevant GATT provisions in the context of import licensing; it simplifies, clarifies and minimizes the administrative requirements necessary for obtaining import licences and makes information on licensing requirements more easily accessible. The Uruguay Round Agreement strengthens the disciplines on the users of import licensing systems and increases transparency and predictability. It contains general provisions applying to all types of import licensing, as well as specific provisions applying to automatic and non-automatic licensing procedures.

The general provisions define import licensing and seek to reduce the scope for discrimination or administrative discretion with regard to the procedures. They include provisions on: neutral application and equitable administration of licensing procedures; advance publication of all information necessary for compliance with licensing requirements; simplification of application forms and procedures; provision of a minimum period for the submission of applications; allocation of foreign exchange for licensed imports; and protection of confidential information.

With respect to the specific provisions, the Agreement stipulates the eligibility conditions for a licence and the duration of the procedures that must be fulfilled for licensing procedures to be considered automatic. Developing countries may delay the application of these conditions by not more than two years. With respect to non-automatic licensing, the Agreement includes provisions on -

- the relationship between the licensing procedures and the measures which they administer;
- transparency with respect to the allocation of licences and the administrative details of the licensing system (including, where applicable, the administration of quotas);
- eligibility for obtaining a licence;
- the period of validity of the licence;
- the amount of imports for which a licence is granted; and
- the distribution of licences between existing and new importers, including special consideration for imports from developing countries, and in particular from **least-developed countries**; and
- time period for processing applications.

The Agreement requires all Members to submit replies to the annual questionnaire on import licensing procedures promptly and in full.

Recognition of Interests

Preamble

Members are to take into account the particular trade, development and financial needs of developing country Members.

General Provisions: Article 1:2

When ensuring that the administrative procedures implementing import licensing regimes are in conformity with GATT provisions and do not have trade-distorting effects, Members are to take into account the trade, development and financial needs of developing country Members.

Non-automatic Import Licensing: Article 3:5(j)

In allocating licences among importers, Members should give special consideration to those importers importing products originating in developing country Members and, in particular, in **least-developed countries**.

Fewer Obligations

Non-automatic Import Licensing: Article 3:5(a)(iv)

To ensure transparency, Members using non-automatic import licensing regimes are to provide, upon request from other Members, all relevant information concerning the administration of restrictions, import licences granted by Members over a recent period and, where practicable, import statistics of the products concerned. Developing country Members are not expected to undertake additional administrative or financial burdens in fulfilling this latter requirement.

Implementation Period

Automatic Import Licensing: Article 2:2 and Footnote 5

A developing country Member which is not currently a signatory of the Tokyo Round Agreement on Import Licensing Procedures may, upon notification to the Committee, delay by a maximum of two years the implementation of the two following obligations -

- acceptance of applications for automatic licences on any working day prior to the customs clearance of the goods; and

- the granting of automatic licences immediately on receipt, or within a maximum of ten working days, provided that applications for licences are submitted in appropriate and complete form.

2.12 Agreement on Subsidies and Countervailing Measures

The Agreement on Subsidies and Countervailing Measures elaborates the provisions relating to subsidies and countervailing measures in the General Agreement and the Tokyo Round Code, thus providing greater uniformity and certainty in their implementation. It imposes disciplines to ensure that subsidies do not adversely affect the interests of the WTO Members. Further, there are disciplines on countervailing measures aimed at ensuring that they do not unjustifiably impede trade, and that they provide relief to producers adversely affected by subsidies. The Agreement also recognizes that subsidies may play an important role in the economic development programmes of developing countries.

The Agreement classifies developing countries into two categories. The first category, found in Annex VII, comprises **least-developed countries** and certain other specified countries until such time as their GNP *per capita* reaches $1000 *per annum*. The second category consists of all other developing countries. The nature and extent of special and differential treatment accorded to any given developing country depends on the country classification.

The Agreement includes several new elements compared to GATT and the Tokyo Round Code. For example, it defines subsidies and the conditions under which they are to be considered as "specific"

(in contrast to "general") subsidies. Only specific subsidies are subject to the disciplines of the Agreement. These are classified as prohibited, actionable or non-actionable subsidies, and different remedies are provided for each category. Prohibited subsidies are those granted contingent upon export performance or upon the use of domestic over imported products. Non-actionable subsidies include (i) subsidies which are not specific, and (ii) among specific subsidies, and subject to certain criteria specified in the Agreement, those granted for basic industrial and applied research, those granted to disadvantaged regions, and those granted to promote or adapt existing facilities to new environmental requirements. All other subsidies are actionable, i.e. action can be taken against them if they cause adverse trade effects on other Members. The Agreement creates a sub-category of actionable subsidies where serious prejudice is presumed to exist, unless the subsidizing Member can demonstrate that the subsidies have not caused serious prejudice. The Agreement also provides more detail on the determination of serious prejudice caused by actionable subsidies.

The provisions relating to the calculation of certain subsidies, the determination of injury, the procedures for initiating and conducting the countervail investigation, the conditions for terminating the investigation (i.e. *de minimis* provisions), the imposition of countervail measures (provisional, definitive, and price undertaking), and their review and duration have been strengthened. Other provisions include an expedited review for exporters not included in the initial investigation, greater detail in public notices, and domestic judicial review. The Agreement also extends the coverage of inputs for exports for which tax benefits can be provided without such benefits being classified as export subsidies.

The extensive nature of the new obligations is such that several developing countries may find it difficult to meet these obligations when taking countervailing actions and thus are likely to require technical assistance.

Recognition of Interests

Special and Differential Treatment of Developing Country Members: Article 27:7

For the time period when export subsidies and subsidies contingent upon the use of domestic over imported goods granted by developing country Members are permitted (see below), the relevant provision for dispute resolution is that relating to actionable subsidies (i.e. Article 7), and not that relating to prohibited subsidies (i.e. Article 4).

Special and Differential Treatment of Developing Countries: Article 27:8

While the subsidies specified in Article 6:1[2] are in general presumed to result in serious prejudice, such a presumption will not apply in the case of developing country Members. In these cases, serious prejudice has to be demonstrated on the basis of positive evidence.

Special and Differential Treatment of Developing Countries: Article 27:9

Subsidies granted by developing country Members are actionable if they cause injury to an industry in the complainant's market, or nullify or impair other Members' benefits under GATT 1994 by displacing or impeding imports of like products into the subsidizing developing country Member's market. Serious prejudice (including displacement from third-country markets) is not actionable. These limitations on actionability do not apply to subsidies referred to in Article 6:1.[2]

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[2]These subsidies are: total ad valorem subsidization of a product exceeding 5 per cent, subsidies to cover operating losses sustained by an industry or (with certain exceptions) by an enterprise, and direct forgiveness of debt and grants to cover debt repayment.

Special and Differential Treatment of Developing Country Members: Article 27:10

The Agreement requires termination of a countervailing investigation where the volume of subsidized imports from a Member is negligible. While a general definition of "negligibility" is not provided by the Agreement, subsidized imports from developing country Members are defined as negligible if their volume is less than 4 per cent of the total imports of the like product in the importing Member, and if the total of the individual shares of imports from developing country Members, which are less than 4 per cent, is not more than 9 per cent of the total imports of that product in the importing Member.

Special and Differential Treatment of Developing Country Members: Articles 27:10 and 27:11

The Agreement requires termination of countervailing duty investigations where the level of subsidization is *de minimis*, defined generally as one percent. For developing country Members, this is increased to 2 per cent. For those developing countries listed in Annex VII, as well as for other developing country Members that eliminate their export subsidies before the end of the eight year transition period (see below), the level is 3 per cent. The provision for a *de minimis* of 3 per cent expires after eight years from the date of entry into force of the WTO Agreement.

Special and Differential Treatment of Developing Country Members: Article 27:13

Direct forgiveness of debt and certain other subsidies are not actionable under multilateral rules when such subsidies are granted within, and directly linked to, a privatization programme of a developing country Member. Additional requirements are that the programme and subsidies have to be notified to the Committee, be in place for a limited period of time, and that the programme results in the eventual privatization of the enterprise concerned. Such subsidies do, however, remain countervailable in the same way as subsidies other than non-actionable subsidies.

Special and Differential Treatment of Developing Country Members: Article 27:15

The Subsidies Committee shall, upon request by a developing country Member, review the consistency of a Member's countervailing measure with the obligation to provide special and differential treatment for developing country Members.

Fewer Obligations

Special and Differential Treatment of Developing Country Members: Article 27:2 and 27:5

Annex VII countries are not subject to the prohibition on export subsidies applicable to other WTO Members. Other developing country Members are exempted from this prohibition for a limited period of time (see below). The exemption from the prohibition will not apply to a product in which the developing country Member attains "export competitiveness", defined in terms of the share of its export in world trade of that product. Developing country Members in Annex VII are given a longer period than other developing country Members to phase out export subsidies on products in which export competitiveness is reached (see below).

Implementation Period

Special and Differential Treatment of Developing Country Members: Article 27:2(b) and 27:4

Developing country Members, other than Annex VII countries, are entitled to an eight year transition period within which to phase out export subsidies before being subject to prohibition. Meanwhile, these countries are prohibited from increasing their level of export subsidies[3].

Extensions of the eight year transitional period may be granted by the Committee upon request. The decision will be made in light of the economic, financial and development needs of the Member concerned. If an extension is granted, the Member has to consult annually with the Committee regarding the necessity of maintaining the export subsidies. If an extension (or further extension) of the period is not granted by the Committee, the remaining export subsidies are to be phased out within two years from the end of the last authorized period. Thus, a developing country Member, other than an Annex VII country, which requests an extension of the eight year transition period, will in any event have an additional two year period to phase out export subsidies.

Special and Differential Treatment of Developing Country Members: Article 27:3

The prohibition of the granting of subsidies on the use of domestic over imported goods does not apply to developing country Members for a period of five years and to **least-developed country** Members for a period of eight years.

Special and Differential Treatment of Developing Country Members: Article 27:5

A developing country Member which attains export competitiveness in a given product has to phase out export subsidies on such products:

- within eight years for Annex VII countries; and
- within two years for other developing country Members.

2.13 Agreement on Safeguards

The Agreement on Safeguards reaffirms the general rule that safeguard measures can not be used in a discriminatory manner, prohibits the use of "grey area measures" which escape multilateral control (such as voluntary export restraints and orderly marketing arrangements) and establishes a maximum period for the imposition of safeguard measures. As a departure from the general rule of non-discriminatory treatment, Article 5:2(b) provides the possibility to allocate quotas in a discriminatory manner. While this constitutes a change from the earlier tradition of non-selectivity embodied in Article XIX of the General Agreement, safeguard action can only be taken selectively according to certain conditions. Further, additional disciplines on the use of safeguard measures are imposed by the Agreement:

- a safeguard measure cannot be imposed without an investigation by the competent authorities of the importing Member, including public hearings and public-notice to interested parties;
- a detailed specification of the factors to be evaluated in determining the existence of serious injury and the threat thereof;

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[3]Countries not granting subsidies as of the day of entry into force of the WTO Agreement are to base this provision on export subsidies granted in 1986.

- a report setting out the findings and reasoned conclusions reached on all pertinent issues of fact and law must be published;

- a time limit is placed on the duration of safeguard measures;

- normally, import quotas used as safeguard measures shall not reduce imports below the average of imports in the last three representative years for which statistics are available;

- safeguard measures of more than one year duration are to be progressively liberalized, and those imposed for more than three years must be reviewed (not later than the mid-term of the measure) for further possible liberalization;

- reimposition of safeguard measures is not allowed before a specified time period has elapsed;

- more detailed notification and consultation requirements are specified; and,

- existing grey area measures must be phased-out whilst new grey area measures are prohibited.

In order to encourage Members to rely on safeguard measures under this Agreement and to encourage a shorter duration of safeguards, the right to retaliate against a safeguard measure taken under certain conditions is not to be exercised for the first three years that the measure is in effect.

Recognition of Interests

Developing Country Members: Article 9:1

The conditions under which imports originating in a developing country Member will be exempt from safeguard measures are specified. Two conditions are to be met:

- The share of imports of the product from the developing country Member in the total imports of that product in the importing Member does not exceed 3 per cent; and,

- The developing country Members with less than 3 per cent import share, collectively do not account for more than 9 per cent of the total imports of the product concerned in the importing Member.

Fewer Obligations

Developing Country Members: Article 9:2

Fewer obligations are imposed on developing country Members in the following cases:

(i) The general obligation that safeguard measures cannot be in place for more than 8 years does not apply to developing country Members. They are permitted to maintain their safeguard measures for two years longer than the maximum allowed for others.

(ii) The general obligation for safeguard measures with a duration of more than 180 days is that they cannot be reimposed for at least two years, or for the time period for which they were in place, if the latter period is more than two years. For developing country Members, such safeguard measures can be re-imposed after half the time period they were in place, provided the re-imposition is after at least two years. Thus, for example,

while a developed country Member's safeguard measure initially imposed for a three (four or five) year period can be re-imposed only after three (four or five) years respectively, the safeguard measure of a developing country Member initially in place for the same duration can be re-imposed after two (two or two-and-half) years respectively.

3. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The principal objectives of the negotiations on services have been threefold:

- the creation of a multilateral framework of principles and rules for trade in services, including the elaboration of possible disciplines for individual sectors;

- the expansion of trade in services under conditions of transparency and progressive liberalization; and,

- the promotion, through such trade liberalization, of the economic growth of all trading partners and the development of developing countries.

The General Agreement on Trade in Services (GATS) provides, for the first time, a set of multilateral rules for the conduct of services trade, and simultaneously creates a framework for a continuing process of liberalization. In this it resembles the GATT, which is also a multilateral agreement and a forum for negotiations. The GATS consists of three components -

- the Articles of the Agreement which contain general obligations applicable to all Member countries as well as specific obligations which may be negotiated by Members for individual sectors or sub-sectors;

- annexes dealing with the specificities of particular sectors (Air transport, Financial Services and Telecommunications) and the movement of natural persons supplying services; and

- the schedules of commitments undertaken by Member countries, which are annexed to the Agreement and form an integral part of it.

In addition, as part of the Uruguay Round package, there are a number of Ministerial Decisions on such matters as institutional arrangements and dispute settlement, and an Understanding on Financial Services. (See section 7.6 of this document).

The basic elements of the Agreement are: complete coverage of all service sectors with no service activity being excluded; an obligation to provide national treatment and market access to service suppliers of other Members; an obligation not to discriminate between service suppliers of other Members (the MFN obligation); and the increasing participation in world trade in services for developing countries. These principles are applied with considerable flexibility. Members are free to decide which services will be subject to market access and national treatment commitments in their national schedules, and may include limitations on market access and on national treatment in their schedules. It is also possible, at the entry into force of the Agreement, for a Member to be exempted from its MFN obligations in respect of particular discriminatory measures which it wishes to maintain.

The Agreement thus establishes, through national schedules, a first stage in the binding or liberalization of barriers such as quotas or national preferences which restrict the freedom of service

suppliers to operate in foreign markets, either through establishment in the market, through cross-border trade or through the presence of personnel supplying services. Since it also creates an obligation to undertake successive rounds of further negotiations, starting not later than five years from its entry into force, the Agreement will be a permanent stimulus to efficiency, openness and growth in services trade.

A characteristic of the GATS is that the provisions relating to increasing the participation of developing countries in world trade in services permeate the Agreement. From the outset, developing countries were of the view that their development needs should be dealt with as an integral part of the Agreement itself. The Agreement does not contain a separate chapter on special and differential treatment of developing countries comparable with Part IV of the GATT; development considerations are taken up throughout the Agreement. The most explicit and important references to the specific interests of developing countries appear in Articles IV and XIX. Article IV is intended to facilitate increasing participation of developing countries in world trade by providing for the negotiation of specific commitments on such matters as access to technology on a commercial basis, improved access to distribution channels and information networks and liberalization of market access in service sectors and modes of supply which are of special export interest to them. It also requires developed countries to facilitate access by service suppliers of developing countries to necessary commercial and technical information.

Article XIX provides flexibility for developing countries to pursue their own development priorities and open fewer sectors or to liberalize fewer types of transactions in further negotiations, thus making explicit their right to extend market access in line with their development situation. It also recognizes that offers of market access by developing countries may be subject to conditions relating to the objectives of Article IV, on such matters as the strengthening of their domestic services capacity and transferring technology on commercial terms, for example. Both Article IV and Article XIX call for special consideration to be given to **least-developed countries**. The Guidelines for the negotiation of initial commitments during the Round require that negotiations have regard to the level of development of each participant, with a view to achieving a balance of interests and benefits in terms of Articles IV and XIX. It is thus recognized that initial commitments by developing countries may be less comprehensive than others.

The benefits to be derived from the GATS by developing countries in terms of increased exports will of course depend very much on the level of development of their service industries and their ability to take advantage of more open and secure access to foreign markets. Benefits derived will also depend on the readiness of other countries to provide access for services and modes of supply where developing countries have comparative advantage, for example in labour-intensive services. It should also be said however that all economies, and perhaps especially those in which the service sector is weak, stand to benefit from the presence in the market of efficient and competitive suppliers of services. Offers of market access which are conducive to inward investment by foreign service suppliers, for example, may be a very effective means of upgrading the domestic service economy or even of bringing new services of value to the rest of the economy into the country.

Recognition of Interests

Preamble

There is a desire to establish a multilateral framework of principles and rules for trade in services, which would expand trade, as a means of promoting the economic growth of all trading partners and the development of developing country Members.

There is also a desire to facilitate the increasing participation of developing country Members in trade in services, and the expansion of their services exports through, among other things, the strengthening of their domestic services capacity and its efficiency and competitiveness.

There is a recognition of the right of Members to regulate the supply of services in order to meet national policy objectives. Due to the asymmetries existing with respect to the degree of development of services regulations in different Member countries, the particular need of developing country Members to exercise this right is recognized.

The Preamble also recognizes that the serious difficulty of the **least-developed countries** should be taken into account in view of their special economic situation and their development, trade and financial needs.

Increasing Participation of Developing Countries: Article IV:1

The increasing participation of developing country Members in world trade is to be facilitated through the negotiation of specific commitments. These relate to the strengthening of their domestic services capacity and its efficiency and competitiveness *inter alia* through access to technology on a commercial basis; the improvement of their access to distribution channels and information networks; and, the liberalization of market access in sectors and modes of supply of export interest to them.

Priority is to be given to **least-developed countries** in the process of the negotiation of specific commitments in meeting the above objectives. Further, Members are to take particular account of the serious difficulty of the **least-developed countries** in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs. For the negotiation of specific commitments in future trade liberalizing rounds, negotiating guidelines and procedures will be established for each round of trade liberalizing negotiations. These guidelines will establish modalities for the special treatment of **least-developed countries** in accordance with the priority afforded in meeting the above objectives.

Increasing Participation of Developing Countries: Article IV:2

Developed country Members, and to the extent possible other Members, are to establish contact points within two years from the entry into force of the Agreement. This is to facilitate the access of service suppliers of developing country Members to information relating to their respective markets. This information concerns commercial and technical aspects of the supply of services, registration, recognition and obtaining of professional qualifications, and the availability of services technology. Special priority will be given to the **least-developed countries** in facilitating their access to information.

Subsidies: Article XV:1

Members are to enter into negotiations with a view to developing the necessary multilateral disciplines to avoid the trade distortive effects of subsidies. In these negotiations there will be a recognition of the role of subsidies in relation to the development programmes of developing country Members. The negotiations will take into account the needs of developing country Members, particularly in providing for flexibility in this area.

Fewer Obligations

Economic Integration: Article V:3

The Agreement permits Members to enter Economic Integration Agreements liberalizing trade in services provided that two conditions are met. The Agreement must have substantial sectoral coverage, and it must provide for the absence, or elimination, of substantially all discrimination in the sectors covered. For developing country Members which are parties to such an agreement, flexibility is provided for in meeting these conditions, in particular that relating to the elimination of discrimination. The flexibility allowed for is in accordance with the level of development of the Members concerned, both overall and in individual sectors and sub-sectors.

Negotiation of Specific Commitments: Article XIX:2

In the process of liberalization, there will be due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. Appropriate flexibility will be provided for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to it conditions aimed at achieving the increasing participation of developing countries, as stated in Article IV.

Annex on Telecommunications: paragraph 5(g)

Consistent with their levels of development, developing country Members may place reasonable conditions on access to, and use of, public telecommunications transport networks and services. These conditions are described as those being necessary to strengthen the domestic telecommunications infrastructure and service capacity of the developing country Member, and to increase its participation in international trade in telecommunications services.

Implementation Period

Transparency: Article III:4

Each Member is to establish one or more enquiry points to provide specific information on laws, regulations or administrative guidelines which significantly affect its trade covered by specific commitments. While these enquiry points are to be established within two years from the entry into force of the Agreement, appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members.

Technical Assistance

Technical Co-operation: Article XXV:2

Technical assistance to developing country Members is to be provided at the multilateral level by the WTO Secretariat and will be decided upon by the Council for Trade in Services.

Annex on Telecommunications: paragraph 6

There is a recognition on the part of Members that an efficient, advanced telecommunications infrastructure in Member countries, particularly developing country Members, is essential to the expansion of their trade in services. To this end, they endorse and encourage the participation, to the fullest extent practicable, of developed and developing country Members and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations. These organizations include the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development. In paragraph 6(b), encouragement and support for telecommunications co-operation among developing country Members at the international, regional

and sub-regional levels is offered. Paragraph 6(c) states that Members will make information available to developing country Members to assist in strengthening their domestic telecommunications services sector. This will be done in co-operation with relevant international organizations. The information will relate to telecommunications services as well as developments in telecommunications and information technology. Paragraph 6(d) indicates that special consideration will be given to opportunities for the **least-developed countries** to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

4. AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

The Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS) Agreement has three main features: the establishment of minimum substantive standards of protection for each of the main categories of intellectual property rights (IPRs); the procedures and remedies to be available in national law so that the rights can be effectively enforced; and making applicable the general dispute settlement mechanism that will emerge from the Uruguay Round. In addition, it specifies certain basic principles, notably national treatment and most-favoured-nation treatment; lays down general rules to be met by the procedures for the acquisition and maintenance of IPRs; and provides transition arrangements. The IPRs covered by the Agreement are copyright and related rights (rights of performers, producers of phonograms and of broadcasting organizations), trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits and undisclosed information.

In regard to minimum standards of protection, the Agreement is built upon the main existing international conventions negotiated under the auspices of the World Intellectual Property Organization (WIPO). As a general rule, compliance with the substantive provisions of the Berne Convention on the Protection of Literary and Artistic Works, the Paris Convention on the Protection of Industrial Property, as well as of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits is an obligation under the TRIPS Agreement. In respect of each category of IPRs, the Agreement specifies a number of additional standards with a view to defining the key issues of protection - the subject matter to be protected, the scope of the rights to be granted and the term of protection. Members will have the possibility to limit the scope of rights within certain limits, including to grant compulsory licences under certain conditions, and to take measures to prevent abusive anti-competitive practices. To facilitate action against anti-competitive practices, procedures for consultations and exchange of information among Members are provided. The Agreement also exempts the issue of the exhaustion of IPRs from the scope of dispute settlement (except in regard to the national treatment and m.f.n. requirements), and recognizes the right of countries to adopt measures consistent with its provisions to protect public health and nutrition, and to promote the public interest in sectors of vital importance.

The provisions on enforcement are aimed both at ensuring that effective procedures are available, and that such procedures are not abused or applied in such a manner as to create barriers to legitimate trade. The provisions cover civil judicial procedures and remedies, including provisional measures, procedures for obtaining the assistance of the customs authorities to prevent the importation of counterfeit and pirated goods, and criminal procedures to be available in cases of wilful counterfeiting or piracy on a commercial scale. In regard to provisional and border measures in particular, detailed requirements are laid down to safeguard against abuse. It is specifically recognized that Members are not obliged to put in place a special judicial system for the enforcement of IPRs and that no obligation is created with respect to the distribution of resources as between enforcement of IPRs and of laws in general.

One issue of particular concern to some developing countries relates to the obligation of protecting inventions in the area of pharmaceutical and agricultural chemical products. The compromise solution included in the Agreement clarifies that developing country Members which do not at present provide product patent protection in an area of technology would have up to 10 years to introduce such protection. However, in the case of pharmaceutical and agricultural chemical products, they must accept the filing of patent applications from the beginning of the transitional period. Though the patent need not be granted until the end of this period, the novelty of the invention is preserved as of the date of filing the application. If authorization for the marketing of the relevant pharmaceutical or agricultural chemical is obtained during the transitional period and certain other conditions are met, the developing country Member concerned must offer an exclusive marketing right for the product for five years, or until a product patent is granted, whichever is shorter.

Recognition of Interests

Preamble

The special needs of **least-developed countries** in respect of maximum flexibility in the domestic implementation of laws and regulations so as to enable them to create a sound and viable technological base are recognized.

Implementation Period

Transitional Arrangements: Article 65:2

Developing country Members may delay the date of application of the provisions of the Agreement for five years (developed country Members have only a one-year transitional period). However, the obligation to provide national treatment and most-favoured nation treatment is to be adhered to one year following the entry into force of the Agreement.

Transitional Arrangements: Article 65:4

Developing country Member may delay the application of the provisions on product patents for an additional period of five years for areas of technology not so protectable in its territory at the end of the transitional period of five years mentioned above.

***Least-Developed Country** Members: Article 66:1*

Least-developed countries may delay for eleven years the date of application of the provisions of the Agreement. However, the obligation to provide national treatment and most-favoured nation treatment is to be adhered to one year following the entry into force of the Agreement. The Council for TRIPS shall extend this period upon a duly motivated request from a **least-developed country**.

Technical Assistance

***Least-Developed Country** Members: Article 66:2*

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

Technical Cooperation: Article 67

Developed country Members are to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and **least-developed country** Members. This cooperation is to include assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights, as well as on the prevention of their abuse.

Developed countries are to provide support regarding the establishment or reinforcement of domestic offices and agencies which are relevant for these matters, including the training of personnel.

5. UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

The dispute settlement system of the GATT is generally considered to be one of the cornerstones of the multilateral trade order. The developing countries have attached particular importance to this system as it permits them to pursue their rights under the GATT independent of considerations of economic power. Developing countries have been involved in fewer GATT disputes than the developed contracting parties. However, because the results of GATT dispute settlement proceedings must be implemented on a most-favoured-nation basis, they have benefited also from many of the dispute settlement proceedings in which they were not complainants.

The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) significantly strengthens the existing dispute settlement procedures. Since the adoption of the decision on the improvements to the dispute settlement procedures agreed at the Mid-Term Review in Montreal, the establishment, terms of reference and composition of panels no longer depend on the consent of the parties to the dispute. The DSU extends this automaticity to the adoption of the panels' findings by declaring the results of any appellate review of a panel report to be binding on the parties to the dispute. Moreover, the DSU establishes an integrated system permitting WTO Members to base their claims on any of the Multilateral Trade Agreements included in the Annexes to the Agreement establishing the WTO, thereby ending the fragmentation that resulted from the coexistence of different dispute settlement procedures under the General Agreement and the Tokyo Round Agreements.

The DSU emphasizes the importance of consultations in securing dispute resolution, requiring a Member to enter into consultations within 30 days of a request for consultations from another Member. If after 60 days from the request for consultations there is no settlement, the complaining party may request the establishment of a panel. Where consultations are denied, the complaining party may move directly to request a panel. The parties may voluntarily agree to follow alternative means of dispute settlement, including good offices, conciliation, mediation and arbitration.

Where a dispute is not settled through consultations, the DSU requires the establishment of a panel, at the latest, at the meeting of the Dispute Settlement Body (DSB) following that at which a request is made, unless the DSB decides by consensus against establishment. The DSU also sets out specific rules and deadlines for deciding the terms of reference and composition of panels. Standard terms of reference apply unless the parties agree to special terms within 20 days of the establishment of the panel. And where the parties do not agree on the composition of the panel within the same 20 days, this can be decided by the Director-General.

Panel procedures are set out in detail in the DSU. It is envisaged that a panel will normally complete its work within six months or, in cases of urgency, within three months. Panel reports may be considered by the DSB for adoption 20 days after they are issued to Members. Within 60 days of their issuance, they are to be adopted, unless the DSB decides by consensus not to adopt the report, or one of the parties notifies the DSB of its decision to appeal.

The concept of appellate review is an important new feature of the DSU. An Appellate Body is to be established, composed of seven members, three of whom are to serve on any one case. An appeal is limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings should not exceed 60 days from the date a party formally notifies

its decision to appeal. The resulting report is to be adopted by the DSB and unconditionally accepted by the parties within 30 days following its issuance to Members, unless the DSB decides by consensus not to adopt it.

Once the panel report or the Appellate Body report is adopted, the party concerned must notify its intentions with respect to the implementation of the adopted recommendations. If it is impracticable to comply immediately, the party concerned is given a reasonable period of time, the latter to be decided either by agreement of the parties and approval by the DSB within 45 days of adoption or through arbitration within 90 days of adoption. In any event, the DSB is to keep the implementation under regular surveillance until the issue is resolved.

Further provisions set out rules for compensation or the suspension of concessions in the event of non-implementation. Within a specified time-frame, parties can enter into negotiations to agree on mutually acceptable compensation. Where this has not been agreed, a party to the dispute may request authorization of the DSB to suspend concessions or other obligations to the other party concerned. The DSB is to grant such authorization within 30 days of the expiry of the agreed time-frame for implementation. Disagreements over the proposed level of suspension may be referred to arbitration. In principle, concessions should be suspended in the same sector as that in issue in the panel case. If this is not practicable or effective, the suspension may occur in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may take place under another agreement.

One of the central provisions of the DSU reaffirms that Members shall not themselves make determinations of violations or suspend concessions, but shall make use of the dispute settlement rules and procedures of the DSU.

The DSU contains a number of special provisions setting forth particular procedures and time-frames for dispute settlement involving developing countries.

Recognition of Interests

General Provisions: Article 3:12

If a complaint is brought by a developing country Member, that Member may choose to apply the provisions of the CONTRACTING PARTIES' Decision of 5 April 1966, which entitles developing countries to the good offices of the Director-General and a panel procedure with shorter time limits, as a partial alternative to the DSU.

Consultations: Article 4:10

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

Composition of Panels: Article 8:10

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

Panel Procedures: Article 12:10

In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established for consultations. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide whether to extend the period. In addition, in examining a complaint against

a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation.

Panel Procedures: Article 12:11

Where one or more members is a developing country, the panel's report shall explicitly indicate how special and differential provisions raised by the developing country have been taken into account.

Surveillance of Implementation of Recommendations and Rulings: Article 21:2

When keeping the implementation of adopted recommendations or rulings under surveillance, particular attention should be paid to matters affecting the interests of developing countries.

Surveillance of Implementation of Recommendations and Rulings: Articles 21:7 and 21:8

If the case has been brought by a developing country, the Dispute Settlement Body shall consider what further action (apart from the normal surveillance mechanism) might be taken, taking into account not only the trade coverage of measures complained of, but also their impact on the economy of the developing country Member.

*Special Procedures Involving **Least-Developed Members**: Article 24:1*

If the dispute involves a **least-developed country**, particular consideration shall be given to the special situation of that country. In these cases, Members are to exercise due restraint in raising matters under the dispute settlement procedures, asking for compensation, seeking authorization for retaliation or other obligations pursuant to these procedures.

*Special Procedures Involving **Least-Developed Members**: Article 24:2*

If consultations involving a **least-developed country** fail, such country may request the Director-General or the Dispute Settlement Body Chairman to offer his good offices before a request for a panel is made.

Technical Assistance

Responsibilities of the Secretariat: Article 27:2

There shall be a qualified legal expert from the WTO technical co-operation services to provide legal advice and assistance for developing countries.

6. TRADE POLICY REVIEW MECHANISM

The establishment of the Trade Policy Review Mechanism (TPRM) was among the early results agreed at the Mid-Term Review of the Uruguay Round. The GATT Council adopted the TPRM decision in April 1989 on a provisional basis. Under the mechanism, the Council examines, at periodic special meetings, the impact of each contracting party's trade policies and practices on the multilateral trading system. The TPRM enables the CONTRACTING PARTIES to collectively assess and monitor, on a regular basis, all aspects of the trade policies and practices of each individual contracting party, thereby enhancing transparency in the multilateral trading system. The Uruguay Round Agreement will provide a permanent status for the TPRM.

Fewer Obligations

Procedures for review: Section C:(ii)

The four largest trading entities in terms of market share (currently the EC, U.S., Canada and Japan) are subject to review every two years, the next sixteen every four years (this group includes

currently six developing countries), and the other contracting parties, including the majority of developing countries, every six years. Longer intervals may be prescribed for **least-developed countries**.

Reporting: Section D

Some flexibility might be needed by **least-developed countries** in compiling their reports (currently they have the possibility, through a Council Decision, to depart from the outline format).

Technical Assistance

Reporting: Section D

The WTO Secretariat shall make available technical assistance on request to developing country Members, particularly to **least-developed countries**, in the compilation of their national reports.

III

7. MINISTERIAL DECISIONS AND DECLARATIONS

7.1 Decision on Measures in Favour of Least-Developed Countries

This Decision was adopted by Ministers in Marrakesh to take into account some specific concerns of the **least-developed countries**.

Recognition of Interests

Preamble

There is a recognition that the effective participation of **least-developed countries** in the world trading system will require improved trade opportunities for products of interest to them. Their participation in the multilateral trading system should be seen in the light of their special financial, development and trade needs as recognized in a number of GATT decisions related to special and differential treatment.

Special and differential measures: Paragraph 2:(i)-(iv)

Ministers agree that the following special and differential treatment will apply to **least-developed country Members** in the implementation of the Uruguay Round results:

- expeditious implementation of all special and differential measures taken in favour of **least-developed countries** are to be ensured through, *inter alia*, regular reviews (which currently take place in the Committee on Trade and Development) (i);

- to the extent possible, Uruguay Round concessions on tariffs and non-tariff measures applied on products of export interest to **least-developed countries** may be implemented autonomously, in advance and without staging. Consideration is to be given to improve preferential treatment on such products (ii);

- rules and transitional provisions resulting from the Uruguay Round should be applied in a flexible and supportive manner for the **least-developed countries**, including the determinations and authorizations that are to be arrived at by appropriate Councils and Committees for different situations (such as extensions of transition periods, time-limited exemptions, etc.) (iii); and

- when applying import relief measures and other measures permitted under the General Agreement, Members are to give special consideration to the export interests of **least-developed countries**. (iv)

Continued review: Paragraph 3

There will be a continued review of the **least-developed countries'** problems and a continued attempt to adopt positive measures which facilitate the expansion of their trading opportunities.

Fewer Obligations

Commitments: Paragraph 1

Least-developed countries, recognized as such by the United Nations, will have the obligation to comply with the general rules set out in the instruments resulting from the Uruguay Round. However, they will only be required to apply individual commitments, obligations and concessions consistent

with their individual development, financial and trade needs, or their administrative and institutional capabilities.

Implementation Period

Commitments: Paragraph 1

The **least-developed countries** are to be given additional time of one year from the Marrakesh Ministerial Session concluding the Uruguay Round negotiations (i.e. until 15 April 1995) to submit their schedules as required in Article XI of the Agreement Establishing the WTO.

Technical Assistance

Technical assistance: Paragraph 2:(v)

Least-developed countries are to be accorded increased technical assistance in developing, strengthening, and diversifying their production and exporting bases including those of services, as well as their trade promotion.

7.2 Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policy-making

The Declaration sets out concepts and proposals with respect to increasing the contribution of the WTO to achieving greater coherence in global economic policy-making. Among other things, the text notes that greater exchange rate stability based on more orderly underlying economic and financial conditions should contribute to the expansion of trade, sustainable growth and development, and the timely correction of external imbalances. It recognizes that while difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone, there are nevertheless interlinkages between the different aspects of economic policy. Therefore, the WTO is called upon to develop its cooperation with the international organizations responsible for monetary and financial matters. In particular, the Director-General of the WTO is called upon to review, with his opposite numbers in the World Bank and the International Monetary Fund, the implications of the WTO's future responsibilities for its cooperation with the Bretton Woods institutions.

Recognition of Interests

Paragraph 2

The Declaration recognizes the need for an adequate and timely flow of concessional and non-concessional financial and real investment resources to developing country Members, and for further efforts to address debt problems, to help ensure economic growth and development. There is also a recognition that trade liberalization forms an increasingly important component in the success of the adjustment programmes that many Members are undertaking, and that this often involves significant transitional social costs. Ministers note the role of the World Bank and the IMF in supporting adjustment to trade liberalization, including support to net food-importing developing country Members facing short-term costs arising from agricultural trade reforms.

7.3 Decision on Notification Procedures

The Decision will apply to the WTO as a whole. It takes the form of a recommendation to be made at the Special Ministerial Session, which will become a Decision to be adopted by the WTO Ministerial Conference or its General Council (on its behalf) after the entry into force of the WTO.

In the Decision, Ministers recommend the approval, by the Ministerial Conference, of improvements in the WTO notification procedures, through:

(i) a general obligation of Members to notify policy actions. In practice, this obligation only applies to measures covered by the WTO Annex 1A Agreements. An illustrative list of policy actions which are agreed to be notifiable is annexed to the Decision;

(ii) the establishment of a central registry of notifications under the responsibility of the WTO Secretariat. The Secretariat shall ensure that the registry records elements of the information provided on the measure by the Member, such as its purpose, its trade coverage, and the requirement under which it has been notified. The registry shall cross-reference its records of notifications by country and obligation. Information in the central registry regarding individual notifications shall be made available on request to any Member entitled to receive the notification concerned; and

(iii) the revision, by the WTO Council for Trade in Goods, of notifications, obligations and procedures under the Agreements in Annex 1A of the WTO. To this effect, a working group will be established immediately after the entry into force of the WTO, which shall, not later than two years after the entry into force of the WTO, make recommendations to the Council for Trade in Goods.

Technical Assistance

Review of notification obligations and procedures: Part III

The Council for Trade in Goods will undertake a review of notification obligations and procedures. In undertaking the review, the possible need of some developing Members for assistance in meeting their notification obligations will be borne in mind.

7.4 Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on **Least-Developed** and Net Food-Importing Developing Countries

As increases in the level and stability of world prices for many agricultural products are passed through to producers, domestic production levels in developing country Members, including the **least-developed** and net food-importing countries, would be expected to increase. The Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on **Least-Developed** Net Food-Importing Developing Country Members acknowledges the possibility that net food-importing developing country Members, and **least-developed countries**, may experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports. The Decision provides for the establishment of appropriate mechanisms to rectify this possible situation including a recognition that the Members concerned may be eligible to draw on the resources of international financial institutions in order to address such difficulties. Besides, it establishes periodic review by the Ministerial Conference of the provision of the Decision.

Recognition of Interests

Paragraph 3

The Decision provides for the establishment of appropriate mechanisms to ensure that the reform does not adversely affect the availability of food aid at a level which is sufficient to continue to provide assistance in meeting especially the food needs of **least-developed** and net food-importing developing country Members.

It states that:

- a periodical review of the level of food aid established by the Committee on Food Aid under the Food Aid Convention will be held, and negotiations will be initiated in the appropriate forum to establish a level of food aid commitments sufficient to meet the legitimate needs of developing country Members during the reform programme (i); and

- guidelines will be adopted that ensure that an increasing proportion of basic foodstuffs is provided to **least-developed** and net food-importing developing country Members in the form of a grant, or on appropriate concessional terms in line with Article IV of the Food Aid Convention. (ii)

Paragraph 4

It will be ensured that any agreement relating to agricultural export credits makes appropriate provision for differential treatment in favour of **least-developed** and net food-importing developing country Members.

Paragraph 5

Members experiencing short-term difficulties in financing normal levels of commercial imports may be eligible to draw on the resources of international financial institutions under existing facilities, or such facilities as may be established, in the context of adjustment programmes, in order to address such financing difficulties (this refers mainly to loans from the International Monetary Fund and the World Bank).

Technical Assistance

Paragraph 3:(iii)

Full consideration will be given in the context of Members' aid programmes to requests for the provision of technical and financial assistance to **least-developed** and net food-importing developing country Members to improve their agricultural productivity and infrastructure.

7.5 Decisions Relating to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

The Punta del Este Declaration provided that, in relation to the Agreements or Codes emanating from the Tokyo Round, the aim of the negotiations would be to improve the clarity of these Agreements and expand them as appropriate. The limited membership on the part of developing countries was viewed as the primary problem with respect to the Customs Valuation Code. In general, developing countries were reluctant to join the Agreement because it was felt that Article 17 of the Code, together with paragraph 7 of the Protocol, were not adequate to counter the problem of customs fraud.

During the Uruguay Round, a Decision Regarding Cases where Customs Administrations Have Reason to Doubt the Truth or Accuracy of the Declared Value was elaborated. Although not making specific reference to developing countries, this Decision was formulated to take into account their concerns regarding customs fraud. It recognizes that customs authorities may need to request additional information if reasonable doubt exists, and authorizes the rejection of the transaction value if this information is not forthcoming or if doubts persist once it has been furnished. Thus, it shifts the burden of proof from the Customs Administration to the importer. In addition, the Decision stresses the need for co-operation among customs administrations in different countries.

Besides this Decision, the Final Act includes two texts which Ministers refer to the Committee on Customs Valuation for adoption.

Implementation Period

Minimum values: Text 1

Where developing country Members make a reservation to retain on a limited and transitional basis officially established minimum values and this is consented to, the Committee shall take into account the development, financial and trade needs of the Member concerned for determining the terms and conditions on the basis on which such practices would be allowed to be continued.

Technical Assistance

Related agents: Text 2

The Committee on Customs Valuation urges the Customs Co-operation Council to formulate and conduct studies in areas identified as being of potential concern to developing country Members, including those related to importations by sole agents, sole distributors and sole concessionaires.

7.6 Decisions Relating to the General Agreement on Trade in Services

Decision on Institutional Arrangements for the General Agreement on Trade in Services

The Decision states that the Council for Trade in Services may establish subsidiary bodies (e.g. dealing with specific sectors) that will report to the Council. It also establishes the responsibilities of the subsidiary bodies, including the review and surveillance of the Agreement with respect to a sector, the formulation of proposals for the amendment of sectoral annexes etc. The Decision also establishes a Committee on Trade in Financial Services.

Technical Assistance

The sectoral committees will provide technical assistance to developing country Members and developing countries negotiating accession to the Agreement Establishing the World Trade Organization in respect of matters affecting trade in services in the sector concerned.

Decision on Negotiations on Movement of Natural Persons

Ministers decide that negotiations on further liberalization of the movement of natural persons for the purpose of supplying services is to continue beyond the conclusion of the Uruguay Round, with a view to allowing the achievement of higher levels of commitments by participants under the General Agreement on Trade in Services. They also establish a Negotiating Group on Movement of Natural Persons to carry out the negotiations. The negotiating group is to conclude negotiations and produce a final report no later than six months after the entry into force of the Agreement Establishing the World Trade Organization.

Recognition of Interests

Ministers are mindful of the objectives of the General Agreement on Trade in Services, including the increasing participation of developing countries in trade in services and the expansion of their service exports.

Other Decisions Relating to GATS

The following Decisions do not include specific reference either to developing or **least-developed countries**. They are thus summarized only for sake of completeness.

Decisions on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services

Taking into account the specific nature of the obligations and specific commitments of the Agreement and with respect to the dispute settlement provisions of Articles XXII and XXIII, Ministers decide to recommend that the Council for Trade in Services, at its first meeting, adopt the decision to, among other things, create a roster of panellists composed of well-qualified governmental and/or non-governmental individuals who have experience in issues related to the General Agreement on Trade in Services and/or trade in services, including associated regulatory matters.

Decision on Trade in Services and the Environment

Ministers decide to recommend that the Council for Trade in Services at its first meeting adopt the Decision to determine whether any modification of Article XIV (General Exceptions) of the Agreement is required to take account of environmental protection, and to request the Committee on Trade and Environment to examine and report, with recommendations if any, on the relationship between services trade and the environment including the subject of sustainable development. The Committee is to report the results of its work to the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization.

Decision on Financial Services

Ministers decide that no later than six months after the date of entry into force of the WTO Agreement, Members may improve, modify or withdraw all or part of their commitments for financial services without offering compensation. At the same time Members will finalize their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions from MFN Treatment.

Decision on Negotiations on Maritime Transport Services

Ministers decide that negotiations of maritime transport services will be entered into by Members. They will be comprehensive in scope, aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time scale. Prior to the conclusion of the negotiations, it is not necessary to list MFN exemptions on maritime transport services. At the conclusion of the negotiations (no later than June 1996), Members may improve, modify or withdraw any commitments made in this sector during the Uruguay Round without offering compensation. At the same time Members will finalize their positions relating to MFN exemptions in this sector. Should the negotiations not succeed, the Council for Trade in Services will decide whether to continue the negotiations in accordance with the mandate.

Decision on Negotiations on Basic Telecommunications

Ministers decide that negotiations will be entered into on a voluntary basis with a view to the progressive liberalization of trade in telecommunications transport networks and services. Negotiations will conclude no later than 30 April 1996.

Decision on Professional Services

Because of the impact of regulatory measures relating to professional qualifications, technical standards and licensing on the expansion of trade in professional services, Ministers decide to establish a Working Party on Professional Services to determine which disciplines are necessary to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements in the field of professional services do not constitute unnecessary barriers to trade. The Working Party is to give priority to the elaboration of multilateral disciplines in the accountancy sector.

7.7 Other Decisions and Declarations

The following Decisions and Declarations, although not making reference to either developing or **least-developed countries**, have been included in this paper for the sake of completeness.

Declaration on the Relationship of the World Trade Organization with the International Monetary Fund

By this Decision, Ministers reaffirm that, unless otherwise provided for in the Final Act, the relationship of the WTO with the IMF on the area of trade in goods will be based on the practice and provisions that have governed such relationship under the GATT 1947.

Decision on Notification of First Integration Under Article 2.6 of the Agreement on Textiles and Clothing

Ministers stipulate that Members with MFA restraints will have to notify full details of their integration programme not later than 1 October 1994.

Decision on Proposed Understanding on WTO/ISO Standards Information System (TBT Agreement)

Ministers decide to recommend that the WTO Secretariat reach an understanding with the ISO to establish an information system, which is to include data concerning the Code of Good Practice (included as an Annex to the TBT Agreement) addressed to voluntary standards adopted by standardizing bodies. Such a system is to be established under ISO/IEC Information Centre and periodical reports containing the information received shall be published.

Decision on Review of the ISO/IEC Information Centre Publication (TBT Agreement)

Ministers decide that the Committee on TBT shall review at least once a year the publication of the ISO/IEC Information Centre referred to above.

Decision on Anti-Circumvention (Anti-Dumping Agreement)

Since the question of anti-circumvention could not be solved within the Uruguay Round negotiations, Ministers decide to refer this matter to the Committee on Anti-Dumping practices for resolution.

Decision on Review of Article 17.6 of the Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)

Ministers decided that the standard of review - i.e. the scope of analysis and judgement of any panel established under the DSB on anti-dumping cases - will be reviewed in three years with a

view to considering whether it is capable of general application (more specifically in the case of countervailing duties). The standard of review of Article 17.6 allows the panel only to judge whether the handling of the dumping investigation has been fairly conducted, and not to revisit the facts presented to it.

Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the GATT 1994 or Part V of the Agreement on Subsidies and Countervailing Measures

Ministers recognize the need for consistent resolution of dispute settlement arising from the imposition of anti-dumping and countervailing measures.

Decision on Accession to the Agreement on Government Procurement

The central item in the Uruguay Round negotiations in the area of government procurement has been accession; currently, only three developing countries (Korea, Hong Kong and Singapore) are Parties to the Tokyo Round Agreement on Government Procurement. In the only Uruguay Round result in such an area, Ministers invite the Committee on Government Procurement to clarify the manner in which a country could accede to the Agreement (which is outside the Final Act), noting that Committee decisions are arrived at on the basis of a consensus and that non-application is available to any Party.

Negotiations held in parallel to the Uruguay Round in the Committee on Government Procurement have however resulted in a completely new Agreement which will enter into force on 1 January 1996. The only developing country which has already decided to join this new Agreement is Korea.

Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes

Ministers invite the relevant Councils and Committees to take a decision to remain in operation for the purpose of dealing with any dispute for which the request for consultation was made before the entry into force of the WTO Agreement. Further, they also invite the Ministerial Conference to complete a full review of dispute settlement rules and procedures under the WTO within four years after the entry into force of the WTO Agreement, and to take a decision whether to continue, modify or terminate such dispute settlement rules and procedures on the occasion of its first meeting after the completion of the review.

IV

8. UNDERSTANDING ON COMMITMENTS IN FINANCIAL SERVICES

The Understanding specifies an alternative approach for undertaking specific commitments to the approach specified in the General Agreement on Trade in Services. It provides for a standstill where any conditions, limitations and qualifications to commitments are to be limited to existing non-conforming measures. With respect to market access commitments, the Understanding contains additional provisions relating to monopolies, financial services purchased by public entities, cross-border trade, commercial presence, new financial services, transfer and processing of information, temporary entry of personnel and non-discriminatory measures. The Understanding also contains an elaboration of the concept of national treatment and various definitions of terminology relating to financial services.