

GENERAL AGREEMENT ON

TARIFFS AND TRADE

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ACCESSION OF VENEZUELA

Questions and Replies to the Memorandum on Foreign Trade Régime (L/6565)

In a communication dated 5 June 1989 circulated as L/6519, the Government of Venezuela applied for accession to the General Agreement pursuant to Article XXXIII. At its meeting on 21-22 June 1989, the Council set up a Working Party to examine Venezuela's application for accession. The terms of reference of the Working Party are reproduced in document L/6558. In GATT/AIR/2833 contracting parties were invited to submit questions in writing concerning the foreign trade régime of Venezuela. The questions submitted by contracting parties in connection with Venezuela's foreign trade régime and the replies thereto provided by the Venezuelan authorities are given below.¹ Questions received at a later date will be answered at the meeting of the Working Party.

Delegations wishing to raise additional questions concerning Venezuela's foreign trade régime might inform the delegation of that country (with a copy to the secretariat) of such questions in advance of the meeting of the Working Party, so that considered replies can be made available by Venezuela to members at the time of the Working Party meeting.

In GATT/AIR/2833, dated 11 September 1989, contracting parties wishing to enter into tariff negotiations relating to Venezuela's accession to the General Agreement were invited to contact the Venezuelan authorities and to inform the secretariat as soon as possible.

¹The Annexes listed on page 68 are available for consultation in the secretariat (Development Division, Room 2010).

CONTENTS

	<u>Questions</u>	<u>Page</u>
CHAPTER I: THE VENEZUELAN ECONOMY		5
B. The Structure of the Venezuelan Economy		5
a. Gross Domestic Product	1-2	5
b. Basic Industries	3-5	5
C. The External Trade of Venezuela	6-9	6
D. Recent Economic Performance	10-11	7
E. The New Economic Policy	12-27	8
CHAPTER II: IMPORT POLICY		15
B. Legal Provisions	28-37	15
C. Basic Characteristics of the Customs Tariff		20
a. Structure	38-48	20
b. Tariff Rates	49-55	24
c. Tariff Exemptions	56-62	26
d. Non-Tariff Measures	63-69	28
D. The New Trade Policy and Integration Agreements	70-74	32
E. Other Charges on Imports	75-86	35
F. Customs Rules and Procedures		39
a. Customs Valuation	87-90	39
b. Official Prices	91-94	43
c. Customs	95-98	44
G. Measures Against Unfair Trade Practices	99-100	46

	<u>Questions</u>	<u>Page</u>
CHAPTER III: EXPORT POLICIES		47
A. Introduction	101-106	47
B. Port Service Taxes and Charges	107	49
C. Export Restrictions	108-110	49
D. Export Incentive Systems		50
a. Fiscal Credits	111-116	50
b. Special Tariff Régimes	117-119	53
c. Exemptions from Income Taxes	120-123	53
E. Export Financing	124-126	55
F. Procedures Applicable to Exports		
CHAPTER IV: ECONOMIC AND TRADE AGREEMENTS		57
B. Regional and Sub-Regional Integration	127	
a. The Latin American Integration Association	128-133	57
b. The Cartagena Agreement	134-137	59
C. Bilateral Trade Agreements	138-139	60
D. Multilateral Agreements	140	60
CHAPTER V: OTHER POLICIES RELATED TO TRADE		61
B. Free Zones		61
a. General Regulations	141	61
b. Free Zone and Free Port of Margarita	142-143	61
c. Industrial Free Zone of Paraguana	142-143	61
C. Counter-trade	144-145	62
D. Technical Standards	146-149	63

	<u>Questions</u>	<u>Page</u>
E. Sanitary and Phytosanitary Standards	150-151	64
F. Government Procurement	152-160	65
G. State Monopolies Relating to Trade	161-164	67
CHAPTER VI: INSTITUTIONS RESPONSIBLE FOR FOREIGN TRADE		68
C. The Competent Institutions	165	68
D. Other Matters	166-168	69
STATISTICAL TABLES	169-170	70

CHAPTER I: THE VENEZUELAN ECONOMY

B. Structure of the Venezuelan economy

(a) Gross domestic product

Question 1

Paragraph 9: Approximately what part of the GDP is represented by the output of state-owned enterprises?

Reply

According to figures from the Central Bank of Venezuela, in 1988 public sector enterprises contributed 18.8 per cent of the GDP. In 1987, their contribution was 21.5 per cent.

Question 2

Paragraph 9: Approximately what part of the GDP represented by "non-oil activities" is accounted for by the output of state-owned enterprises? What part of the purchases of state-owned enterprises is covered by Decree 1182 (Annex 26)?

In 1987 and 1988, public sector enterprises accounted for 6 per cent and 5.4 per cent, respectively, of the GDP represented by non-oil activities. Available statistics do not specify the part of the purchases of public sector enterprises covered by Decree 1182.

(b) Basic industries

Question 3

Paragraphs 11, 12 and 13: These paragraphs describe the Venezuelan government's rôle under Article 97 of the Constitution in the creation and promotion of basic industries, including the iron, oil, asphalt and hydrocarbon sectors. Please list any additional sectors in which the government plays a central rôle in development.

Reply

In addition to the iron, oil, asphalt and hydrocarbon sectors, the Venezuelan government plays a central rôle in development of the following sectors: natural gas; steel; military industries; naval industry; ports; domestic and international air transport; sea-freight; underground transport; railways; post and telegraph; telephone and other telecommunications services; water and sewage; coal industry. It also participates in other sectors such as the hotel trade, forestry, sugar, salt and electricity generation and supply.

Question 4

Paragraph 11: Please indicate the amount and share of total government resources devoted to "the socio-economic development of the nation" in a recent representative period? Please describe, in broad terms, the activities such government resources finance.

Reply

The Fiscal expenditure on what can broadly be termed the "social and economic" development of the nation represented 41.3 per cent of the 1987 budget and 46 per cent of the 1988 budget. For the most part these resources were used to cover operating costs and investment requirements in education, health, agriculture, housing and infrastructure, which together accounted for an average of about 85 per cent of the total resources allocated for this purpose in the past two years.

Question 5

Paragraph 13: What is the relationship of Annex 24, the "Law for the Defence of Animal and Vegetable Health," to the constitutional mandate described in this paragraph regarding the exploitation of Venezuela's mineral resources?

Reply

There is no relationship between Annex 24 and paragraph 13 of the Memorandum. Annexes 22 and 23 are the relevant ones.

C. The external trade of Venezuela

Question 6

Paragraph 14: What portion of Venezuela's inputs are purchased by state-owned enterprises? What portion of Venezuela's imports are covered by the procurement terms of Decree 1182 (Annex 26)?

Reply

According to figures from the Central Bank of Venezuela, in 1987 public sector enterprises purchased 20.7 per cent of Venezuela's total imports. The corresponding figure for 1988 is 20.9 per cent. These percentages are largely a reflection of the fact that, before the present trade policy, a number of public sector enterprises were able to import a wide range of products to meet private sector needs. This practice has now been largely eliminated. Available statistics do not specify the portion of Venezuela's imports covered by Decree 1182.

Question 7

Paragraph 14: What portion of Venezuela's non-oil exports are attributable to state enterprises? What portion of Venezuela's non-traditional exports are attributable to state enterprises?

Reply

In 1988, 68.8 per cent of non-oil exports and 68.3 per cent of non-traditional exports were attributable to public sector enterprises. The corresponding figures for 1987 were 62.1 per cent and 60.6 per cent, respectively.

Question 8

Paragraph 17: To what extent are Venezuela's exports of petroleum derivatives, petrochemicals, and other products derived from oil considered to be "traditional" exports?

Reply

Petrochemicals are not considered to be "traditional" exports. Exports of certain products derived from oil, particularly greases and lubricants, benefit from FINEXPO credit and the tax incentive for exports, which are geared to non-traditional exports.

Question 9

Paragraph 17: To what extent are exports of products manufactured or derived from iron ore, coffee, and cocoa considered to be "traditional" exports?

Reply

Exports of products manufactured or derived from iron ore, coffee and cocoa, are considered to be "non-traditional" exports.

D. Recent economic performance

Question 10

Paragraph 19: What was Venezuela's oil income in 1970 and in 1975? What was the change in terms of trade between 1975 and 1981, in percentage terms?

Reply

Venezuela's oil income was US\$2,380 million in 1970, and US\$8,493 million in 1975. According to ECLAC figures, Venezuela's terms of trade increased by 52 per cent between 1975 and 1981.

Question 11

Paragraph 19: Could Venezuela list and describe the terms of any bilateral or multilateral agreements (e.g. the San José Accords) to which it adheres that deal with trade arrangements, or other arrangements that affect trade, in the petroleum sector?

Reply

The San José Agreement is the result of a joint endeavour by Venezuela and Mexico to establish regional co-operation, and benefits ten countries in Central America and the Caribbean. It consists of two parallel and

simultaneous agreements: (a) a supply agreement to meet domestic petroleum consumption requirements of the beneficiary countries; (b) a financial co-operation agreement for balance-of-payments support and development project funding.

Under the supply agreement, Venezuela and Mexico each supply 65,000 barrels/day of petroleum, which are distributed among the beneficiary countries according to their domestic consumption requirements, the amount being set out in the agreement. Sales are made under normal trading conditions, i.e. at prevailing market prices and with the same terms of payment as apply to other purchasers of Venezuelan petroleum. No discounts or special prices are granted.

Under the financial co-operation agreement, Venezuela grants loans, as balance-of-payments support, equivalent to 20 per cent of the amount paid by beneficiaries for their petroleum purchases. The loans have a pay-back period of five years, with an 8 per cent interest rate. Beneficiaries can opt either to reimburse the loan or to convert it into a long-term loan (12 years at 6 per cent interest) to finance national development projects.

E. The new economic policy

Question 12

Paragraph 29: Are there any areas other than tariffs in which Venezuela's preferential trading partners receive treatment that allows for preferential market access vis-à-vis m.f.n. trading partners?

Reply

Venezuela's trading partners that are members of the Cartagena Agreement, in addition to tariff preferences, also enjoy exemption from certain non-tariff measures. Thus, Note 1 products (prohibited imports) receive Note 2 status (authorization from the National Executive); and Note 2 restrictions have been eliminated for almost all products traded in the sub-region.

Question 13

Paragraph 30: What is the time-table for the elimination of differential exchange rates under the New Economic Policy? What is the average differential between the free exchange rate for foreign currency and the "reference rate" referred to in this paragraph for certain Central Bank transactions during a recent representative period? Why is a separate "reference rate" maintained for petroleum transactions? To what percentage of foreign currency transactions does the Central Bank reference rate apply?

Reply

Differential exchange rates were eliminated as from March 1989 when a single floating exchange rate was introduced.¹ This exchange rate is determined according to supply and demand conditions on the exchange market. However, there is a transitional régime for certain transactions, as specified in the reply to the following question.

Although Exchange Rate Convention No. 1 authorizes the Central Bank to fix a daily reference rate for the opening of the exchange market, in practice, the closing exchange rate of the previous day, determined by foreign exchange supply and demand, is applied at market opening.

No reference rate is applied to transactions involving the petroleum industry. Foreign exchange from oil activities is acquired by the Central Bank at the rate of exchange prevailing when the transaction is concluded.

Question 14

Paragraph 30: How does the "transitional régime" for the payment of imports contracted prior to November 1988 differ from the reference rate and the free rate of exchange? Please describe in more detail in what way this régime is "transitional"? Approximately what percentage of foreign exchange transactions are covered by this transitional régime?

Reply

The transitional régime applies to imports that entered the country before 31 October 1988, for the payment of which the Central Bank of Venezuela did not provide the foreign exchange by 14 March 1989. Payment of these imports is covered by a special régime:

- (a) imports which were eligible for the Bs.7.50/US\$ exchange rate, and imports of certain goods considered to be essential, which were eligible for the Bs.14.50/US\$ exchange rate, will be paid at the respective exchange rates on condition that they entered the country before 14 March 1989;
- (b) imports eligible for the Bs.14.50/US\$ exchange rate, other than those mentioned above, will be paid for by the Central Bank taking account of their date of entry into the country, according to the following table:

¹See Exchange Rate Convention No. 1, Official Gazette No. 341777 of 13 March 1989.

Date of entry	Exchange rate of Bs.14.50/US\$	Free exchange rate
1. Up to 31.05.88	100%	-
2. From 01.06.88 to 30.06.88	83%	17%
3. From 01.07.88 to 31.07.88	67%	33%
4. From 01.08.88 to 31.08.88	50%	50%
5. From 01.09.88 to 30.09.88	33%	67%
6. From 01.10.88 to 31.10.88	17%	83%
7. From 01.11.88 to 13.03.89	-	100%

Finally, for the period April-September 1989, the implementation of the transitional régime described above accounted for approximately 8 per cent of the Central Bank's foreign exchange sales.

Question 15

Paragraph 32: Please explain the development and implementation of the pricing policy described in this paragraph as "increases in the domestic prices of fuels and of those goods produced by the basic industries e.g. steel, aluminium and petrochemicals". Do these products remain under government control? Are these "official" prices used in all transactions (domestic as well as export) involving these products?

Reply

The aim of this policy is to bring the domestic prices of these products to the level of the f.o.b. export price at Venezuelan ports. These products continue to be produced by state enterprises. The price increase schedule for the products provides for six-monthly (fuels) or quarterly (steel) increases, so that they reach the level of export prices in 1991. Certain of these products such as aluminium and a number of chemicals are already being sold at export prices.

Question 16

Paragraph 33: How does the Government of Venezuela intend to apply its sales tax? How will this sales tax affect imports into Venezuela as opposed to Venezuelan domestic sales? Will the tax be applied in a non-discriminatory manner between domestic sales and Venezuelan imports?

Reply

Rather than applying a sales tax, the National Executive has decided to submit a Bill to Congress, for the introduction of a Value Added Tax (VAT). The Bill provides for the tax to be paid in stages, taking account of the value added by each intermediary from the initial production process or importation, up to the final purchase or consumption. VAT would apply both to products made in Venezuela and to imports. The same rate (10 per cent) would apply to both, according to a mechanism whereby the tax is passed on from seller to buyer in the sale price. This procedure is repeated with every transaction until the product reaches the final consumer. The tax thus passed on to intermediaries in the production and marketing process is deducted when the intermediaries pay the tax on their sales to the Internal Revenue. In the case of imports, it is of course the importer that pays the taxes. There is therefore no discrimination in the manner in which VAT is applied to domestic products and imported products.

Question 17

Paragraph 33: When will the sales tax become effective? At what rate(s) will it be applied? What time-frame is contemplated for its evolution into a Value Added Tax (VAT)? What rate(s) is(are) contemplated for the VAT? Will there be any goods exempted from the application of either tax, or will they be applied across the board?

Reply

As stated in the reply to the previous question, the National Executive has decided to propose the introduction of the VAT to Congress, and plans to submit a Bill to that effect during the first ordinary session of Congress in 1990. Once the Bill establishing the VAT is passed, a period of at least sixty days must elapse from the date of its enactment before it comes into force, in accordance with Article 226 of the Constitution, which applies to all tax laws. As stated above, the Bill provides for a rate of 10 per cent (10%). The following products are exempted:

- (1) products included in the basic basket;
- (2) mineral, plant or animal products in their natural state;
- (3) fuels and lubricants derived from petroleum;
- (4) products sold or imported by diplomats.

Question 18

Paragraph 34: Is the list of products contained in the footnote to paragraph 58, i.e. the "basic basket" whose prices continue to be state-mandated, complete? How are these controlled prices implemented in Venezuela's market, e.g. is a ceiling price established for each product? Do subsidies for local producers help maintain the official price for these commodities?

Reply

The list of "basic basket" products is complete. Certain agricultural products have minimum producer prices. Prices are agreed between the Government and producers and are established through the Public Sale Price (PVP). These are ceiling prices. Generally, these products are not subsidised, with a few exceptions, such as milk.

Question 19

Paragraph 34: Are any other products currently subject to state pricing? To what extent are state-priced products imported by state-owned enterprises? Could Venezuela indicate when these prices are to be liberalized?

Reply

No products, other than those included in the "basic basket", are subject to state-pricing. Prices of goods produced by a number of public sector enterprises are being adjusted on the basis of international prices, as indicated in the reply to question no. 15. State-priced products are imported not by state-owned enterprises but by private enterprises, except for milk powder and sugar which are produced and/or imported by state enterprises. No date has been fixed for the liberalization of the prices of "basic basket" products.

Question 20

Paragraph 34: What portion of imports are accounted for by products with state-mandated prices? What is the legislative authority for state-pricing ?

Reply

In answer to the first part of the question, it should be noted that imports of products included in the "basic basket" are minimal. The vast majority of these products are produced domestically. In answer to the second part, pricing is based on the Law on Consumer Protection, published in the Official Gazette (No. 1.680 Extraordinaria) of 2 September 1974. Article 5 of this Law provides that the Ministry of Development may, where the national interest so requires, establish maximum prices for essential goods and services, to be maintained for as long as is warranted by market

conditions. Article 2 of the same Law defines essential goods and services as those expressly determined by a resolution of the Ministry of Development as being mass-consumption goods or essential to the life of the population.

Question 21

Paragraph 34: What kinds of "social subsidies" are provided in the case of newly freed prices? Please provide some examples.

Reply

Social subsidies are not provided in the case of products whose prices have recently been freed. The purpose of social subsidies is to compensate, at least in part, for the impact of the huge price adjustments on the real income of the most vulnerable sectors of society. Four categories of subsidy have been established for this purpose, two direct and two indirect:

- (a) the housing subsidy: this is designed for the partial financing of mortgage interest payments;
- (b) a school-children's food allowance: this is provided for children of deprived sectors of the population who regularly attend nursery or primary school. Mothers of children qualifying for the allowance receive a monthly sum of Bs.500.00 per child up to a maximum of three children per family;
- (c) school-children's half-fare transport subsidy: it is estimated that the daily transport of 1,333,800 school children will be subsidized. An amount of money corresponding to half the fare will be paid to public transport companies;
- (d) milk subsidy: milk is subsidized for the deprived sectors of the population from funds allocated to the National Nutrition Institute.

Question 22

Paragraph 37: Concerning plans for privatization of public companies, please describe them in more detail. As possible, please list the enterprises and/or sectors in which public enterprises have undergone privatization or in which there exist announced plans to privatize.

Reply

Privatization of public assets and enterprises is still at the initial planning stage. A Commission, headed by the Venezuelan Investment Fund (FIV), is responsible for drawing up the main outlines of the policy. The highest decision-making authority is the President of the Republic in Council of Ministers.

Following the study now underway on privatization and a case-by-case review, appropriate recommendations will be made, which may be to:

- (a) transfer ownership to the private sector;
- (b) transfer management but not ownership to the private sector;
- (c) restructure ownership; or
- (d) improve performance, while maintaining public ownership.

The stages envisaged for privatization are, initially, the privatization of small and medium-sized enterprises which are obvious candidates for privatization. This would be followed by the privatization of enterprises for which ownership restructuring or management transfer were initially envisaged. Finally, privatization would be extended to large enterprises and possibly to the so-called natural monopolies.

Question 23

Paragraph 37: Could Venezuela give an indication of what portion of currently state-owned productive enterprises are intended to be transferred to private ownership and within what general time-frame? In which sectors will state involvement definitely be maintained?

Reply

No decision has yet been taken as to the portion of state-owned productive enterprises to be transferred to the private sector. The time-frame for implementation of the programme is approximately five years, beginning in 1990. The sectors in which State involvement will definitely be maintained have not yet been determined.

Question 24

Paragraph 37: Concerning the Government's plans for privatization, what is the time-frame contemplated for the realization of the process described in paragraph 37? Could Venezuela supply further information concerning priority sectors or industries to be privatized? What legal barriers to privatization presently exist?

Reply

As already stated, it is planned to begin privatization in January 1990. Privatization is envisaged in terms of companies in which state ownership cannot be justified, rather than by priority sectors or industries. Legal barriers to privatization will be examined on a case-by-case basis. There are not thought to be any major legal difficulties.

Question 25

Paragraph 37: What, if any, new para-statal or government-controlled entities (and in what sectors) will be initiated or in operation by 1995?

Reply

There are no plans to establish new para-statal or government-controlled enterprises by 1995.

Question 26

Paragraph 39: Is the tariff whose ad valorem equivalent is 940 per cent currently in force? If so, on which article is it imposed?

Reply

This tariff is not in force. Specific tariffs have been eliminated.

Question 27:

Paragraph 42: What articles are presently subject to the "prohibitions" and/or "prior licensing requirements"? Is Venezuela applying any quantitative import restrictions? If so, which items are subject to the restrictions and for what reasons? Are they applied on the global quota basis?

Reply

The articles currently subject to prohibitions are indicated in column 5 of the Customs Tariff by the figure 1 (corresponding to Note 1) and those subject to the prior-licensing requirement are indicated in that column by the figure 4 (corresponding to Note 4). In addition, Venezuela applies quantitative restrictions in the case of some agricultural products. For example, in the case of some food products included in the "basic basket", imports are authorized in specified quantities. In such cases, the reasons for granting the authorizations are linked with domestic market supply conditions.

CHAPTER II: IMPORT POLICY

B. Legal provisions

Question 28

Paragraph 45: Who is responsible for the determination of the provisions of the Regulation of the Organic Customs Law? Are the rates of various taxes and charges contained in the Articles of these regulations fixed by law or does the Executive have the authority to change them administratively?

Reply

The President of the Republic in Council of Ministers is responsible for determining the provisions of the Regulations of the Customs Act (Organic Customs Law). The maximum and minimum amounts within which the tariffs and charges may be fixed are set out in the Customs Act. The President of the Republic in Council of Ministers may fix these rates without exceeding the limits specified in the Act. The Minister of Finance is responsible for modifying tariffs, within the limits laid down in the above-mentioned Act.

Question 29

Paragraph 45: Are there any import or export charges or taxes authorized in the Organic Customs Law whose actual rates or form of application are mandated in this legislation? If so, what are they?

Reply

All taxes and charges are authorized by the Customs Act (Organic Customs Law) in accordance with the mechanism described in the reply to the previous question. With regard to the form of application, the Act authorizes the President of the Republic in Council of Ministers to determine whether the tax or charge is to be applied on an ad valorem or specific basis, within the limits laid down by law.

Question 30

Paragraph 45: Is Venezuela prepared to alter its customs regulations to bring its practices into conformity with the General Agreement, where necessary? To what extent is special legislation or legislative approval needed to alter Venezuela's tariffs or customs regulations?

Reply

Venezuela considers that its customs regulations are fully consistent with the requirements of the General Agreement.

Any modification of tariffs which exceeds the upper and lower limits set forth in the Customs Act will require an amendment to the Act. Any alteration to regulations other than those contained in the Customs Act can be made administratively.

Question 31

Paragraph 46: How are Venezuelan tariff levels set? Does the authority of the President of the Republic to promulgate the customs tariff include the authority to set tariff levels? If so, within what limits? What is the rôle of the legislature in determining the level of tariff duty applied to imports?

Reply

The maximum and minimum tariff levels are established in section 83 of the Customs Act (Organic Customs Law), which provides that tariffs may be either ad valorem, specific or mixed and must fall within the following limits:

- (a) between 0.01 per cent and 500 per cent of the value of the goods;
- (b) between Bs.0.005 and Bs.100.00 per unit of the decimal metric system.

The President of the Republic in Council of Ministers is responsible for promulgating the Customs Tariff (Customs Act, Article 3:2 in conjunction with Article 84) which establishes the tariff levels to be applied in determining the customs duty, within the above-mentioned limits. As already stated, the Minister of Finance is responsible for establishing, re-establishing, modifying or eliminating, temporarily or permanently, by resolution and after notifying the Council of Ministers, the tariff lines, descriptions, notes rates restrictions, legal régime and other provisions of the Customs Tariff, within the limits laid down in the Customs Act. The Legislature, through Congress, establishes only the maximum and minimum levels of the customs duty, in the manner described in the above reference to Article 83 of the Customs Act.

Question 32

Paragraph 46: Does the authority for the "increase, reduction or elimination of import, export or transit taxes" after its accession referred to in the paragraph include the authority to alter the method of application of the tax, for example to apply customs and other fees other than ad valorem?

Reply

The authority of the President of the Republic in Council of Ministers to increase, reduce or eliminate import, export or transit taxes includes the authority to alter the method of application of the tax, within the limits laid down in Article 83 of the Customs Act, referred to in the reply to the previous question.

Question 33

Paragraph 46: If, after its accession to the General Agreement, Venezuela invokes existing authority to increase tariffs over bound rates or otherwise violate GATT provisions, does Venezuela intend to follow GATT procedures of notification, consultation, negotiation and compensation?

Reply

Venezuela will fulfill its obligations in accordance with GATT procedures, should it take any action affecting its commitments under the General Agreement.

Question 34

Paragraph 47: What legislation authorizes the application of the measures in the "Notes" referred to in paragraph 39 above? Is this authority still in effect? Are the measures listed in the "Notes" still applied to imports?

Reply

As already stated, Article 4:13 of the Customs Act authorizes the Minister of Finance to establish, re-establish, modify or eliminate, temporarily or permanently, by resolution and after notifying the Council of Ministers, inter alia the legal régime applying to the import, export or transit of merchandise. The above legal régime is contained in the "Notes" referred to in paragraph 39. The authority of the Minister of Finance still exists, but the measures set out in the "Notes" are being eliminated under the new trade policy now being implemented.

Question 35

Paragraph 47: Explain the nature of the "customs-related export incentives" administered by the Ministry of Finance. List and describe all such incentives and indicate the products to which they apply.

Reply

These are mechanisms to reimburse customs duties applying to goods to be exported or incorporated in products for export. The mechanisms comprise: temporary admission for inward processing, import tax refunds (drawback), and replacement of stocks, which are described in sections 339 to 369, inclusive, of the Regulations of the Customs Act.

Temporary admission for inward processing consists of the entry into the national customs territory of goods conditionally exempted from import duties, with the object of re-exportation after having been transformed, combined, mixed, recovered, repaired or otherwise processed. Goods introduced under this régime may remain in the country for a period not exceeding one year, renewable once only. By-products and usable waste resulting from the manufacture and processing of goods admitted for inward processing, which are not re-exported or destroyed under customs control, are liable for the corresponding import duties. The Regulations establish the system of administrative control governing goods admitted temporarily for inward processing.

The replenishment of stocks consists of the duty-free importation of raw materials, parts, components and semi-manufactures, which are identical in description, quality and technical characteristics to those which, having paid import taxes, have been used in the production of goods previously exported. Goods imported under the replacement régime must enter the country within a period not exceeding 180 consecutive days from the date on which the Customs Directorate-General issued the import authorization, and after verification of the export of the goods in respect of which application has been made for stock replacement. This régime provides for the importation only of raw or semi-processed materials which are identical or are of the same kind and have the same characteristics as those incorporated in the exported product, and chemicals or other materials needed in the manufacturing process even if they are consumed or disappear without being incorporated in the exported product, on condition that their quality and quantity can be determined. This régime does not apply to goods, equipment, tools, devices or means of transport, fuels and, in general, energy used in the industrial process.

The import tax refund (drawback) régime is a customs procedure whereby, when goods are exported, the import duties paid on goods or on the materials used in their production may be totally or partially refunded. The refund of import duties applies to imports of raw or semi-processed materials, or imported parts or components incorporated in the exported product. For the purposes of this régime, finished parts or components means those which require no further processing. The drawback régime also applies to chemicals or other materials needed in the manufacturing process, even if they are consumed or disappear without being incorporated into the exported product, on condition that their quality and quantity can be determined. The finished products for which goods admitted under the drawback régime are used must be exported within one year from the date on which the goods in question entered the country. This period is renewable once only. If the goods or products are not exported within the stated period, they are not eligible for the import tax refund.

Question 36

Paragraph 47: Please provide information, as possible, on Venezuela's plans for the reduction or elimination of the "customs-related export incentives" administered by the Ministry of Finance.

Reply

Venezuela does not plan to reduce or eliminate the "customs-related export incentives" described in the reply to the previous question; on the contrary, it is trying to improve them.

Question 37

Paragraph 48: Is the authority of Decree No. 239 (Annex 3) Executive or Legislative? Are its specific provisions contained in legislation, or is the Decree simply implementing existing legislation and its provisions are determined administratively? Please provide any additional relevant legislation on this issue.

Reply

The authority of Decree No. 239 is Executive, and is conferred by Articles 181 and 190:12 of the Constitution which provide that the President of the Republic is responsible, inter alia, for the administration of national public finances, which includes revenue from import taxes. The authority is therefore Executive. The purpose of Decree No. 239 is to inform the manufacturing sector of the changes in the trade régime and the time-frame for their implementation, so that it has a reasonable time in which to adjust its structures to the country's new economic conditions, as indicated in the last preambular paragraph. The Decree's specific provisions are not set out in any law, and constitute the guidelines of the trade policy to be followed by Venezuela.

C. Basic characteristics of the customs tariff

(a) Structure

Question 38

Paragraph 50: Please describe the status of Venezuela's preparations to convert its tariff nomenclature to the Harmonized System. Is it still planned to implement the new nomenclature by March 1990, as described in Annex 14 of L/6565, or will Venezuela seek a delay to June, or beyond?

Reply

So far, approximately 30 per cent of the headings of the present tariff nomenclature have been converted to the NANDINA (Common Tariff Nomenclature of the Member Countries of the Cartagena Agreement). Three sectors are being converted simultaneously (Food and Chemicals, Textiles and Miscellaneous, and Metal-Mechanical). Decree No. 239 of 24 May 1989 stipulates that the NANDINA will be adopted as the basis for the Customs Tariff in March 1990. At present, Venezuela does not envisage seeking a delay.

Question 39

Paragraph 50: According to paragraph 50, the NANDINA, based on the Harmonized System, will be introduced by March 1990. Does this mean that Venezuela is going to introduce the six-digit HS system?

Reply

The NANDINA is based on the Harmonized Commodity Description and Coding System and the first six digits of its code therefore correspond to those of the Harmonized System, with the exception of approximately ten items which have not been converted at this stage (30.01, 30.02, 30.03, 30.05, 30.07, 44.03, 44.07, 44.08, 44.11, etc.).

Question 40

Paragraph 50: This paragraph indicates that the Venezuelan Government plans to convert its national tariff schedule to the Harmonized System in March 1990. In the context of its GATT accession, does Venezuela intend to consolidate its GATT schedule of concessions in the Harmonized System Nomenclature?

Reply

Venezuela will consolidate its tariff concessions in the Harmonized System Nomenclature, unless the system has not come into effect in the country by the time it accedes to GATT.

Question 41

Paragraph 52: Are the non-tariff measures listed in column 5 related to the "Notes" referred to in paragraph 39?

Reply

Yes.

Question 42

Paragraph 52: Please describe the measures indicated by the notations in columns 6 to 9 concerning imports coming from the Andean Pact nations?

Reply

The measures indicated in column 6 of the Custom Tariff refer to the Cartagena Agreement Liberalization Programme. The purpose of the Programme is to free products listed in it from all charges and restrictions. The notations used in the column correspond to the Liberalization Programme lists, which are described below:

<u>Notation</u>	<u>Meaning</u>
A.	Automatic exemption: Products already freed from all charges and restrictions in trade among the Andean countries.
A1-A2-A3	Products in the Reserve List for Sectoral Industrial Development Programmes which have been withdrawn from them in successive stages and freed under the Exemption Programme.
A(B)	Opening for Bolivia: Products which were exempted from all charges and restrictions for Bolivia on 1 January 1971.

- A(E) Opening for Ecuador: Products exempted from all charges and restrictions for Ecuador on 1 January 1971.
- LC. LAFTA Common List. The list refers to products negotiated in the former Latin American Free-Trade Association whose member countries granted each other preferential treatment, which was extended through the most-favoured-nation clause. Although LAFTA ceased to exist in 1980, the Andean Group retained the Common List for its Liberalization Programme. These products are therefore exempt from charges and restrictions in trade among the Andean countries.
- N. Products not produced in the sub-region and not reserved for Sectoral Industrial Development Programmes. These products are exempt from charges and restrictions in trade between Andean countries.
- N(B) and
N(B)-1 Products not produced in the sub-region and reserved for manufacture in Bolivia.
- PMM Metal-Mechanical Programme. For purposes of trade between Andean countries, products coming under industrial programmes have their own liberalization programmes.
- FPQ Petrochemical programme.
- PSA Automotive programme. This programme was terminated in 1988.
- R. Products reserved for Industrial Development Programmes. For the purposes of trade among Andean countries, national tariff levels apply to products in this list. The list is in the process of being revised with a view to reducing product coverage.

Columns 7 and 8 of the Customs Tariff indicate the different stages of implementation by Venezuela of the Liberalization Programme up to the application of a zero tariff for the Andean countries in respect of all the products included in the Liberalization Programme. These columns no longer serve any practical purpose at all, as the stages have been completed. Column 9 of the Tariff lists the non-tariff measures that may be applied in trade among Andean countries for health, security and defence reasons.

Question 43

Paragraph 52: Please elaborate on the "general observations" noted in column 10 of Venezuela's customs tariff.

Reply

Column 10 indicates the Andean agricultural régime, which permits the application of import quotas.

Question 44

Paragraph 52: Please explain in more detail the "régime applied to imports coming from the Andean Pact," particularly with regard to the terms of the "rules of origin" applied to goods manufactured within the Andean Pact countries, as outlined in Annex 16.

Reply

The rules of origin were established to guarantee that the products included in the Liberalization Programme really originate in and come from member countries. Decision 231, in Article 1 in particular, sets out the conditions and requirements concerning the origin of the products. The Decision envisages the possibility of the Board establishing specific origin requirements for special cases. It also provides for verification of origin through certification.

Question 45

Paragraph 52: Please indicate under what conditions a product manufactured within the territory of the Andean Pact is denied the preferential trade treatment provided for by the Cartagena Agreement.

Reply

When such products do not meet the origin requirements set out in Decision 231 of the Commission of the Cartagena Agreement. In other words, when a product is presented as originating in a country without having been entirely produced there; when the product does not possess the specific requirements established by the Board; when a product does not acquire a new tariff classification after processing; or when a product is not shipped directly from the country in which it is considered to originate.

Question 46

Paragraph 52: Why are goods produced by "foreign" firms excluded from such coverage (Article 4 of Decision 231, Annex 16)?

Reply

Because, in accordance with Decision 220, the advantages of the Liberalization Programme are destined only for trade generated by national or mixed enterprises or enterprises in the process of changing status. Consequently, a foreign company wishing to benefit from the preferences of the Liberalization Programme must demonstrate to the competent national authorities that it is willing to become a mixed or national enterprise. Foreign enterprises have a period of thirty years in which to effect the change, but may benefit from the Liberalization Programme as soon as they have demonstrated their readiness to become national or mixed companies.

Question 47

Paragraph 52: What agency of the Government of Venezuela administers the regulations contained in Annex 16?

Reply

With regard to Venezuelan exports to member countries of the Cartagena Agreement, pursuant to Article 11 of Decision 231, the Venezuelan governmental authorities have authorized a number of private sector trade associations to issue certificates of origin under State supervision. The associations in question are the Venezuelan Exporters Association (AVEX) and a number of duly authorized Chambers of Commerce.

Question 48

Paragraph 52: Who decides whether products meet the Andean Pact rules of origin in the context of the criteria listed in Article 10 of Decision 231, Annex 16? Are these determinations published, and if so where? Can they be appealed, and if so, to what agency?

Reply

The authority responsible for deciding whether the rules of origin meet the criteria listed in Article 10 of Decision 231 is the Board of the Cartagena Agreement. The Board's decisions are published in the Official Gazette of the Cartagena Agreement and may be appealed before the Commission and the Andean Court of Justice.

(b) Tariff rates

Question 49

Paragraph 53: Footnote 1 to paragraph 39 indicated that prior to the revisions instituted in June 1989, only about 8 per cent of Venezuelan fiscal requirements were supplied by tariff revenues due to many exemptions. Could Venezuela indicate what portion of Government revenue is generated by other import taxes, duties, and charges? Can Venezuela estimate the portion of Government revenue that will be generated by tariffs and other import charges and taxes under the new tariff régime?

Reply

Government revenue from import taxes, fees and charges, other than tariffs, accounted for 3.06 per cent of total government revenue in 1988. It is estimated that in 1990, Government income generated by tariffs and other import duties and charges will increase considerably despite the recent reduction in tariff levels. The increase can be explained by the fact that exemptions have been eliminated. It is estimated that this revenue could account for 13 per cent of total Government revenue in 1990.

Question 50

Paragraph 53: We believe that Annex 5 has been superseded by more recent modifications of Venezuela's tariff schedule. We believe that such modifications may number 900 tariff lines. If this is so, could Venezuela provide more recent documentation to indicate the current tariff régime being applied?

Reply

Yes. The present Customs Tariff was modified by a joint Resolution of the Ministries of Finance and Development on 28 September 1989. It has already been sent to the GATT secretariat and made available to contracting parties.

Question 51

Paragraphs 54-55: What percentage of tariff lines and import trade are still subject to specific tariffs or to a combination of specific and ad valorem tariffs?

Reply

All specific tariffs have been eliminated in the Customs Tariff in force.

Question 52

Paragraph 55: Could Venezuela indicate the percentage of tariff lines and import trade covered by each tariff category currently? Could Venezuela provide similar information on its tariff structure for each phase of its tariff reduction and reform programme as described in Articles 6-9 of Decree No. 239 (Annex 3)?

Reply

The percentage of tariff lines and import trade covered by each tariff category is in the process of being calculated. The details of the tariff reduction programme for the next few years are currently being discussed.

Question 53

Paragraph 57: Why has the Venezuelan Government chosen to exclude agriculture initially from its tariff reform programme? What reforms (both tariff and non-tariff) are currently planned for the agriculture sector, and what is the anticipated time-table for implementing the reforms? Describe the studies initiated by the Government to determine the trade impact of agricultural reform.

Reply

Since international markets for agricultural products are subject to different regulations, subsidies and other measures, Venezuela considered that it should implement new instruments before undertaking trade reform in the sector. Since the trade reforms for the agricultural sector have not been defined as yet, there is no time-table for implementation.

Question 54

Paragraph 57: Will the tariff reductions contemplated in the period 1990-93 cover agricultural items as well? Please list and describe the non-tariff measures currently applied to imports in this sector. Under what specific GATT provisions does Venezuela intend to justify these measures after its accession to the GATT?

Reply

Agricultural products are not included in the Liberalization Programme for the period 1990-1993. Non-tariff restrictions are set out in the Customs Tariff. Trade reforms in the agricultural sector are scheduled to start in March 1991. From that date, the restrictions, exemptions and other measures will be phased out.

With regard to justification of the measures applied in the agricultural sector, Venezuela considers that the relevant provisions are contained in Articles XI, XVIII, XX and XXI and the 1979 Decision on Safeguard Action for Development Purposes. It should also be pointed out that non-tariff measures in the agricultural sector are applied on a non-discriminatory basis in accordance with Article XIII.

Question 55

Paragraph 57: How does the Government of Venezuela intend to ensure non-discriminatory market access for imported agricultural items into Venezuela?

Reply

Venezuela applies no discriminatory measures with regard to market access, except in the case of products benefiting from preferences negotiated within the Andean Group and ALADI.

(c) Tariff exemptions

Question 56

Paragraph 58: Why is it necessary to "exempt" the imports listed in footnotes 1 and 2, i.e. the "basic basket" and certain knock-down kits for assembly in Venezuela, from tariff duties, rather than establish a zero rate of duty for their importation?

Reply

Products included in the "basic basket" and the CKD régime are subject to the same liberalization scheme as other products. Exemptions will be phased out and once they have been eliminated, the products concerned will

receive the tariff protection stipulated in the Customs Tariff. The purpose of exemptions is to supply the domestic market, without any major price increases, with products which are vital for the needier sectors of the population, such as those included in the "basic basket" or mass-consumption, products such as those included in the CKD régime. Exemptions on "basic basket" products are only authorized when there is a shortage in the domestic market; discretionary powers have been reduced to a minimum.

Question 57

Paragraphs 58 and 59: It seems that quite a large number of entities enjoy the total or partial exemption from customs duties. Is this system of the tax exemptions going to be maintained in the future?

Reply

Tariff exemptions are set out in the laws establishing public bodies. Only a very limited number of State enterprises come under this régime and they are not associated with any specific sector or product. Products exempted by legislation are for Government use and not for sale.

Question 58

Paragraph 58: Will the preferential treatment of tax exemptions concerning the CKD régime be completely terminated in January 1991?

Reply

CKD régime exemptions will be eliminated in January 1991.

Question 59

Paragraph 58: What portion of Venezuelan imports was accounted for by the items listed in footnote 1 (the "basic basket") and footnote 2 (certain knock-down kits) during a recent representative period?

Reply

Compilation of the relevant statistics is in the process of completion. The contracting parties will be informed in due course through the GATT secretariat.

Question 60

Paragraph 58: Please describe more fully the public enterprises whose constituent imports are exempted from tariffs. Are such imports solely for the consumption of the Government of Venezuela, or are they destined for sale on the commercial market? Please indicate the approximate portion of Venezuela's imports accounted for by such imports.

Reply

The public enterprises which benefit from exemptions are those whose constituent legislation so provides. The imports thus exempted are intended for the consumption of the enterprises which effect them. Major changes have been made in the exemption policy recently, which makes it difficult at present to provide more detailed information in this respect. This information, as well as data on the percentage of "exempted" imports, will be supplied later.

Question 61

Paragraph 59: Does this paragraph list all the other situations under which the Government of Venezuela currently grants any other exemption from tariffs? What portion of Venezuela's imports benefited from the programmes described in this paragraph?

Reply

Paragraph 59 lists all the situations in which tariff exemptions are applied. Available statistics do not deal separately with imports benefiting from tax exemptions. The necessary calculations are being made to provide information on the matter.

Question 62

Paragraph 59: Please elaborate on the conditions under which the National Executive would consider granting tariff exemptions "on the basis of reciprocity" or in "industrial, agricultural, breeding, transportation, mining, fishing and the manufacturing [sectors], principally of necessity goods". Would such exemptions be applied to imports from all GATT contracting parties, as called for in Article I?

Reply

The exemptions on the basis of reciprocity referred to in paragraph 59 are granted to imports effected by diplomatic and consular officials accredited to the National Government. Exemptions are not granted on a discriminatory basis, and as pointed out above, this is a practice which has been radically modified recently. No exemptions are currently granted except in the case of certain State enterprises whose constituent legislation so provides. The legal basis for the grant of exemptions is provided by the provisions referred to in paragraph 59.

(d) Non-tariff measures

Question 63

Paragraphs 60, 61 and 42: Concerning Import Prohibitions (Note 1), could Venezuela describe more fully and provide a time-table for its plans to eliminate these import prohibitions?

Reply

The list of prohibited imports is included in Annex I. They are essentially luxury goods. Pursuant to Decree No. 239, prohibitions on imports will be eliminated once the consumption taxes are in force.

Question 64

Paragraphs 60, 61 and 42: Concerning Import Prohibitions (Note 1):

- (i) Please list the remaining products whose import is currently prohibited, and indicate the reasons for the import prohibition. Where possible, please give the tariff line number for each item prohibited.

Reply

As stated earlier, all the products whose import is prohibited are indicated in column 5 of the Customs Tariff by the figure 1. These prohibitions are temporary, and stemmed from the need to avoid, in the country's current economic circumstances, the acquisition of products considered to be luxuries.

- (ii) Who develops the list of products whose import is prohibited? Is there an opportunity for public comment on items proposed for import prohibition? How long does Venezuela contemplate retaining such measures?

Reply

The prohibitions are established by the National Executive, usually without public consultation.

- (iii) Please elaborate on the Venezuelan Government's plans to eliminate these prohibitions. How does Venezuela intend to justify these measures under GATT provisions after accession?

Reply

As mentioned in the reply to the previous question, in accordance with Decree 239 the prohibitions will disappear once the sales tax enters into force.

Question 65

Paragraphs 60 and 42: Concerning Items whose Import is Reserved to the National Executive (Note 2):

- (i) Could Venezuela supply a list of the 285 items whose importation is currently reserved to the Government as indicated by Note 2? Who is responsible for proposing and approving application of Note 2 to an import product? What public entities are responsible for such purchases? Does Venezuela contemplate reducing further the number of items covered by Note 2?

Reply

The items to which Note 2 applies (importation reserved to the National Government) are indicated in column 5 of the Customs Tariff by the figure 2. The fact that these imports are "reserved" to the National Government does not mean that they are effected by public agencies. Note 2 in fact provides for what are known as authorizations ("delegaciones"). The National Government authorizes a private importer to import the product subject to Note 2. To this effect, importers apply to the Ministry of Development for such authorization, which the Ministry then does or does not grant.

- (ii) Why has a Government monopoly been maintained on the import of these 285 items? Does the Government monopoly extend to domestic trade as well? Does the reservation of an item in fact restrict the quantities imported? What portion of Venezuela's imports are accounted for by these items? What is the relationship between these items and items for which price controls are still maintained?

Reply

In the framework of the trade reform currently underway, further reductions in the number of products subject to Note 2 are planned. The National Government does not have a monopoly in either external or domestic trade in the products still subject to Note 2. There is no relationship between Note 2 and price controls.

- (iii) Please give more detail concerning the process by which the Government carries out the importation of these goods, and the steps a foreign exporter must undertake to make sales of these products to the national government. Is such trade subject to the purchasing requirements of Decree No. 1182 (Annex 26)?

Reply

The National Government does not directly import the products subject to Note 2, and the State does not market the goods; it delegates importation and trade. The State delegates the authority to import to private enterprises, and the foreign exporter's relationship is with the private-sector importer. This procedure is not subject to Decree 1182.

Question 66

Paragraphs 60, 42 and 47: Concerning Import Licensing by the Ministry of Development (Note 4), and Permits from the Ministry of Finance (Note 8):

- (i) Paragraph 47 explains that the Ministry of Finance has the authority to suspend imports and exports. What is the relationship between this authority and the Permit from the Ministry of Finance (Note 8)? If these are different issues, please indicate the legislative authority by which the Ministry of Finance can suspend imports and exports.

Reply

They are two different attributions. The legal authority to suspend import and export operations temporarily is conferred by Article 4:14 of the Customs Act.

- (ii) Have these licensing import restrictions been eliminated? If so, when? Does the authority to apply prior licensing requirements under Note 4 and Note 8 remain in place? Why were such restrictions applied? Under what conditions would Venezuela contemplate reinstating such measures?

Reply

In accordance with the policy set out in Decree No. 239, gradual reduction of restrictions has begun. To date, all Note 4 and Note 8 restrictions have been eliminated except those affecting the agricultural sector. The general legal authority to establish restrictions is still in force, as the Customs Act which confers such authority has not been amended. The main reason for the large-scale establishment of such restrictions was the need to regulate imports owing to the economic difficulties prevailing early in the present decade. Venezuela does not envisage reinstating such measures in the short or medium term.

- (iii) What fees may be charged for granting such licences, and how are they determined?

Reply

The only charge is a Bs.1,000 stamp duty, in accordance with section 5,4 of the Stamp Duty Act.

- (iv) Do Venezuela's provisions for the application of its import and export licensing programmes comply with the relevant provisions of the General Agreement? Does Venezuela intend to adhere to the Licensing Code at the time of its accession?

Reply

Venezuela considers that its obligations concerning the application of its export licensing programmes comply with the relevant provisions of the General Agreement. Venezuela is at present examining the possibility of adhering to the Import Licensing Code.

- (v) Would the Ministry of Finance consider applying such suspensions after it has become a GATT contracting party? If Venezuela maintains residual import licensing restrictions after accession, will import limitations administered under Notes 4 and 8 be notified to the GATT and justified under the appropriate GATT articles?

Reply

Venezuela intends to implement its trade policy in a manner consistent with the General Agreement once it has formally acceded.

Question 67

Paragraphs 60 and 42: In addition to import prohibitions, licences, and Government monopoly trading, which are mentioned in paragraph 60, and the other restrictions listed in paragraph 62, what other types of non-tariff measures have been eliminated or reduced? What other types of non-tariff measures remain in place? Are the reductions in application of these measures referred to in paragraph 42 reductions in number of products or tariff line items? What is the trade coverage of the import restrictions removed?

Reply

The non-tariff measures that have been eliminated or reduced are those mentioned in paragraph 60. The other regulations concerning imports are those applied for health, security and defence reasons, and will not be eliminated. The reduction referred to in paragraph 42 means that the non-tariff measures removed covered 76.9 per cent of manufactures.

Question 68

Paragraph 61: Please state specifically what non-tariff barriers will be eliminated in the policy's second stage (March-September 1990), and what restrictions will remain in place.

Reply

The operational details of the trade policy's second stage are currently being worked out. By September 1990, only an estimated 5 per cent of manufactures will be covered by non-tariff measures.

Question 69

Paragraph 63: What agency is responsible for issuing Sanitary and Social Welfare Permits? For what types of products are such permits required in order to import? Please describe the procedure for obtaining such a permit. Can decisions not to issue such permits be appealed?

Reply

The Ministry of Health and Social Welfare is responsible for issuing sanitary permits. This permit is required for medicines for human consumption, narcotics and psychotropic substances, cosmetics, perfumes and toiletries.

D. The new trade policy and integration agreements

Question 70

Paragraph 64: Article 3 of Decree No. 239 (Annex 3) instructs the National Executive to negotiate its Andean Pact commitments and other international agreements in relation to the provisions of that Decree.

Please describe more fully Venezuela's plan to "harmonize" commitments contracted with its trading partners under the Cartagena Agreement, ALADI and third country agreements. Does Venezuela intend to seek further liberalization of intra-Andean tariffs as a result of the New Economic Policy?

Reply

With regard to the "harmonization" of Venezuela's commitments with its trading partners, as provided for in Article 3 of Decree 239, the following points should be made: (a) Decree 239 facilitated the implementation of Venezuela's commitments under the Cartagena Agreement with respect to the elimination of non-tariff measures; (b) Decree 239 coincided with the beginning of a review of the common tariffs of the Andean Group with a view to reducing average levels of protection.

Question 71

Paragraphs 66-67: Regarding Venezuela's Partial Scope Agreements under ALADI, and Regional Tariff Preferences under the Andean Pact and ALADI:

- (i) Do these tariff preferences cover substantially all trade with the partners in the arrangement?

Reply

In intra-Andean trade, most traded goods benefit from tariff preferences. In ALADI the preferences cover only part of the trade.

- (ii) Does Venezuela plan to apply these preferential rates on an m.f.n. basis after its full accession to the General Agreement?

These preferences are negotiated in the context of the regional and subregional co-operation and integration agreements in which Venezuela participates, and they are exclusively applicable to the countries to which they have been granted. Consequently, Venezuela does not intend to extend them to all its trading partners.

- (iii) What is the margin of preference currently applied by Venezuela to imports from member countries in each Partial Scope Agreement?

The margin of preference granted by Venezuela varies from agreement to agreement and from product to product. The current margins of preference are set out in detail in the various partial-scope agreements, which have been made available to contracting parties through the GATT secretariat. Margins of preference are determined by the Andean or national tariff rate for each product, the volume of trade of the product, its sensitivity at the domestic level and participating countries' level of development.

- (iv) Please list the products subject to the Industrial Development Programme and those products on the list of exceptions for which "intra-subregional tariff liberalization" does not apply. For those products covered by industrial programmes, please describe the separate liberalization programmes currently underway.

The only industrial development programme fully applied in Venezuela is the petrochemical programme. The products included in this programme (see Annex II) enter the Venezuelan market free of duty since the corresponding liberalization programme has been implemented. The products included in the list of exceptions appear in Annex III.

Question 72

Paragraph 68: What is the status of Venezuela's implementation of the Minimum Common External Tariff under the Cartagena Agreement? Does Venezuela currently adhere to these minimum tariffs for the designated imports from all countries outside the region?

Reply

The minimum common external tariff has been in force in Venezuela since 1973. It covers 3,340 items out of a total of 4,824 tariff items. The AEMC applies to all imports from outside the Andean subregion, with a few exceptions stemming from the new trade policy implemented by the National Executive.

Question 73

Paragraph 68: When does Venezuela contemplate that the review of the Minimum Common External Tariff will be completed? Is there a projected date for the completion of a full Common External Tariff?

Reply

The review of the AEMC currently being conducted by the Commission of the Cartagena Agreement is expected to be completed in early 1990. No firm dates have yet been set for the approval and adoption of the common external tariff.

Question 74

Paragraph 68: Under the Cartagena Agreement there is a requirement that member countries hold consultations within the regional Commission before entering into tariff commitments with countries outside the region. In light of this requirement, what constraints will Venezuela face in establishing a GATT schedule of concessions in its accession? Will Venezuela's capacity to participate in international tariff negotiations be impaired by this or any other regional or bilateral commitments?

Reply

Venezuela will in due course hold the consultations referred to in Article 68 of the Cartagena Agreement. Venezuela's participation in international tariff negotiations will be in keeping with the commitments entered into under that Agreement.

E. Other charges on imports

Question 75

Concerning tariff surcharges and import taxes:

- (i) Paragraph 46 noted that the Executive had the authority to apply the "surcharges and additional taxes... not in excess of 60 per cent of the amount of established rates" to imports, exports, or goods in transit. Please list the imports affected and give the amount of each surcharge or fee and the circumstances under which it is applied.

Reply

Currently no surcharges or additional taxes are applied, nor are any foreseen in the short or medium term. The application of such surcharges or taxes falls within the discretionary power of the President of the Republic in the Council of Ministers.

- (ii) Does Venezuelan law provide for the application of the tariff surcharges other than those referred to in paragraph 46? Are any such measures currently applied? If so, on what categories of goods, and on what proportion of total imports? Does Venezuela contemplate recourse to such measures in the future, and if so, under what conditions?

Venezuelan law does not provide for the application of tariff surcharges or additional taxes other than those referred to in paragraph 46.

- (iii) Are these surcharges and additional taxes applied to the dutiable value of the good, or does the "established rate" mentioned in paragraph 46 refer to the tariff rate?

If surcharges were applied, they would be applied to the customs tariff rate.

- (iv) The reference in paragraph 46 to a "given country" in the surcharge provisions appears to imply that such surcharges or taxes may be assessed on a discriminatory basis. Does Venezuela currently apply such measures only to certain countries? After accession, how would such a practice be reconciled with the obligations of Article I?

Venezuela does not impose import surcharges and therefore does not discriminate between countries. Venezuela intends to comply fully with its obligations under the General Agreement.

Question 76

Paragraph 69: In addition to normal customs duties, Venezuela imposes "customs-service charges" on imports. What are the reasons for those charges?

Reply

The customs service charge is the counterpart for the service provided by the Administration for the purpose of determining the régime applicable to the merchandise submitted to its authority.

Question 77

Paragraph 69: On what basis is the Customs Service Fee described here applied, i.e. on the f.o.b. value, the c.i.f. value, the c.i.f. duty-paid value, or on some other basis?

Reply

In accordance with Article 39 of the Regulations of the Customs Act, the customs service fee is calculated on the basis of the normal value of the goods, which is the same as their c.i.f. value unless there has been some modification or adjustment by the Customs Administration as mentioned in paragraph 74 of the Memorandum.

Question 78

- (i) Paragraph 69: Are these fees applied to all trade, e.g. including preferential and tariff-exempted trade?

Reply

Yes. Venezuela may apply these fees to all trade, including imported goods under preferential and tariff-exempt régimes.

- (ii) Paragraph 69: Please list the customs services and activities funded by these fees. Does Venezuela's customs service require additional funding from general revenues, or do they generate revenue equal to or in excess of that required to run the customs services?

Reply

This fee pays for all the services provided by the Customs Administration in determining the régime applicable to the goods submitted to its authority. These services consist in the receipt of goods and their documentation, physical identification of the goods and the corresponding settlement of duties. Identification consists in the determination of the

legal régime to which the goods are subject, and includes the verification of documents, and the identification, examination, tariff classification, determination of tariff rates and restrictions, valuation, measurement, weighing and counting of the goods.

Question 79

Paragraph 69: According to some information, it is always required to pay at least Bs 20 for the customs service rendered to an article imported in the form of a postal package, regardless of its actual value. What is the reason for this minimum charge and on what grounds?

Reply

The payment referred to here is not required by the customs service, but rather by the Post Office (IPOSTEL) in connection with imports made through postal packages.

Question 80

Paragraph 69: According to Article VIII:1(a) of the General Agreement (supported in a 1988 GATT Panel Report - Customs Users Fee), the cost of services paid by importers must be specifically related to the cost of services rendered. Given the ad valorem nature of the 5 per cent customs service charge and 2 per cent charge on postal packages, how will Venezuela justify these charges as a GATT member? Is Venezuela willing to change the structure of this fee to bring it into conformity with the GATT?

Reply

It is considered that the administrative costs associated with the application of a variable rate for customs services would be very high, especially for a developing country such as Venezuela. In addition, the application of an ad valorem rate tends to avoid administrative discretion and other practices that may lead to delays or obstacles to imports. Finally, it should be pointed out that in the framework of its new trade policy Venezuela has decided to undertake the comprehensive modernization of ports and customs.

Question 81

Paragraph 70: Please describe the nature and level of the storage charges for goods that remain in warehouses, patios, or other customs service dependencies. Title II, Chapter I of the Regulation of the Organic Customs Law (Annex 2) appears to indicate that these charges are ad valorem charges.

Reply

The storage fee is charged by public or private bodies responsible for keeping and guarding merchandise while it remains in the areas and depots intended for storage in customs service dependencies while the corresponding customs formalities are carried out. The charges are monthly ad valorem charges, as provided for in Article 29 of the Regulations of the Customs Act (Annex 2 of the Memorandum).

Question 82

Paragraph 70: Please give an example of an average storage charge, if possible, or a range of potential charges. What method is used to assess the storage charges?

Reply

The method is based on the length of time the merchandise remains in storage; progressive charges based on length of stay have been established, ranging, usually, and depending on the body providing the services, from 2 per cent to 20 per cent of the value of the goods. The average charge is about 10 per cent for a period of up to forty-five days.

Question 83

Paragraph 70: Are any other customs warehouse services available to importers? How can ad valorem charges on merchandise for the use of the facilities be equated with the approximate cost of services rendered, as required by Article III of the GATT?

Reply

Users are entirely free to use whatever storage service best suits their interests, whether public or private. All that is required is authorization for transfer of the goods from the corresponding customs office. The second part of this question has been answered earlier (see question No. 80).

Question 84

Paragraph 71: According to Paragraph 71, "Applications to the Ministry of Finance concerning tariff classification relating to any merchandise must also be paid for." In which cases is this fee charged? Is Venezuela going to maintain the charges concerning tariff classification in the future?

Reply

Consultations concerning tariff classification are not compulsory. They must be requested by the person concerned. The advantage of this consultation is that it offers legal security through an official document, provided the product to which the consultation referred is identical to the product which is the object of the customs operation. Thus, even where the customs officials may disagree with the classification obtained from the consultation, they must apply the criterion of that classification, without prejudice to the possible opening of an investigation into the matter. Venezuela will maintain these charges as a counterpart for the activity involved in conducting all these consultations.

Question 85

Paragraphs 71-72: The charges listed for various customs services and consultations vary from one to 1,000 Bolivars. Please explain the basis upon which charges for specific services are assessed. For example, do these charges vary with the time or resources expended by customs officials?

Reply

In the case of consultations on tariff classification, the charge depends, as mentioned in paragraph 71 of the Memorandum, on whether there is a need for laboratory analysis of the product involved. Consequently, in this case the basis for fixing the charge depends on the resources employed by the customs officials, although there is no discrimination on the basis of the costs of the laboratory analyses in question. With regard to the special charge for working in non-working hours mentioned in paragraph 72 of the Memorandum, this is determined on the basis of the amount of time the customs officials must devote to providing a service outside normal working hours or on non-working days.

Question 86

Paragraphs 71-72: What are the criteria applied to determine the charges for the services listed in these paragraphs? How do these charges relate to the cost of the services rendered?

Reply

The charges for consultations concerning tariff classification and customs services provided outside ordinary working hours have been set as described in the replies above. The criteria guiding these charges are the simplification of operations and limitation of the discretionary powers of customs officials.

F. Customs rules and procedures

(a) Customs valuation

Question 87

Paragraph 74: If the price "paid or payable", i.e. the transaction value, of the import is lower than the "normal" value under competitive conditions as described in Annex 3, is an uplift of the valuation for customs purposes authorized? If so, how is it calculated? Are these procedures published? If the transaction value is higher than the "normal price" which valuation is used for customs purposes?

Reply

If the price paid or payable for the imported goods is lower than the "normal price", it is rectified or adjusted by raising it to the "normal price". The determination of customs value on the basis of the price paid

or payable is carried out primarily through a comparison between the actual sales contract and the theoretical contract provided for by the regulations (Article 235-238 of the Regulations of the Customs Act). Thus the customs service has three possibilities for expressing its agreement or disagreement with the declared value:

- (a) The price paid or payable may be accepted without adjustment when the declared value of the actual contract is in every way consistent with the theoretical contract (Articles 249 and 271 of the Regulations of the Customs Act).
- (b) The price paid or payable may be accepted with minor adjustments to include the sale and storage costs which have to be incurred so as to place the goods on a c.i.f. basis at the port of entry when such costs are not included in the declaration (Articles 250 and 275 of the Regulations of the Customs Act).
- (c) The price paid or payable is unacceptable. In this case, the declared value is adjusted when: (i) the sale has not taken place in conditions of free competition (Article 251 of the Regulations); (ii) there are unallowable discounts (Articles 255 and 257 of the Regulations); or (iii) the price is lower than the normal competitive price (Articles 258-260 of the Regulations).

In the case of sales not carried out under conditions of free competition, the Customs Directorate-General calculates, in accordance with Articles 252-254 of the Regulations, the required adjustment to rectify the values declared by the importer so as to bring them to the level of the theoretical contract. Such calculation methods or procedures are public knowledge in that they are merely the application of the rules of the Customs Act Regulations. The adjustment calculated by the Customs Directorate-General is established by administrative resolution, which is notified to the importer and to all customs services.

In the event that the price paid or payable is considered unacceptable because unallowable discounts have been made or because it is lower than the normal competitive price, the declared value is again increased by adjustment. In the first case, the adjustment corresponds to the amount of the discount. In the second case, the price is adjusted to bring it to the level of the normal competitive price, in accordance with Articles 258-260 of the Regulations of the Customs Act. If the transaction value were higher than the "normal price", the former would be used for the purposes of customs valuation.

Question 88

Paragraph 75: Under what conditions would it not be possible to determine the "normal" price based on the price paid or payable, or the price under "competitive conditions"? What criteria are used for the determination of "probable" price? If "identical" imported merchandise cannot be used for this determination, is other merchandise used? What criteria are used for the determination of "effective" price? If the

"effective" price is based on a retail sale in Venezuela, is some discount applied to account for profit and general expenses incurred by the retailer? How is the "amount of foreseen rentals" used to calculate the value of imported merchandise for customs valuation purposes?

Reply

It would not be possible to determine the "normal price" based on the price paid or payable, or the price under "normal competitive conditions", when the conditions of the transaction declared to the customs correspond to one of those provided for in Article 261 of the Regulations of the Customs Act, as follows: (a) the transaction is not the result of an actual sale made at a real and final price; (b) the import is the object of a sale, but not in normal or usual trade conditions; (c) the customs service considers that one or more of the particulars contained in the documentation are wrong or false; (d) the price paid does not correspond to a sale made in conditions of free competition and the necessary information is not available to adjust the price as provided for in Articles 252 and 253 of the Regulations of the Customs Act; and (e) the normal competitive price cannot be established for lack of information on prices of other identical or similar goods sold by the same or other suppliers from the same or other countries under equal conditions as regards time, quantity and commercial level.

In accordance with Article 262 of the Regulations, the "probable price", is the price fetched in the national territory by a product identical to the imported product at a date prior or close to the valuation date, in other words, the price at which the imported article to be valued would probably have been marketed. To establish this price it is necessary to collect information from importers in the same trade branch who have sold identical goods. In the absence of identical goods, this method is not applied, and indeed it is not frequently used. The reason it is not more frequently applied in practice is that the basis used is the "effective price" that is to say, the unit price or actual sum at which the imported merchandise is actually marketed on the domestic market, with the deduction of whatever elements are not relevant to customs value, such as the gross commercial profit obtained from the sale, import costs and duties, so as to place the goods on a footing of delivery c.i.f. at point of entry. At that point, the customs value is the result of the theoretical contract, which is compared with the declared value of the transaction. If the "normal value" so calculated according to the theoretical contract proves higher than the declared value derived from the actual contract, an adjustment is made equal to the percentage difference between the two values. The data necessary for the application of this criterion are collected from the importer himself.

If the "effective price" is based on a retail sale made in Venezuela, a discount is applied to take account of the retailers profits and overheads. Starting from the "effective price", the lowest unit sale price on the domestic market is taken into consideration. Between the direct price to the consumer and the price to the retailer, the latter is chosen. Furthermore, if there is a sale price to wholesalers granted by the

importer, then that price is taken as being the real sum obtained when the goods are marketed for the first time in the national territory, taking account of discounts granted for volume or quantity.

With regard to the use of the "amount of foreseen rentals" used to calculate the customs value of imported merchandise, this is an exceptional method. It is used to determine the normal value of goods imported under leasing arrangements, or which will be the object of a leasing contract after they have been imported (Article 264 of the Regulations of the Customs Act). If the normal price is not known, from having been previously determined in earlier cases of importation of identical goods, the normal price is determined on the basis of the foreseen rentals.

This method consists in determining, through actuarial or financial calculations, the actual value of all rentals payable during the probable service life of the merchandise at the least attractive rate of return in the financial market or the internal rate of return of the leasing operation as supplied by the importer himself.

Once the actual value has been obtained, the same procedure is followed as in the method of the "effective price" for resale, i.e. from this value are deducted all elements that are not relevant to the customs value, so as to arrive at the "normal value" in a theoretical contract. If this is higher than the value declared to customs for the import, an adjustment to the declared value is calculated, which is equal to the percentage relationship existing between the difference between the two values and the declared value.

Question 89

Paragraph 76: What special rules are used in determining the normal price of used, deteriorated or depreciated articles? What are the "special régimes" which are referred to in this paragraph, and what special rules apply to goods imported under them? Are these criteria published?

Reply

Ministry of Finance Resolution No. 431 of 15 May 1973 (see Annex IV) establishes in Articles 6-11 the rules for valuing goods in special cases where conditions are such that they cannot be valued in accordance with the procedures applicable to other merchandise. For used or depreciated articles, the normal price is defined as the price of identical or similar articles in the new state, less certain depreciation percentages according to time. These percentages are established in Ministry of Finance Resolution No. 631 of 3 November 1975 (see Annex V).

Damaged goods are valued on the basis of the contract price providing that is the normal competitive price, less any insurance indemnization payable. If the goods were not insured, no deduction or adjustment is made. Likewise, the Customs Act (Article 53) and its Regulations (Article 163) provide that valuers must adjust the dutiable base when the

merchandise shows signs of damage, objectively determining the proportion of the damage with respect to the total value of the goods so as to make the corresponding adjustment or deduction.

The only special régime for which valuation rules exist concerns goods that are reimported after having been temporarily exported for purposes of repair or processing abroad (outward processing). These rules are given in Article 11 of Resolution 431 and were published in the Official Gazette.

Question 90

Paragraphs 73-76: Will Venezuela adhere to the Customs Valuation Code at the time of accession?

Reply

The possibility of Venezuela's subscribing to the Customs Valuation Code is currently being assessed.

(b) Official prices

Question 91

Paragraph 78: Which factors are taken into account when setting the "official prices" mentioned in paragraph 78?

Reply

According to Article 278 of the Regulations of the Customs Act, in the setting of official prices it is necessary to take into account that goods are imported whose prices do not correspond to those of reasonable international trade competition, so that it must be ensured that the official prices conform to the usual competitive prices obtained in normal commercial circumstances.

Question 92

Paragraphs 77-78: Please explain in detail the conditions under which "official" price valuation would be applied to an import, and the methods used to determine "official prices" applied to imports "for the purpose of calculating ad valorem tariff rates" under the Organic Customs Law. Are there additional regulations other than those contained in Article 278 of Annex 2? Are the criteria used to select products and determine "official" prices published and available to traders?

Reply

Assuming an official price has been fixed for the import of a specific article, and the price paid or payable in the transaction was less than the official price, the latter would represent the taxable base for the application of ad valorem duties as indicated in paragraph 77 of the Memorandum. If on the other hand the official price were lower than the price paid or payable, then the latter would be used as the valuation base. For the purposes of determining official prices, the Ministry of Finance examines the circumstances in each case, and has discretionary power to reach a decision on them. There are no rules other than those contained in

Article 4, paragraph 18, of the Customs Act and Articles 278 to 281, inclusive, of the Regulations of the Act, which govern official prices. The criteria used to select products and determine official prices are not published nor available to traders. What have to be published in accordance with Article 280 of the Regulations of the Customs Act are the official prices themselves, but not the criteria by which they were established.

Question 93

Paragraphs 77-78: Why are official prices under Article 278 necessary, when the Customs authorities already have the authority to adjust the transaction value for customs valuation purposes when it does not correspond to the "normal price"?

Reply

Official prices are a suitable means of dealing with cases of under-invoicing, especially those of a recurring or continuous nature, with the added advantage of removing this matter from the discretion of the customs official. At present no official prices are applied, and as the Venezuelan customs are modernized they will probably be less necessary.

Question 94

Paragraphs 77-78: GATT Article VII prohibits the use of "the value of merchandise of national origin" or "arbitrary or fictitious values" for customs valuation purposes. How will Venezuela reconcile the provisions of its customs law with the GATT in this area after accession to the GATT?

Reply

Venezuela intends to apply its customs valuation provisions in a manner consistent with the General Agreement.

(c) Customs

Question 95

Paragraph 79: Please describe Venezuela's provisions for appeal and judicial review of Customs decisions concerning valuation, classification and other customs administrative actions.

Reply

In administrative matters, decisions of the Customs authorities concerning valuation and classification and other customs administrative actions are subject to the remedies provided for in the Administrative Procedures Act, namely, appeal for reconsideration, by the same official responsible for the act that is challenged; hierarchical appeal directly to a higher body in the Ministry of Finance, when the lower customs body decides not to modify its act as requested in the appeal for reconsideration; and appeal for review, which may be made to the Ministry of Finance in exceptional cases. Once administrative channels have been

exhausted, it is possible to turn to the judicial channel by filing an appeal for annulment of an administrative act with the Administrative Litigation Division (Sala Politico Administrativo) of the Supreme Court of Justice. For customs offences or fraud, there exists a special jurisdiction for criminal-fiscal matters formed by the national finance courts and their higher courts. Proceedings for nullification of administrative acts having particular effects before the Administrative Division of the Supreme Court of Justice include: filing of the relevant application by the person concerned, request by the Court for the administrative antecedents of the case, fixing a reasonable period of time for the pertinent administrative authority to provide them; transmittal of all the documentation to a procedural court (Juzgado de Sustanciación) which reviews all the facts of the case and decides on the admissibility of the appeal; notification of the appeal, if admissible, to the Office of the Government Attorney (Fiscal General de la República and Procurador General de la República), as well as possible summonses to other persons concerned to attend the trial; presentation and examination of evidence; remittal of the proceedings by the procedural court to the Administrative Litigation Division, presentation of final reports, and subsequent decision by the Division.

Question 96

Paragraph 79: What measures are perceived as necessary to modernize the Venezuelan Customs Service?

Reply

The measures envisaged to modernize the Customs Service include the formulation of a strategy for the acquisition of human, material and financial resources; computerization of systems; recruitment and training of staff; and allocation of more budgetary resources to meet the planned targets.

Question 97

Paragraph 79: Does Venezuela still contract with specialized inspection and customs clearance firms for pre-shipment inspection or for any other customs services?

Reply

No such contracts exist at present.

Question 98

Paragraph 79: Concerning Venezuela's provisions for appeal and judicial review of Customs decisions concerning valuation, classification and other customs administrative actions, please indicate, or estimate, the normal length of time required to decide the outcome of such an appeal or judicial review process.

Reply

The Supreme Court of Justice Act contains detailed provisions concerning the time periods within which the various procedural steps described in the answer to question number 95 must take place. Nevertheless, the large number of cases brought before the above-mentioned judicial authorities has led to considerable delay in deciding them. No information is available on the average length of time that may pass before the Administrative Litigation Division of the Supreme Court hands down its decision.

G. Measures against unfair trade practices

Question 99

Paragraphs 80-82: In paragraph 80 Venezuela indicates the establishment of mechanisms for coping with unfair competition in future. What kind of measures would Venezuela introduce in order to cope with unfair practices such as dumping and unjustified manipulations of prices?

Reply

Anti-dumping legislation is currently being drafted. The relevant provisions of the General Agreement are being fully taken into account in this work.

Question 100

Paragraphs 80-81 and 44: Concerning the development of Venezuela's laws concerning protection from unfair trade practices:

- (i) Please describe in more detail the sort of provisions that are being designed for Venezuela to deal with unfair import competition, as called for in Article 16 of Decree No. 239 (Annex 3).

Reply

The anti-dumping provisions currently being drafted will be consistent with Article VI of the General Agreement, and will fully take into account the provisions of Decision 230 of the Cartagena Agreement. Thus, they provide for the possibility of applying anti-dumping duties, after the necessary investigations have been carried out, to the extent necessary to eliminate the injury or threat of injury to domestic production, or considerable delay in the start-up of such production. Decision 230 of the Commission of the Cartagena Agreement subjects application of anti-dumping duties to prior authorization from the Board in cases where such duties have to be applied on products originating in or imported from: (a) a member country of the Cartagena Agreement, which cause or threaten to cause serious prejudice to domestic production or to exports to another member country of the Agreement; and (b) a country outside the Andean sub-region, which cause or threaten to cause serious prejudice to Venezuelan exports to a member country of the Cartagena Agreement or to domestic production; in the latter case the correction of the distortion of competition calls for a modification of the commitments made under the Cartagena Agreement.

- (ii) The Cartagena Agreement's Decision 230 also provides guidelines for the establishment of mechanisms for addressing unfair import competition. How will Venezuela's legislation relate to the Decision 230 provisions of the Cartagena Agreement?

The legislation on unfair import competition which Venezuela will establish will be in keeping with the terms of Decision 230 of the Cartagena Agreement as described in the above reply.

- (iii) Does Venezuela plan to develop and implement its measures in this area in conformity with Article VI of the General Agreement? Will Venezuela adhere to the anti-dumping at the time of its accession?

As mentioned above, the future anti-dumping legislation will be in keeping with the provisions of Article VI of the General Agreement. The accession of Venezuela to the Anti-Dumping Code is currently being devaluated.

CHAPTER III: EXPORT POLICIES

A. Introduction

Question 101

Paragraph 85: Please describe the fiscal and financial incentives mentioned in paragraph 85. What sectors do they affect? What does the Government of Venezuela mean by "sufficient time" for new industries to be able "to internalize initial learning costs"?

Reply

This question is answered in detail in the replies to questions 111 to 116 and 124 to 126.

Question 102

Paragraph 85: Please describe how, and when, Venezuela plans to bring its export subsidy programme into conformity with Article XVI and other relevant provisions of the General Agreement? Does Venezuela intend to accede to the Subsidies Code?

Reply

Venezuela considers that its programmes in this area are compatible with Article XVI and other provisions of the General Agreement. The Subsidy Code is currently being evaluated. In accordance with Decree 239, the export incentive programme will progressively be reduced from March 1990 onwards, as progress is made in tariff reform and the various special customs régimes provided for in the Customs Act enter fully into operation.

Question 103

Paragraph 85: Please explain how "non-traditional exports" are defined for purposes of government assistance programmes.

Reply

Traditional export products are exports of cocoa, coffee and petroleum and petroleum refining products; all other export products are non-traditional.

Question 104

Paragraph 86: Do Venezuelan authorities envision a specific time-frame for industrial reconversion? What will be the trade effects of the reconversion?

Reply

The Government of Venezuela has not fixed a specific time-frame for industrial redeployment. The programme is the responsibility of the Ministry of Development, and is intended to make enterprises more efficient and competitive on both the domestic and international markets.

Question 105

Paragraph 87: When is the elimination of most export permits, export licences and prohibitions on exports foreseen? Please explain precisely how each of these three export control mechanisms currently operates and the goods affected thereby.

Reply

Export prohibitions have been eliminated under the new trade policy. With regard to licences, their number has been restricted to the items making up the basic basket, subsidized products and products considered by the National Executive to be of public interest. Permits have been reduced to those of a sanitary nature. The bodies administering the licensing system are the Ministries of Finance, Development and Agriculture.

Question 106

Paragraph 88: Under GATT Article XX(g) exhaustible natural resources can qualify as exceptions to GATT disciplines if measures undertaken or restrictions imposed are also applied to domestic production or consumption. Accordingly, how would Venezuela justify export restrictions on natural resources once it becomes a GATT member? Does the government restrict the use of exhaustible natural resources domestically as well?

Reply

Venezuela limits the production of some products of exhaustible natural resources on conservation grounds. Thus, there is a limit on production of crude petroleum and on that of natural gas, of which a large part of total production is re-injected. Conservation policies also apply to other exhaustible natural resources, such as minerals. These policies do not discriminate between the domestic market and exports of such products.

B. Port service taxes and charges

Question 107

Paragraph 89: Under what conditions would the Venezuelan Executive enforce taxes on exports?

Reply

The National Executive has powers to apply customs taxes both on imports and exports by virtue of Article 40 of the Customs Act. There are no specific legal provisions establishing the conditions under which export taxes could be established. For the time being, no tax of any kind exists for export products.

C. Export restrictions

Question 108

Paragraph 91: How is "public interest" defined, as used in this paragraph? Please give examples of goods that might fall under this category.

Reply

The concept of "public interest" refers to the need to satisfy the interests of the community, for the safeguard and protection of which the State is responsible. Examples of such goods would be basic foodstuffs or essential products, some mining products and some species threatened with extinction.

Question 109

Paragraph 91: Are the products listed in paragraph 92 the only ones currently covered by export licensing requirements? What portion of Venezuela's non-petroleum exports require licences?

Reply

Besides the products mentioned in paragraph 92, some steel exports are also subject to the export licensing requirement. The percentage of exports subject to export licenses is currently being calculated and the information will be duly communicated to the contracting parties through the GATT secretariat.

Question 110

Paragraph 92: Are the export licences required for the products listed in this paragraph restrictive? Why does Venezuela restrict exports of uranium and thorium minerals and metallurgic minerals?

Reply

The licensing requirement for exports of products included in the basic basket is not trade restrictive. It is aimed at ensuring the domestic supply of essential foodstuffs. With regard to metallurgical minerals, the purpose of licensing is to ensure that local industry has supplies of them. The licence applicable to exports of uranium and thorium is intended to ensure State control over foreign trade in these radioactive minerals, in view of the defence and security considerations inherent in that trade.

D. Export incentive systems

(a) Fiscal credits

Question 111

1. (Re. paragraphs 93-98.) In order to promote the growth of exports Venezuela seems to grant very advantageous fiscal credits to the exporting entities. What is Venezuela's view on the consistency of this system with Article XVI of the General Agreement?

Reply

Venezuela considers that its programme of fiscal credits is consistent with Article XVI of the General Agreement.

Question 112

2. In the financial policy, is there any preferential treatment to promote the growth of exports other than the fiscal credits?

Reply

In addition to the fiscal credits established by the Export Incentive Law and its Regulations, non-traditional exports benefit from credits granted by FINEXPO.

Question 113

Paragraph 93: Please describe more fully the provisions and workings of the export incentive programme authorized under Article No. 18 of Decree 239. How is the 30 per cent credit assessed? How is it paid to exporters? What goods are excluded from receiving this benefit? Also describe in greater detail the phase-out programme which is scheduled to begin in March 1990. Does the government intend to eliminate the export incentive completely? If so, by what date? What Ministry is responsible for administering this assistance programme?

Reply

Article 18 of Decree 239 only establishes some rules for modifying the export incentive provided for in the Export Incentive Law and its Regulations (annexes 7 and 8 to the Memorandum), described in detail in paragraphs 93 to 98, inclusive, of the Memorandum. The 30 per cent credit percentage is calculated on the basis of the local value added of the export product, which is calculated according to the formula given in paragraph 97 of the Memorandum, and is applied to the net f.o.b. value of the export product. This incentive is paid to exporters in the form of bonds issued by the Ministry of Finance that are negotiable on the stock exchange and used for the payment of domestic taxes. The following are excluded from this export incentive: (a) petroleum and petroleum-refining products; (b) unprocessed minerals; (c) products whose local value added is less than 30 per cent; (d) products of foreign origin intended for re-export, including products that have been trans-shipped or entered the country in transit; (e) used products or waste of which the export chiefly gives rise to gains linked with or stemming from their marketing; (f) exports of parts by the motor-vehicle assembly industry which are within the limits of what is recognized as the incorporation of local parts; (g) exports of gold in any form; (h) exports of diamonds; and (i) exports of certain types of fish.

This incentive is administered by the Ministry of Finance together with the Ministry of External Relations, through the Foreign Trade Institute, with respect to the determination of the local value added of products for which exporters are eligible for this programme. In accordance with the guidelines in Decree 239, this export incentive programme will gradually be eliminated as of March 1990.

Question 114

Paragraph 93: Concerning the phase-out programme for fiscal credits scheduled to begin in March 1990, please describe any intermediate steps to be applied prior to creation of the new régime. To what extent would such interim measures maintain the level of subsidy embodied in the current programme?

Reply

Improvements are currently being made in the mechanisms of temporary admission for inward processing, drawback, and stock replacement referred to in the reply to question number 35. These measures are not considered provisional, nor as causing subsidies.

Question 115

Paragraph 94: Under the provisions of the Export Incentive Law exporters are eligible to receive export incentive bonds from the Ministry of Finance. Please describe the operation of this programme in greater detail. How is the amount of the bond determined? Are certain goods excluded from receiving this benefit?

Reply

The conditions of eligibility for the export incentive are the following: (a) the export products must be produced in the country. Evidence of export is provided by the export manifest or customs declaration (Article 1 of the Export Incentive Law and 12 of the Regulations); (b) the export products must have a local value added of 30 per cent or more. This percentage is established by the Certificate of National Value Added. The list of products with their corresponding National Value Added is published in the Official Gazette (Articles 1 and 3 of the Act and 8 and 12 of the Regulations); (c) the receipts from the export operation must actually be brought back to the country. This is established by the Certificate of Entry of Foreign Exchange issued by a commercial bank or by FINEXPO (Articles 8 of the Act and 8 and 12 of the Regulations).

The procedure to be followed to obtain the incentive is the following: (a) the exporter submits his Calculation of Value Added to the Foreign Trade Institute, which may verify the information furnished. After checking that the information is consistent with the firm's financial statements and other evidentiary requirements, the Foreign Trade Institute issues the Certificate of Local Value Added (VAN); (b) subsequently, the Foreign Trade Institute carries out a check on the enterprises and, in the event of any irregularity, submits a report to the Ministry of Finance for the latter to impose the relevant penalties; (c) once the exporter has the Certificate of Local Value Added and carried out the export transaction, he must bring his foreign exchange earnings into the country, through any commercial bank.

The actual amount of the credit is calculated by the commercial bank for the Ministry of Finance. To this end, the exporter must submit the above mentioned documents (export manifest, VAN Certificate or Official Gazette and Certificate of Entry of Foreign Exchange). The actual amount of the credit will be calculated by multiplying the exchange value in Bolívares of the amount of foreign exchange actually brought into the country, using the exchange rate in force on the date of issue of the export manifest, by the fiscal credit percentage previously established by the National Executive. Once this calculation has been made, it is reviewed by the Export Financing Fund (FINEXPO) for the purpose of authorizing payment of the export bonds.

Question 116

Paragraphs 93-94: Are these incentives limited to domestically-owned firms, or can foreign-owned firms participate in the programme?

Reply

Any enterprise that is lawfully constituted and domiciled in the country and meets the requirements laid down in the Export Incentive Law may be eligible for the fiscal credit.

(b) Special tariff régimes

Question 117

Paragraph 99(ii): Please provide the value of exports that benefited from such duty-free imports in a recent representative period.

Reply

Although the Customs Act establishes the stock-replacement régime, it has been very little used. Available statistics are not sufficient to calculate the value of exports affected by this régime.

Question 118

Paragraph 99(iii): Has an import tax refund (drawback) system already been instituted? If so, when was it put into place?

Reply

Article 4, paragraph 22, of the Customs Act establishes that the Ministry of Finance shall refund wholly or partially the amount of customs duties paid in the case of articles involving the local processing or finishing of products that will subsequently be exported, or in the case of articles that are imported and must leave the country under duly-proven special circumstances, in accordance with Decree No. 914 of 27 November 1985, published in the Official Gazette, No. 2693 Extraordinaria, dated 21 January 1986 (Regulations of the Customs Act), article 361 and following.

This régime has not been widely used because of the complexity of its application. A review is currently underway of the changes which will have to be made in this drawback system for import duties so that it will be fully in keeping with the needs for which it was designed. It is estimated that the revised system will be put into practice in February 1990.

Question 119

Paragraph 99(iii): Concerning a possible duty drawback system, what Government institution would administer such a tax refund system, if it is implemented?

Reply

As mentioned above, under the Customs Act the Ministry of Finance has this power.

(c) Exemptions from income taxes

Question 120

Paragraph 100: Are foreign industrial enterprises (or joint ventures) eligible for the income tax exemption mentioned in this paragraph?

Reply

Decree No. 1336 is no longer in force. That Decree provided exemption from income taxes for industrial enterprises in respect of earnings stemming directly from new investments for the production of goods for export, regardless of whether the industrial enterprise in question was foreign or local or a joint venture. Consequently, foreign or joint enterprises benefited from this exemption provided they had made the corresponding new investments.

Question 121

Paragraph 101: Please explain more fully the terms of Decree 2633 which abolished the income tax exemptions for exports described in paragraph 100. What is the date after which no Venezuelan exporter will benefit from this incentive?

Reply

The earnings of industrial enterprises which, as of 21 December 1988 (the date of entry into force of Decree No. 2633) make new investments for the production of goods for export are not eligible for the income-tax exemption provided for in Decree No. 1336. Those industrial enterprises that made such investments while Decree No. 1336 was in force, that is to say between 12 November 1986 and 21 December 1988, continue to enjoy the exemption for a period of five years from the year following that in which the investment was made. Consequently, the final date for this exemption will be 31 December 1993, assuming that the enterprise made the investments in the course of 1988.

Question 122

Paragraphs 100-101: Does Venezuela intend to bring its tax exemption programme into conformity with Article III at the time of accession?

Reply

As mentioned in paragraph 101 of the Memorandum and in the replies to questions no. 120 and 121, this exemption programme has been eliminated.

Question 123

Paragraph 102: Is an export requirement placed on firms that benefit from tariff exoneration in the free zones and free ports mentioned in this paragraph? Other than special tariff treatment, what benefits do exporting entities located in these areas receive? Are firms located in these areas eligible for financial assistance or export incentives administered by the Venezuelan Government? Are firms located in these areas subject to Venezuelan tax laws?

Reply

Enterprises operating in free ports are not subject to minimum export requirements. However, enterprises operating in the Industrial Free Zone of Paraguana are subject to them. Industries that export at least 55 per cent by value of their output may set up in this free zone in accordance with the provisions of Resolution No. 3932 of the Ministry of Development, of 16 August 1979, of which a copy is annexed.

Further to the replies to questions 141 and 142, income tax exemptions have been established for the earnings of industries located in the Industrial Free Zone of Paraguana with the exception of income from the marketing in the country of goods not classified as domestic, as explained in the reply to question no. 141. All interest on capital for financing industrial investments in the Industrial Free Zone of Paraguana is exempt from income tax, and this is also true for financing of supplies of goods or services for the company that administers this Free Zone. The exemption also applies to 50 per cent of the interest and dividends on securities issued by registered companies established in the Free Zone. The income tax exemption also applies to interest on capital intended for the financing in the Industrial Free Zone of Paraguana of industrial investments provided under external credit contracts for periods of not less than one year signed with foreign finance institutions, and the interest on credits granted by enterprises set up and domiciled abroad to natural or legal entities established in the Industrial Free Zone of Paraguana to finance the acquisition of permanent assets intended to generate income from industrial and construction activities.

Enterprises located in free zones and free ports are eligible for the financial assistance and incentives for exports established by the Venezuelan Government on the same terms as any enterprise established in any other part of the national territory. Such enterprises are subject to Venezuelan tax laws.

E. Export financing

Question 124

Paragraph 103: Please explain in greater detail how FINEXPO financing is administered. Other than the preferential interest rate margin, what are the preferential terms under which exporters receive FINEXPO financing? Does the Government plan to continue providing export financing on preferential terms after it becomes a GATT contracting party? If so, what GATT justification can it provide for maintaining these measures?

Reply

FINEXPO grants credit assistance to local exporters whose products incorporate a local value added of at least 30 per cent. Foreign enterprises may have access to FINEXPO credit assistance subject to the authorization of the Board of Directors.

FINEXPO's financing modalities include pre-investment activities; fixed investment for agricultural exporting enterprises; working capital; cash requirements of exporters in the case of small exports with fixed

deadlines; exports of goods and services; financing of inventories; import financing; and pre-shipment and post-shipment operations.

About 90 per cent of the credits granted by FINEXPO have gone to working capital, import financing and pre-shipment operations. The financial terms of these credits have been as follows:

(a) Working capital:

Interest rate of 6 percentage points below the discount, rediscount and borrowing rate set by the Central Bank of Venezuela in force for the disbursement date; the length of the credit is established according to the sale and settlement period for the exports; and repayment is effected on the basis of amortization payments fixed in advance.

(b) Import financing:

The interest rate is that fixed for loans of the Inter-American Development Bank (IDB) in force for the disbursement date. The period varies according to the nature of the operation: for goods, up to six years; for services, up to twelve years. Repayment is made through equal and consecutive half-yearly amortization payments; and

(c) Pre-shipment:

Financing is made through a commercial bank which fixes the interest rate and establishes the repayment terms and conditions.

Finally, the National Government does not intend to discontinue the activities of FINEXPO and does not consider them to be contrary to the rules of the General Agreement.

Question 125

Paragraph 103: Please provide information on the newly-established Venexport. What rôle will Venexport play in export financing? How will it complement FINEXPO's efforts? Who is eligible to obtain Venexport financing and under what terms?

Reply

The Venexport project has not been implemented.

Question 126

Paragraph 103: Is the preferential export financing described in this paragraph limited to domestically-owned firms?

Reply

National and foreign enterprises are eligible for financing of this kind. Foreign enterprises must have the authorization of the FINEXPO Board of Directors to have access to such credit assistance; there has been no case where such authorization has been refused.

CHAPTER IV: ECONOMIC AND TRADE AGREEMENTS

B. Regional and sub-regional integration

Question 127

Paragraphs 66 and 111: Will Venezuela undertake to co-operate with other members of the Andean Pact, ALADI, and other preferential trade arrangements to notify these agreements to the GATT, and to report periodically to the contracting parties on measures taken under the agreements that affect trade? Will Venezuela agree to consult with the contracting parties concerning the impact of these agreements on CP trade?

Reply

Venezuela is prepared to co-operate with other members of ALADI and the Andean Group to provide contracting parties with any information they consider necessary. It also agrees to consult with contracting parties concerning the impact of these agreements on trade with contracting parties.

(a) The Latin American Integration Association

Question 128

Paragraph 113: Please give more details on the nature and scope of Venezuela's Partial Scope Agreements. For each agreement, provide a list of products for which tariff preferences are applied.

Reply

As mentioned above, the tariff preferences granted in the ALADI Partial Scope Agreements are determined according to lists of products exchanged between the parties. The general criteria governing such negotiations are mentioned in the replies to questions 66 and 67. The Partial Scope Agreements signed by Venezuela have been transmitted to the GATT secretariat and made available to contracting parties.

Question 129

Paragraph 114: Please give more details on the nature and scope of Venezuela's multilateral Sectoral Trade Agreements. What countries are participants in each sectoral agreement? Provide a list of products for which tariff preferences are applied under each of these agreements.

Reply

The multilateral sectoral agreements are agreements covering surpluses and shortfalls of concern to private enterprises in the sectors concerned. Venezuela participates in the following: (a) chemical industry, with Argentina, Brazil, Chile, Mexico, Peru and Uruguay; (b) phonographic industry, with Argentina, Brazil, Mexico and Uruguay; (c) petrochemical industry, with Argentina, Brazil, Chile, Mexico and Uruguay; (d) photographic industry, with Argentina, Brazil, Mexico and Uruguay; and (e) glass industry, with Brazil and Mexico. The multilateral sectoral agreements have been transmitted to the GATT secretariat and are available to contracting parties.

Question 130

Paragraph 115: How have the Framework Agreements on Economic Complementarity with Mexico and Argentina operated in practice? Does Venezuela in any way require its importers to source any specific supplies from these countries? Do the "Economic Complementarity" Framework Agreements referred to in the paragraph contain provisions for preferential trade access?

Reply

These agreements are general instruments which seek to encourage complementarity and/or specialization in the industries of participating countries. They do not provide for tariff preferences or requirements to import specific products. Since these economic complementarity agreements are recent, a thorough assessment of them is impossible.

Question 131

Paragraph 115: Concerning the Framework Agreement on Economic Complementarity with Argentina, we understand that Venezuela give preferential access to Argentine wheat. Does Venezuela intend to continue this practice after its accession to the GATT? If so, how will Venezuela justify such measures under the General Agreement?

Reply

The Framework Agreement signed with Argentina does not provide for any preference for wheat from that country.

Question 132

Paragraph 116: Provide a full description of the seven Partial Scope Agreements Venezuela has entered into with non-ALADI countries. For each agreement, list the products for which tariff preferences have been negotiated.

Reply

The texts of the partial scope agreements have been transmitted to the GATT secretariat and are available to contracting parties.

Question 133

Paragraph 116: What is the duration of the partial scope arrangements concluded with non-ALADI countries? Does Venezuela intend to expand the scope or number of such agreements? How can these agreements be justified within the provisions of the General Agreement and other GATT instruments?

Reply

The partial scope agreements with non-ALADI countries have a duration of three years, which is renewable. Venezuela intends to extend the scope of these partial scope agreements and negotiate similar arrangements with

other developing countries in the region that are not ALADI members, in accordance with Article 25 of the Montevideo Treaty. Venezuela considers these agreements to be compatible with the contracting parties' Decision of 28 November 1979 concerning Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

(b) The Cartagena Agreement

Question 134

Paragraphs 119-120: What specific trade-related measures were established by the Quito Protocol (Annex 13)?

Reply

As regards extra-subregional trade, the most important measure provided for in the Quito Protocol was flexibility of periods for the adoption of the Common External Tariff.

Question 135

Paragraph 121: What is the process by which the Minimum Common External Tariff (AEMC) is determined?

Reply

The Minimum Common External Tariff (AEMC) was designed as a transitional mechanism which will remain in force until the Common External Tariff is approved. The AEMC provides minimum protection, allowing some flexibility in management of national tariff policies, and has partial application, with respect both to the range of products and to the countries subject to it.

Besides these basic features of the AEMC, the Cartagena Agreement provides for some exceptional measures, concerning the postponement of the application of the AEMC for specific products until such time as production exists or temporary suspension in the case of insufficient regional supply.

Question 136

Paragraph 126: Please provide more details about the Industrial Sector Development Programmes administered under the Cartagena Agreement. Do these programmes significantly impact trade?

Reply

The industrial programmes are designed to promote industrial development in the sub-region and contribute to the fair distribution of benefits among countries members of the Cartagena Agreement. Each programme covers a specific set of products, a liberalization programme for intra-subregional trade and an external tariff applicable to third parties. The Andean Group has adopted programmes for the metalmechanical, petrochemical and steel sectors, but as mentioned above for Venezuela only the petrochemicals programme is fully in force. These programmes are

currently being reviewed, and it should be mentioned that in the Quito Protocol a new modality of industrial integration - industrial complementarity agreements - was approved.

Question 137

Paragraph 126: Please provide the time-frame for the operation of these industrial sector development programmes, in addition to the further detail already requested.

Reply

There is no time-frame for the operation of these industrial sector development programmes.

C. Bilateral trade agreements

Question 138

Paragraph 128: Please describe more fully what is meant by the term "border trade".

Reply

There is no legal definition in Venezuela of what is meant by border trade, nor are there provisions governing it. The reference contained in the bilateral agreement refers to an internationally-accepted practice, as reflected, inter alia, in Article XXIV of the General Agreement.

Question 139

Paragraphs 129-130: Do any of these agreements provide for "indicative lists" or any sort of trade forecasts? Do they mandate trade in certain products or at a certain level?

Reply

Some of these bilateral agreements provide for indicative lists of products. The agreements do not provide for any trade preference or future trade-flow forecasts.

D. Multilateral agreements

Question 140

Paragraph 134: Please provide more information on Venezuela's anticipated participation in the Global System of Trade Preferences. Are any tariff concessions involved? When do Venezuelan authorities anticipate ratification?

Reply

Venezuela signed the Global System of Trade Preferences (GSTP) in Belgrade in June 1988, but it has not yet been ratified by the National Congress. Under this agreement, Venezuela has granted tariff preferences for thirty-five products.

CHAPTER V: OTHER POLICIES RELATED TO TRADE

B. Free zones

(a) General regulations

Question 141

Paragraph 138: Concerning the tax, fee and tariff treatment of goods processed in the Free Trade Zones (FTZ):

- (i) Does trade into the FTZ pay customs user fees and warehouse charges as assessed on dutiable trade?

Reply

Trade into the free trade zones is subject to the customs user fee, although in this case it is only of 1 per cent ad valorem, unlike the rate applicable to other trade, as mentioned in paragraph 69 of the Memorandum. The trade is not exempt from payment of warehouse charges.

- (ii) Please indicate the exceptions to the application of normal tariffs and charges on goods that are exported from the FTZ into Venezuela's customs territory.

This refers to entitlement to any exemptions, reductions or preferential tariffs that may be established.

- (iii) Who determines, and based on what criteria, whether a FTZ export may be considered as a national good for the purpose of tariff application? Please give some idea about the quantity of trade benefiting from such decisions in a recent representative period.

The determination is made by decision ("Manifiesto") of the Ministries of Finance and Development. Products are considered national goods if they attain a proportion of domestic processing of at least 75 per cent of their value, and in no case may that proportion be less than the domestic-processing percentages attained by existing domestic enterprises in the same industry, including the cost both of raw materials and other local inputs as well as of labour and other services.

- (vi) How is this exemption from income tax consistent with Article XVI of the GATT?

These practices are considered compatible with Article XVI of the General Agreement.

(b) Free zone and free port of Margarita

(c) Industrial free zone of Paraguaná

Question 142

Paragraphs 139-141: What other trade-related measures are in effect in these zones that are not in effect in the rest of Venezuela's customs territory? Are there any restrictions on the type of enterprise that can locate in the zones?

Reply

The special Régime for Free Ports provides not only that goods entering the free zone do not pay import taxes but also that goods may be imported which are classified in the Customs Tariff as prohibited imports or imports reserved for the National Government. (See Article 6 of the Customs Tariff, as mentioned in the reply to question 50.)

The current legislation on free ports also provides for exemption from payment of domestic taxes applicable to local or imported goods which enter the free port of Margarita Island, as well as the possibility, for imports to the free port, of exemption from the restrictions on entry of goods from abroad contained in the non-customs provisions established by the National Executive.

Special regulations also exist governing the baggage of passengers entering the national customs territory from the free port: they may acquire goods free of domestic taxes and import duties up to an amount of 35,000 Bolivares (BS 35,000) (Resolution No. 228 of 13 June 1989). It is understood that the goods subject to this duty-free régime are for the personal use or local consumption of the passenger, and they may therefore not be resold in the rest of the national territory.

With regard to the type of enterprise that may locate in the free zone of Margarita Island, the relevant regulations contain a provision to the effect that foreign natural persons may not effect imports under the free-port régime.

Question 143

Paragraphs 139-142: Do Venezuelan authorities anticipate the establishment of any more free zones or free ports?

Reply

The establishment of other free zones or free ports is not planned.

C. Counter-trade

Question 144

Paragraph 143: Given that some counter-trade operations have been undertaken over the past two years, are Venezuelan authorities considering legislation to regulate counter-trade in the near future?

Reply

For the time being, the Venezuelan authorities are not considering legislation to regulate counter-trade.

Question 145

Paragraph 143: Which Government institution would administer counter-trade operations, should they be entered into?

Reply

There are no provisions in this respect.

D. Technical standards

Question 146

Paragraph 145: Are there any fees involved with respect to the application for requisite approvals to show that imports comply with the relevant technical standards? If so, are they the same for domestic as well as imported products?

Reply

Yes, a fee must be paid according to the type of certification required. The fee includes the expenses involved in tests. The fee is applied in the same way for domestic and imported products.

Question 147

Paragraph 145: Does Venezuela set time-limits for its review process in certifying compliance with the relevant technical standards? Do these time-limits apply equally to domestic products and imports?

Reply

Yes, time limits are set, varying according to the type of certification required and the nature of the product. The time limits apply equally to domestic products and imports.

Question 148

Paragraph 145: Do the standards regarding food products follow the standards established in the international Codex Alimentarius?

Reply

The standards of the Codex Alimentarius for food products are taken as the basis for the corresponding Venezuelan COVENIN product standard. If a Codex standard does not exist, the Venezuelan standard is based on experience gained at national level.

Question 149

Paragraph 147: Please describe how an imported product would be able to acquire the NORVEN trademark.

Reply

Application must be made to the Ministry of Development using a pre-established form. The Ministry of Development will promptly analyse the quality control system of the enterprise in the country of origin and

check the product quality characteristics in the light of the relevant Venezuelan Standard COVENIN. Once the check has been completed, it issues a report indicating shortcomings, if any.

In the course of this examination products are tested in laboratories not connected with the enterprise. Once the enterprise has remedied whatever shortcomings are brought to light by the preliminary inspection, the appropriate verification is made, with the corresponding follow-up. Once the study has been completed, authorization is given for the use of the NORVEN trade mark. Following such authorization, supervision is exercised to ensure compliance with the conditions under which the authorization was granted. The costs incurred in the course of the NORVEN trademark study are borne by the enterprises concerned.

E. Sanitary and phytosanitary standards

Question 150

Paragraph 150: Please indicate what prohibitions or other restrictions on imports are applied at the present time under the authority of the Law for the Defence of Animal and Vegetable Health.

Reply

Under the Law on Plant and Animal Health Protection, various provisions have been established prohibiting or restricting imports of certain products. These provisions include prohibitions on the import of seeds, plants and parts of plants of yucca and musaceae (bananas and plantains), and of pigs and pork products from countries where African swine fever exists. Under this Law standards have also been established restricting imports of semen from genetically-valuable animals and governing imports of live plants or parts of plants for reproduction, sowing or ornament, as well as standards designed to eradicate bovine tuberculosis.

Question 151

Paragraph 150: Are there restrictions at the present time as to which port must be used for the import or export of certain products? Under what circumstances would such a determination be made by the Ministry of Agriculture?

Reply

In general the main ports, airports and border posts of the country of the country are authorized for international trade in products subject to the Law on Plant and Animal Health Protection. Although the Law authorizes the Ministry of Agriculture to determine the ports and customs posts through which alone imports of plants, animals and their products may be effected, and establishes the relevant formalities that must be carried out in this connection, the Directorate for Plant Health of the Ministry of

Agriculture has only established a restriction in the case of imports of seed potatoes, which must be made through the ports of La Guaira and Puerto Cabello.

The Ministry of Agriculture takes such decisions on technical grounds which call for strict supervision of international trade in animals and plants.

F. Government procurement

Question 152

Paragraphs 154-155: What is the definition of the term "government agency" in the context of the operations described in these paragraphs?

Reply

The Government agencies referred to are the Central Public Administration, Autonomous Institutes, State Enterprises, Foundations, State Associations and Civil Societies, other agencies of the Decentralized Public Administration, and State Governments.

Question 153

Paragraph 154-155: Please define more precisely "financed by the State" as a criteria for using the provisions of Decree No. 1182 (Annex 26). Is the coverage of this Decree limited to purchases of goods by government agencies for its own use and consumption?

Reply

State financing refers to any acquisition or contracting funded by any of the bodies belonging to the State financial system. Purchases of goods are for the own use of the agencies concerned.

Question 154

Paragraph 154: What portion of Venezuela's GDP is accounted for by the firms covered by this Decree?

Reply

The relevant calculations are currently being made. The contracting parties will be informed in due course through the GATT secretariat.

Question 155

Paragraph 154: Does any one agency procure products and services for other Government agencies? How does an agency obtain authority to make procurements? What process is used to prepare and implement the regulations set forth in Decree 1182 (Annex 26)? Does the Government regularly publish notices of upcoming procurement opportunities?

Reply

No Government agency has general powers to make procurements of goods and services for other Government agencies. State enterprises operating in the petroleum and chemical sectors, as well as those operating under the supervisions of the Corporación Venezolana de Guayana, have established, in accordance with the internal policies of the holdings concerned, individual specialized agencies for the procurement of goods and services, respectively entitled Bariven and C.V.G. Internacional. In addition, every public agency may procure goods and services in accordance with its own budget. Each of the agencies mentioned in Article I of Decree 1182 has to establish the rules by which it will adjust its procurement process for goods and services to the guidelines laid down in the Decree, either directly or following consultations with the Ministry responsible for the agency in question. Each of these public agencies also has to apply the rules of Decree 1182 and is subject to the supervision of the Ministry in question. Notices are regularly published of forthcoming procurement opportunities, in accordance with Article 17 of Decree 1182, and in conformity with the rules governing public tenders, private competitions and direct awards for contracts for works and the procurement of goods: these rules are designed to ensure transparency in such procurement when carried out using public monies.

Question 156

Paragraph 154: How far in advance of the deadline must such notification of tenders for Government Procurement be published? What is the normal amount of time to elapse between publication and the closing of the notice?

Reply

In the case of public tenders, the notification is published in the local press, and a period of between ten and sixty working days following the second publication is established for the receipt of notice of intention to submit a bid. From that date, a period is fixed for receiving bids, taking into account the complexity of the project; the period may in no case be less than ten days.

Question 157

Paragraph 156: Article XVII of the GATT stipulates that State enterprises and those firms receiving special or exclusive privileges from the State are subject to the provisions of this Article. These provisions provide for non-discriminatory treatment in import decisions, "adequate opportunity" for competition from imports, and the use of "commercial considerations" in purchasing. Decree 1182 would appear to conflict with these provisions in a number of areas. Is Venezuela willing to apply the provisions of Article XVII to its State enterprises after accession?

Reply

Venezuela is currently assessing the practical implementation of Decree 1182.

Question 158

Paragraph 156: To the extent that the regulations of Decree 1182 are applied by enterprises not covered by Article XVII, and that the materials are not government procurement, i.e. purchases for direct Government consumption, Decree No. 1182 would also appear to violate GATT Article III. How does Venezuela intend to bring its State-financed purchasing practices into conformity with GATT provisions?

Reply

Venezuela intends to respect the provisions of the General Agreement. This matter will be carefully examined.

Question 159

Paragraph 157: What is the range of "preference margins" usually granted to domestic products in price comparisons?

Reply

The preference margins are calculated in different ways for capital goods or final consumer goods or intermediate goods. For capital goods, local value added must represent at least 40 per cent, using as margin the product of multiplying the VAN percentage by the c.i.f. value at a Venezuelan port of the foreign good or the import duties on such good, whichever is the greater.

Question 160

Paragraph 158: Would the General Agreement be considered by the Government of Venezuela as an international commitment or agreement for the purposes of granting the President of the Republic the right to exempt some foreign origin trade from compliance with the provisions of Decree 1182?

Reply

Article 23 of Decree 1182 provides exceptions to its application with respect to the acquisition of goods and the contracting of services of foreign origin.

G. State monopolies relating to trade

Question 161

Paragraph 159: Please list and describe each Venezuelan enterprise wholly or partially owned by the Government, or benefiting from special or exclusive government-provided privileges, and indicate the percentage of State ownership. Indicate whether each enterprise engages in exporting or importing, or both? What portion of Venezuela's import and export trade is conducted by these enterprises?

Reply

For a detailed list of the Venezuelan State enterprises, please see Annex VI. For the time being full statistics are not available on enterprises carrying out foreign trade operations; the contracting parties will be informed in due course in this respect. Participation of public sector enterprises in flows of imports and exports of goods may be found in Annex VII.

Question 162

Paragraph 159: Which enterprises does the Government of Venezuela intend to privatize? Please elaborate on Venezuela's considerations in making its decisions. What is the time-table for deciding on which enterprises are to be privatized?

Reply

See replies to questions 22 to 24.

Question 163

Paragraphs 159-160: Please identify the sectors beyond those listed in these paragraphs in which the State plays a leading financial or administrative rôle. Please describe the rôle that the State plays in terms of ownership as well as in terms of directing company policies.

Reply

See replies to questions 22 to 24.

Question 164

Paragraph 159: What internal legal obstacles exist that might impede progress toward privatization?

Reply

See replies to questions 22 to 24.

CHAPTER VI: INSTITUTIONS RESPONSIBLE FOR FOREIGN TRADE

C. The competent institutions

Question 165

Paragraph 165: Which agency or Ministry will be responsible for responding to questions concerning the compliance of Venezuela with GATT provisions, and for co-ordination with other GATT contracting parties on matters of trade policy, practice and dispute resolution under GATT auspices?

Reply

The Ministry of External Relations will be responsible for all matters relating to participation by Venezuela in GATT. In the exercise of these

functions, it will co-ordinate its action with all bodies having responsibilities in the area of foreign trade. These bodies were described in paragraphs 162 to 166, inclusive, of the Memorandum.

According to the Central Administration Act, Article XXV, paragraphs 1 to 4, the Ministry of External Relations is responsible, inter alia, for the international activities of the Republic, the conduct of relations with other States, the representation of the Republic in international organizations, conferences and the management of centralization of foreign trade policy.

D. Other matters

Question 166

III. Other

Does Venezuela intend to accede to the MTN agreements of the Tokyo Round? If so, which Code is Venezuela interested in most?

Reply

The various Tokyo Round Codes and other agreements are currently being analysed. Following this examination, a decision will be taken on whether Venezuela should become a party to them.

Question 167

Paragraph 167: Will Venezuela's GATT accession require legislative ratification?

Reply

Whether or not legislative ratification of the instruments by which Venezuela accedes to GATT will be required can only be determined once the final text of the instruments is known. Generally speaking, it may be said that in accordance with Article 128 of the Constitution, international treaties or agreements entered into by the National Executive must be approved by special legislation to have validity, unless their purpose is to execute or perform pre-existing obligations of the Republic, apply principles expressly recognized by it, perform ordinary acts in international relations or exercise powers explicitly attributed by law to the National Executive.

It should also be pointed out that the National Executive must inform Congress concerning all international legal agreements it enters into, giving precise details of their character and content, regardless of whether or not they need to be ratified by the legislature. Consequently, the protocol for the accession of Venezuela to GATT will be examined by the National Congress even if the Congress's approval is not required.

Question 168

Paragraphs 168 and 46: Are changes in tariff and customs charges published on a regular basis in the Official Gazette? Are they published prior to implementation?

Reply

Changes in tariff and customs charges are always published in the Official Gazette prior to implementation. The date of entry into force of customs tariffs is that of their publication or a later date explicitly mentioned in the relevant issue of the Official Gazette.

STATISTICAL TABLES

Question 169

Tables 3 and 4: Please indicate what percentage of Venezuela's imports and exports in 1987 and 1988 were accounted for by the following:

- the Cartagena Agreement;
- preferential trade under the Cartagena Agreement;
- the Latin American Integration Association (ALADI); and
- preferential trade under ALADI.

Reply

The information on Venezuela's trade with countries parties to the Cartagena Agreement and ALADI in 1987 and 1988 is given in Annex XVIII.

Question 170

Table 5: Could Venezuela provide a similar table showing the distribution of its "non-traditional" exports in 1987 and 1988?

Reply

Information on Venezuela's non-traditional exports in 1987 and 1988 is given in Annex IX.

Annexes

- I List of prohibited-import products
- II Products included in the petrochemical programme
- III Products included in the list of exceptions
- IV Ministry of Finance Resolution No. 431 of 15 May 1973
- V Ministry of Finance Resolution No. 631 of 3 November 1975
- VI State enterprises in Venezuela
- VII Trade participation of public sector enterprises
- VIII Venezuelan trade with countries parties to the Cartagena Agreement and ALADI
- IX Non-traditional exports