

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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REPORT OF THE WORKING PARTY ON THE ACCESSION OF GUATEMALA

1. At its meeting on 3 April 1990, the Council appointed a Working Party to examine the application of the Government of Guatemala to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which might include a draft Protocol of Accession.

2. The Working Party met on 1 June, 15 October and 21 November 1990, under the Chairmanship of H.E. Mr. E. Artacho (Spain).¹

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Régime of Guatemala (L/6400), and the questions submitted by contracting parties on the Guatemalan trade régime together with the replies of the Guatemalan authorities thereto (L/6664 and Add.1, 2 and 3). In addition the representative of Guatemala made available to the Working Party the following material:

- Central American Import Tariff (includes the Convention on the Central American Tariff and Customs Régime and Central American Legislation on the customs value of goods)
- Central American Uniform Customs Code (CAUCA)
- Regulations of the Central American Uniform Customs Code (RECAUCA)
- General Treaty of Central American Economic Integration
- Transitional Trade Agreement between Guatemala and Honduras
- Treaty on Free Trade and Preferential Trade between Guatemala and Panama
- Partial-Scope Agreement between Guatemala and Colombia
- Partial-Scope Agreement between Guatemala and Mexico
- Partial-Scope Agreement between Guatemala and Venezuela
- Organic Law on the Free Industrial and Trade Zone of Santo Tomás de Castilla (ZOLIC)
- Regulations of the Organic Law on the Free Industrial and Trade Zone of Santo Tomás de Castilla (ZOLIC)
- Regulations for barter transactions in the foreign-exchange régime
- Decision on the creation of the Single Export Window
- Main supplier countries by tariff sections 1986-1989
- List of twenty tariff sections
- Guatemala's balance-of-payments situation 1977-1981
- Guatemala's balance-of-payments situation 1982-1986
- Decree Law 123-84 Convention on the Central American Tariff and Customs Régime
- Regulations of Articles 25 and 26 of the Convention on the Central American Tariff and Customs Régime

¹The membership of the Working Party is set out in document L/6666/Rev.2.

4. In an introductory statement, the representative of Guatemala said that his Government's external economic policies were in full agreement with the principles and rules embodied in the General Agreement. Having regard to its developing country status, Guatemala expected to be accorded special and differential treatment in GATT. At the present time, Guatemala was attempting to surmount one of the worst economic crisis in all its history. This crisis had resulted from a number of factors such as instability of export markets and prices for primary products, market access restrictions in important markets, the stagnation and disorganization of the Central American Common Market, the region's armed conflicts, lower financial flows in a context of high indebtedness, increased interest rates and capital flight, etc. Notwithstanding the negative economic environment, the Government of Guatemala in the light of its short-, medium- and long-term objectives had decided to reorient social and economic policies in a democratic fashion and in harmony with the other Central American countries. Thus, Guatemala was in the process of setting up the National Development Plan 1991-1995. Among the measures to rationalize economic conditions already put into effect were the following: liberalization and adjustment of the exchange rate and the rates of interest, tariff and non-tariff measures reform, etc. An accelerated tariff reform programme had already reduced tariff protection to very low levels. Excluding certain strategic or sensitive products tariff rates would not exceed the amount of the consolidated tariff and any remaining non-tariff measures would conform to the relevant international rules. The current trade liberalization programme would be supplemented by measures aimed at developing and expanding exports. The Guatemalan Government was firmly committed to full participation in the multilateral trading system and the observance of the rules of the General Agreement.

5. The representative of Guatemala noted that Resolution No. 43/210 of the United Nations General Assembly had established a Special Economic Cooperation Plan for Central America. Further assistance to Central America was also being provided by the European Communities, USAID and Mexico. Guatemala expected similar understanding and support for its structural adjustment and development efforts from other GATT contracting parties. He confirmed that his Government attached the utmost importance to the multilateral trading system fostered by the General Agreement because it considers that it is the most appropriate means for a more effective participation in international trade. As a contribution to the strengthening of the multilateral trading system, his Government was willing to negotiate an adequate level of tariff bindings with the exceptions required by the country's sectoral and regional development needs. However, he stressed that as a developing country, Guatemala expected that participation in GATT would not restrict its right to utilize its national resources in the most adequate manner and that appropriate recognition would be given to its past trade liberalization efforts and hitherto autonomous compliance with the rules of the General Agreement.

6. Recalling that tariff negotiations were required for accession to the General Agreement under Article XXXIII, the Chairman noted that as of 12 April 1990, Guatemala had invited contracting parties wishing to enter into tariff negotiations to contact the Guatemalan authorities and to inform the secretariat (GATT/AIR/2969). Some members of the Working Party indicated that they had been in touch with the Guatemalan delegation and that negotiations with a view to the exchange of tariff concessions were already underway. Other members said that tariff negotiations relating to accession would commence shortly. The Working Party agreed that contracting parties which had not yet done so should notify their interest in entering into negotiations with Guatemala not later than 30 June 1990 and that efforts should be made to conclude the tariff negotiations as soon as possible (GATT/AIR/3017).

General comments

7. Members of the Working Party welcomed the application of Guatemala for full accession to the General Agreement which could be expected to encourage and strengthen the participation of the Central American region in the GATT and would also be beneficial for the multilateral trading system as a whole. In this respect reference was made to the support which the international community had been providing to assist in the solution of the critical problems affecting Central America. Some members recognized as a positive contribution the trade liberalization measures which Guatemala on an autonomous basis had been implementing recently and expressed the hope that these efforts would be pursued steadily. In welcoming and expressing support for Guatemala's application, some members noted that in a regional or sub-regional context Guatemala and their respective countries maintained strong traditional links which accession to GATT would be expected to reinforce and dynamize.

8. The Working Party carried out an examination of various aspects of the Guatemalan foreign trade régime and the possible terms and conditions of a protocol of accession. During this examination, the delegation of Guatemala provided additional information on, and clarification of, Guatemala's economic and commercial policy. The main points brought out in the discussions are set out below in paragraphs 9 to 46. The report comprises the following sections: I. Economic policies and strategies; II. Tariff and customs system; III. Import regulations; IV. Export policy; V. State-trading and government procurement; VI. Integration agreements; and VII. MTN Agreements.

I. Economic policies and strategies

9. With reference to the National Reorganization Plan of March 1987, the representative of Guatemala said that the basic goals and policies set out therein had not changed. In order to improve the living conditions of the majority of Guatemalans, his Government's strategy was aimed at correcting the causes of the chronic shortage of foreign exchange, improving resource allocation, taking advantage of comparative advantages, creating employment and improving competitiveness. In the interest of achieving

its objectives, Guatemala had accelerated the pace of changes. In the trade field, two tariff adjustments had been carried out within a short period of time and a national export development plan was in the process of being formulated. The representative of Guatemala also gave a brief outline of his Government's strategy for peace and development entitled Guatemala 2000.

Prices

10. A member asked for the reasons that Guatemala set up maximum consumer prices and noted that these prices might have implications for the import of the respective commodities. The representative of Guatemala said that under earlier administrations some 470 products had been subject to maximum prices. As this situation had created severe distortions on production and consumption as well as on fiscal resources, since taking office the present Government of Guatemala had liberalized markets forcefully. At present only some 11 products in the basic consumer basket remained subject to maximum prices for socio-economic reasons exclusively. In the interest of protecting consumers and lowering consumer prices, tariff reductions and other liberalization measures had been enacted recently with respect to products such as milk, meat, poultry, etc. The items included in the basic consumer basket are listed in Annex 8 of document L/6664. The items subject to maximum consumer prices are listed in document L/6664/Add.3. In response to the concern that maximum prices applied to sugar for both consumers and refineries and wholesalers and that this could serve as an incentive to export if maximum prices were below world prices, the representative of Guatemala stated that prices were set at reasonable levels above cost, the price control system would not be used to encourage the diversion of sugar from the domestic market to the international market. In the case of milk only fluid milk produced domestically was subject to price controls. The Working Party took note of these assurances.

Article X

11. In response to questions concerning the publication of trade, tariff and customs laws and regulations, the representative of Guatemala noted that in accordance with its national laws, all regulations and measures of an economic nature must be published in the "Diario de Centroamérica" prior to implementation, and that Guatemala will apply the provisions of Article X from the date of its accession to the General Agreement. The Working Party took note of this assurance.

II. Tariff and customs system

12. Noting that in 1987 Guatemala had increased tariff rates in order to defray the costs for customs administration services, information was requested on the revenue collected by the customs during a representative period and the cost of Guatemala's customs administration. The representative of Guatemala said that the 4 per cent import charge introduced in 1987 had been needed both to provide fiscal revenue and collect income destined to defray the costs of the customs administration.

During a recent period Guatemala's total customs income had been as follows: 1987 273 million quetzales, 1988 235 million quetzales, and 1989 264 million quetzales. Even though it had been foreseen that this charge would be lowered progressively, in the light of the uncertain fiscal revenue situation, a new law had set this import charge at a fixed 3 per cent rate. Therefore, the range of import duties levied by Guatemala would be between 5 per cent and 43 per cent. The floor would be 5 per cent consisting of 2 per cent duty plus the 3 per cent charge and the ceiling would be 43 per cent consisting of 40 per cent duty plus 3 per cent charge. He added, in conclusion, that for all practical purposes including tariff bindings the 3 per cent import charge should be deemed to be part of the Guatemalan tariff. Therefore, this charge would not exceed the tariff rates bound in the GATT schedule of Guatemala.

Central American Import Tariff

13. Noting that to protect Guatemalan industry on a temporary or emergency basis the flexibilization mechanism in the Central American Tariff and Customs Convention permitted the modification of customs duties from 1 to 100 per cent of the nominal ad valorem tariff and the suspension of imports and exports, some members requested that Guatemala confirm that the flexibilization mechanism would be applied in conformity with Article II obligations concerning bound rates of duty. The representative of Guatemala said that his Government would comply with the relevant rules of the General Agreement concerning tariff bindings and the renegotiation of tariff concessions. He asserted that in the light of the relevant tariff negotiations and having regard to the provisions of the Central American Customs Convention and Regulations, Guatemala intended to bind in GATT the whole tariff schedule. In confirming his Government's intention to bind the entire tariff, he said that this undertaking will have very few exceptions. Products that are very sensitive for the country's socio-economic situation will have a higher rate. Nevertheless, this higher rate will also be bound. Furthermore, there will also be some exceptions below the bound level, consisting of all the concessions negotiated bilaterally.

14. The representative of Guatemala stated that the authority of his Government described in paragraphs 12 - 13 and 22 - 27 of this report to levy taxes and surcharges on imports, and to suspend imports and exports will, from the date of accession, be applied in conformity with the provisions of the General Agreement, in particular Articles III, VI, VIII, XI, XII, XVIII, XIX, XX, and XXI. The Working Party took note of these assurances.

15. With reference to the Harmonized Commodity Description and Coding System (HS), the representative of Guatemala said that the CACM member countries were aware of the need to adopt the Harmonized System. He confirmed his Government's interest in adopting the Harmonized System to which end it was carrying out the necessary technical work.

Value-added tax

16. In response to questions concerning the value-added tax, the representative of Guatemala said that the exemptions to this tax applied equally to domestic and imported products and had no connection with the application of non-tariff measures. In Guatemala anybody was free to import, however, as described in Section III below, a few items which had been listed in Annexes 4 and 5 of document L/6400 such as wheat and certain oils and fats were subject to certain import restrictions.

System of levies

17. In response to questions concerning the consumption tax on spirits and fermented beverages and the applicability of the stamp duty, the representative of Guatemala said that these taxes and charges were applied equally both to domestic and imported products.

18. In the light of the findings and recommendations of the panel which examined United States practices, a member reserved its rights concerning the conformity with Article VIII of the General Agreement of certain ad valorem customs penalties and charges to imports.

19. The representative of Guatemala stated that his Government will apply its taxes and charges on imports referred to in paragraphs 12 to 17 of this report in accordance with the provisions of the General Agreement. In this regard, any domestic taxes whose application vary according to whether the products are locally manufactured or imported will be brought into line with Article III prior to the date of accession. Furthermore, customs charges will not be applied except in accordance with Article VIII. He also confirmed that the 3 per cent tax on imports that his Government currently applies is part of the national tariff schedule, and therefore such tax will not be applied in excess of tariff rates bound in its GATT Schedule. The Working Party took note of these assurances.

Customs valuation

20. A number of questions were raised concerning Guatemala's customs valuation regulations. These included questions with respect to the exchange rate applied for customs valuation purposes and the rôle of the Central American peso. Noting that for customs valuation Guatemala applied usual competitive prices, probable transaction prices and previous prices, some members said that these practices would appear to be official or artificial prices not fully consistent with Article VII which is a basic GATT obligation. Therefore, in determining customs value Guatemala's customs officials should give first priority to the actual value of imports and avoid the use of administratively determined or constructed prices. In response the representative of Guatemala said that the foreign exchange régime was free and there were no fixed exchange rates. A special rate existed at present only for the purpose of the application of consular fees whereby the quetzal was valued at par with the US dollar. He added that Guatemala's customs valuation practices were

established in Annex B of the Central American Tariff and Customs Convention which was based on the Brussels Value Convention. As a CACM member, Guatemala could not change the CACM valuation régime unilaterally. Nevertheless, Guatemala would be willing to accede to the MTN Customs Valuation Agreement and for this purpose would actively seek the modification of the CACM valuation régime.

21. The representative of Guatemala affirmed that his Government applies customs practices and procedures, including customs valuation, in accordance with the provisions of Annex B of the Central American Customs Convention. He also stated, however, that his Government recognized its obligation from the date of accession to the General Agreement, to apply the provisions of Articles VII and X to other contracting parties. In this regard, he confirmed that his Government would give first priority in determining customs value to the "actual value" of imports, as provided for in Article VII:2 of the General Agreement, and would avoid the use of administratively determined or constructed prices for customs valuation purposes.

III. Import regulations

22. Members of the Working Party recognized as a positive and encouraging development Guatemala's recent trade liberalization measures which they hoped would be pursued assiduously. Referring to the recent streamlining of the import licensing régime in force in Guatemala, some members requested information with respect to the justification of the remaining measures in terms of the General Agreement. The representative of Guatemala said that the import prohibition and licensing régime set up in 1950 had been revised recently with the aim of rationalizing and eliminating most import restrictions, prohibitions, and licensing requirements. At present import licensing was applicable only to some 25 to 30 items out of 1,850 items in the Central American Customs Tariff. The items subject to import licensing are listed in document L/6664/Add.3. In his view this requirement was not a protective device as import licensing requests were processed very rapidly. Having regard to the recommendations being formulated by an expert group, Guatemala intended to liberalize this requirement further in the near future. He added that most import prohibitions had been eliminated. Following accession to the General Agreement only a very limited number of prohibitions would have to remain force.

23. Some members said that Guatemala's licensing system described in document L/6664/Add.3 appeared to be extensive. These restrictions covered basic grains (including corn, hard and soft wheat, rice, beans, sorghum, oilseeds and oilseed meals), wheat flours, cocoa, fresh apples, fresh pears, and fresh grapes, fruit pulps and concentrates, kenaf seeds, rosella seeds, cottonseeds, natural and synthetic rubber and rubber trees, lead, fertilizers, certain herbicides, fireworks already produced in Guatemala, confetti, and cigarette paper. In the case of wheat, there appeared to be a domestic purchasing requirement as well as import

licensing. In noting that it would not be possible to invoke the pre-existing legislation provision with respect to the entire import licensing system, these members requested detailed information on its operation, the criteria used to apply import licensing requirements, the procedure to determine allowable quantities, etc. Some members stated that Guatemala's import licences and prohibitions did not appear to be consistent with Articles XI or III of the General Agreement. In their opinion certain regulations including health and sanitary regulations applied by Guatemala had a restrictive effect on trade and were not in conformity with Articles XX or XXI of the General Agreement. These members said that a precise time-frame for the elimination of all GATT inconsistent import restrictions should be established at the time of accession. The representative of Guatemala said that the application of import licensing requirements was not arbitrary as it required both the carrying out of an administrative review and the issuance of an official decision. In his view the procedures were not cumbersome. If a trader requested an import licence, the competent authorities consulted with the interested sectors and adopted a decision within 3 to 4 days. The criteria to apply import licensing requirements were currently under review and related basically to socio-economic considerations. Only wheat and oils and edible fats were presently subject to quantitative restrictions. Even though the quantities available for import were not published before-hand, appeals for imports were publicized and communicated to all interested suppliers and allocated in relation to individual productive capacities. In conclusion, the representative of Guatemala said that import licensing requirements concerned less than 0.5 per cent of Guatemala's total trade. He added that import prohibitions were minimal and concerned only items such as drugs, explosives, firearms, etc. which were permitted under Articles XX and XXI of the General Agreement.

24. A number of additional questions were raised concerning the import licensing system currently applied by Guatemala, the role of the Ministries involved, the criteria applied to grant import licences, the traders involved, the existence of tariffs, taxes and charges exemptions with respect to the items subject to import licensing, etc. Some members said that after accession Guatemala would be expected to notify and justify all remaining import restrictions and licences. In the view of a member the arrangements on wheat applied by Guatemala appeared to be a mixing regulation inconsistent with Article III:5 of the General Agreement. The representative of Guatemala said that his Government was implementing an autonomous elimination of import licensing requirements and would therefore have no problem after accession to GATT in notifying and justifying any remaining import licensing requirements. He cautioned, however, that for sociological, anthropological and ecological reasons certain products such as wheat, animal fats and milk were in a very special situation. Guatemala only produces soft wheat cultivated in class six land with 45° grades. On this product cultivated only in the high plateau depended the livelihood of more than 500,000 people. As Guatemala imported the hard wheat needed to make bread some degree of protection for soft wheat was essential. A similar situation occurred in the case of animal fats and milk. He stressed that the application of import licensing requirements was not used as a countermeasure in the case of unfair trade practices.

25. In response to further questions, the representative of Guatemala said that the only sensitive products at present subject to quantitative restrictions were animal fats used to manufacture soap in order to avoid other uses in the case of surplus production, and soft wheat for the socio-economic reasons described in paragraph 24 above. In response to a request for clarification, the representative of Guatemala confirmed that imports of milk in powder were not subject to quantitative restrictions. He added that import licences on milk products existed only for monitoring purposes and were issued automatically. Experience had shown that in the case of Guatemala the application of import restrictions was more theoretical than practical. Imports requests were not normally denied and the existing quotas were seldom filled fully, thus their only practical effect was to ensure that prices were kept in line with current market levels. Nevertheless, Guatemala would undertake to eliminate all GATT inconsistent restrictions in the near future. In regard to wheat, the representative of Guatemala stated that, at the time of accession to the General Agreement, Guatemala will initiate studies with a view to eliminating price controls and existing quotas within a reasonable period of time.

26. The representative of Guatemala said that the question of import licensing requirements and the phyto-sanitary certificates required in the case of certain imports were two separate issues. While import licences were granted to importers by the Guatemalan authorities, the phyto-sanitary certificates asserting that certain products were fit for human consumption had to be issued by the country of origin of the product. Furthermore, the registration of medicines was not an import licensing requirement. These certificates and registration requirements were not, in his opinion, an obstacle to trade.

27. Some members enquired whether Guatemala intended to invoke the provisions of Article XVIII concerning the application of trade restrictions for balance-of-payments reasons and if invoking Article XVIII would be willing to justify and remove the trade restrictions applied gradually. The representative of Guatemala said that his Government did not apply trade restrictions for balance-of-payments purposes. Only in the 1980's when the lack of foreign exchange had become a serious problem, Guatemala had established certain priorities for the allocation of foreign exchange.

28. The representative of Guatemala indicated that his Government did not consider Article XVIII:B provisions regarding the use of import restrictions to protect the balance-of-payments as offering an opportunity to provide protection for specific industries. Moreover, if quantitative restrictions were applied on specific products to foster the development of domestic capacity output, these restrictions would not be justified by Guatemala on balance-of-payments grounds. If the need to use trade restrictions for balance-of-payments purposes should arise, such restrictions would only be applied on a temporary basis, in conjunction with appropriate corrective macroeconomic adjustment measures. He added that, in accordance with the Declaration adopted by the CONTRACTING

PARTIES on 28 November 1979, when applying such measures, Guatemala would give preference to those measures which have the least disruptive effect on trade, i.e. price-based measures, and that whenever practicable, it would also publicly announce a time schedule for the removal of the measures. He also confirmed that his Government intended to notify any restrictions taken for balance-of-payments purposes to the Balance-of-Payments Committee, and would consult with the CONTRACTING PARTIES according to the relevant provisions of Article XVIII and other GATT instruments.

29. A developing country member of the Working Party stated that the commitments established in paragraph 28 should be understood as applicable to Guatemala.

30. The representative of Guatemala declared that his Government is committed to the gradual elimination of the use of import prohibitions, import licensing, and other quantitative restrictions for reasons other than to protect human and plant health and public morals, for national security purposes, or if not otherwise in accordance with GATT provisions. He confirmed that his Government will continue to eliminate such measures in all sectors to the fullest extent possible, with the goal of fully eliminating their use by 31 July 1994. Any such restrictions applied during this period or still in effect at the end of this time will be notified and justified in accordance with relevant provisions of the General Agreement, in particular Articles XI, XII, XVIII, XIX, XX, and XXI. If this is not accomplished, the issue will be reviewed by the CONTRACTING PARTIES. In addition, he stated that Guatemala will ensure that such restrictions and import permit requirements are applied in a way consistent with Article XIII of the General Agreement and shall apply all restrictions in accordance with the principle of non-discrimination. The representative of Guatemala further confirmed that his Government would, if requested, consult with the contracting parties concerning the effect of these measures on their trade. The Working Party took note of these assurances.

Technical regulations, standards, certification and labelling requirements

31. The representative of Guatemala stated that his Government applies the same controls and rules regarding technical regulations, standards, certification, and labelling requirements to imported and domestic goods, and does not consider the use of such regulations to restrict imports as being in its best commercial interests. In this regard, he stated that Guatemala would ensure that after its accession, its technical regulations, standards, certification, and labelling requirements would not be applied to imports in an arbitrary manner, in a way that discriminated between supplier countries where the same conditions apply, or as a disguised restriction on international trade. It would also ensure that certification requirements would be administered in a transparent and expeditious manner. He further stated that in the absence of national regulations, his Government would apply the respective international regulations issued by universally accredited organizations or institutions. The representative of Guatemala confirmed that his Government would, if requested, consult with the contracting parties

concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these assurances.

Unfair trade practices and safeguards

32. With reference to unfair trade practices and safeguard clauses some members noted that Guatemala did not appear to have any legislation other than Articles 25 and 26 of the Central American Tariff and Customs Convention. Noting that there did not appear to be a requirement in Guatemala's laws concerning unfair trade practices for a finding of material injury before the application of countervailing or anti-dumping duties, these members recalled that Article VI of the General Agreement specified the measures which should be used against unfair trade practices such as dumping and subsidies and the conditions for their application.

33. Some members noted that there was no requirement in the legislation permitting the application of measures to safeguard Guatemalan industry for a finding of serious injury before taking such measures, as required by Article XIX. These members stated that the Guatemalan authorities should take action to provide for respective findings of material or serious injury before applying countermeasures to unfair trading practices or safeguard actions, in order to bring its practices in this area into line with the relevant GATT provisions.

34. In response, the representative of Guatemala indicated that his Government will apply, from the date of accession, its measures taken for anti-dumping purposes or regarding subsidies and countervailing duties in conformity with the provisions of Article VI. He also confirmed that Guatemala will abide by the provisions of Article XIX of the General Agreement, including the serious injury test, when applying safeguard measures under its provisions. Taking the above into consideration, the Working Party took note of the assurances given by the representative of Guatemala.

IV. Export policy

35. In response to questions concerning Guatemala's export promotion policy, including the export credit guarantee fund, export credit insurance, direct or customs incentives, and the existence of measures to support domestic production, the representative of Guatemala said that there were two basic legal instruments for export promotion in the industrial sector, namely: the Law on Export Promotion and Incentives (Decree Law No. 29-89) and the Law on Free Zones (Decree Law No. 65-89). These laws established fiscal benefits such as the temporary suspension and the complete exemption from import duties and taxes including the value-added tax. Moreover, as part of the adjustment and administrative reform process, a single export window and single document for exports had been set up to streamline and facilitate the formalities connected with the export process handled by public institutions. He added that his Government felt it was essential to provide financial support to the

export sector. Therefore, Guatemala was studying the possible introduction of an export finance scheme and an export insurance fund. As stated in the Memorandum on Foreign Trade Régime (document L/6400), in view of Guatemala's status as a developing country with limited financial resources, it had not been possible to put into effect the tax rebate certificate (CAT) foreseen in the Export Promotion and Incentives Law and this instrument would be abrogated in the near future. Moreover, for the above stated reasons, the Guatemalan Government anticipated that the Law on Suppression of Privileges currently before Parliament would eliminate the incentives accorded to the agricultural, dairy and tourism sectors and has established a 2 per cent retention on exports to be credited to the payment of income tax. Therefore, the laws on the promotion of poultry farming (Decrees 13-31 and 63-87); dairy farming (Legislative Decree 72-73) and industrial decentralization (Legislative Decree 24-79) as well as the Banana Promotion Law of 1959 would be eliminated shortly while the law on cooperatives (Legislative Decree 82-78) would be maintained. He confirmed that cotton, meat and sugar did not receive subsidies.

36. With reference to the Law for the Promotion and Development of Exporting and Inward Processing Activities, Decree Law No. 29-89, the representative of Guatemala said that the main novelty of this Law consisted in the inclusion of agricultural as well as manufacturing activities. Currently the Law was applicable to some 220 enterprises whose total exports in a recent period had represented approximately US\$120 million. He noted that the duty and tax exemptions only concerned domestic charges. As this Law had only entered into force recently there was no precise data available concerning the value of import trade exempt from duties. The percentage was nevertheless estimated to be in the order of 4 per cent. Imported inputs were estimated to represent some 60 per cent of the total export value of these enterprises.

37. Recognizing Guatemala's status a developing country, a member said that Guatemala appeared to have set up a rather daunting quantity of export incentive programmes which, in his view, in some cases were in conflict with the provisions of Article XVI of the General Agreement.

38. The representative of Guatemala stated that the subsidy programmes described in paragraphs 35-37 in this report will be notified on a regular basis to the GATT CONTRACTING PARTIES as called for in Article XVI:1. He also indicated that it is his Government's intent to avoid serious prejudice to the interests of other contracting parties as set out in Article XVI:1, as well as to receive favourably requests from other contracting parties for consultations on the possibility of limiting the subsidization. The Working Party took note of these assurances.

Free trade zones

39. The representative of Guatemala said that ZOLIC, a trade and industry free zone set up by Decree Law No. 22-73 was operational in Santo Tomás de Castilla. ZOLIC had had limited success in carrying out industrial, trade

and service activities which in 1988 had represented approximately 3 per cent of Guatemalan exports. A new Free Zone Law No. 65-89 had been enacted recently in order to provide additional flexibility and dynamism to this instrument which was considered to have potential to attract additional investments, create job opportunities and expand exports.

40. The representative of Guatemala noted that sales to the national customs territory by firms established in Guatemala's free trade zones are subject to the payment of all taxes, duties, and charges on their imported component that are applied to other imports into the national customs territory. In other words there will be no discrimination between imports from free trade zones and imports from any other country.

V. State-trading and government procurement

41. Noting that certain imports by public and other agencies were exempt from tariffs and other taxes, a member encouraged Guatemala to reduce the trade not covered by normal customs charges. In order to determine if they were State-trading enterprises, this member requested information with respect to the structure and trading operations of the National Agricultural Marketing Institute (INDECA), the National Coffee Association (ANACAFE), and the Guatemalan Autonomous Sports Confederation. With respect to government procurement, this member also enquired whether Guatemala accorded preferences to domestic products. The representative of Guatemala said that only INDECA carried out trading operations that might be relevant to the provisions of the General Agreement. INDECA was a semi-autonomous entity whose purpose was to seek to influence supplies and the prices of essential agricultural products through purchases and sales. Having regard to the interests of both producers and consumers, INDECA sought to stabilize supplies and moderate cyclical fluctuations. The products of concern to INDECA were rice, beans, corn, sorghum and other grains. INDECA was not an import monopoly. Depending on the market situation import and export licences concerning these products could be accorded to interested private traders upon request. INDECA could not abuse of its legal position. Due to Guatemala's financial situation INDECA might have to be reformed in the near future. The representative of Guatemala added that ANACAFE was a private commodity association which carried out market and financial research and analysis on behalf of its members and was not a trader. The Guatemalan Autonomous Sports Confederation depended from the Ministry of Sports and did not have any monopoly on imports.

42. The representative of Guatemala stated that the only State-trading enterprise existing in Guatemala was the National Agricultural Marketing Institute (INDECA). The representative of Guatemala stated that his Government will apply laws and regulations governing the State-trading activities of the enterprises described above in conformity with the provisions of Article XVII, including provisions for non-discrimination, the application of commercial criteria for trade transactions, notification and other procedures. Purchases by these agencies for the

manufacturing process or for resale are not considered government procurement under the General Agreement. The Working Party took note of this assurance.

VI. Integration agreements
Central American Common Market (CACM)

43. Some members raised questions concerning the consistency of the bilateral agreements of the CACM member countries with Honduras and Panama with the provisions of the Central American clause of exemption. The representative of Guatemala said that under the Central American clause of exemption advantages conferred by the contracting States to any Central American country were expressly excluded from trade agreements concluded on the basis of the m.f.n. treatment with third countries. Articles 25 of the General Treaty on Central American Economic Integration and 24 of the Multilateral Treaty on Central American Free Trade and Economic Integration were aimed, inter alia, at preserving the principles of Central American economic integration. Honduras had not denounced the General Treaty on Central American Economic Integration and was thus practically a member of the CACM. As Panama had expressed interest in acceding to the CACM, the respective bilateral agreements were considered to be a forerunner to full accession. In his view, for the purposes of the GATT, these agreements were in full conformity with the provisions of the Enabling Clause which, inter alia, had authorized regional preferential arrangements among developing countries. In this respect he recalled that Panama was geopolitically part of the Central American Isthmus.

44. The representative of Guatemala stated that his Government intends to notify these preferential agreements to the CONTRACTING PARTIES within six months of accession, and to coordinate with other contracting party members of these agreements in providing periodic reports on the activities of these agreements, with particular emphasis on changes in their operation that could affect contracting party trade. He further stated that his Government is prepared to consult in the appropriate GATT forum at some future point, if requested by interested contracting parties. The Working Party took note of these assurances.

VII. MTN Agreements

45. The representative of Guatemala said that in the context of its regional integration scheme - the Central American Common Market (CACM) -, Guatemala would promote the acceptance of some MTN Agreements such as the Customs Valuation Code and the Code on Import Licensing Procedures. As a member of the CACM, at the time of the conclusion of the Uruguay Round, Guatemala would jointly with the other CACM member countries analyze the results of the negotiations and decide which Codes might be accepted. Some members noted that one CACM member country had already agreed to accept an MTN Code within a certain period of time. Even though acceptance of the Codes was not a condition to join GATT, these members felt that in order to avoid the segmentation of the multilateral trading

system it was desirable to increase participation in these arrangements, some of which were basically of a procedural character. These members urged Guatemala to examine this issue in detail as soon as possible. Other members suggested that Guatemala might also consider joining the MTN Agreements on Technical Barriers to Trade, Subsidies and Anti-Dumping.

46. The representative of Guatemala declared that his Government will soon initiate negotiations with the other member States of the Central American Common Market to jointly modify the current customs valuation system, and, within two years after Guatemala's accession to the General Agreement, Guatemala will adhere to the Code on Customs Valuation. He further stated that within two years after its accession to the General Agreement, Guatemala will adhere to the Anti-Dumping Code and to the Code on Import Licensing Procedures.

VIII. Conclusions

47. The Working Party took note of the explanations and statements of Guatemala concerning its foreign trade régime, as reflected in this report. The Working Party took note of the assurances given by Guatemala in relation to certain specific matters which are reproduced in paragraphs 10, 11, 13, 14, 19, 21, 25, 28, 30, 31, 34, 38, 40, 42, 44 and 46 of this report.

48. Having carried out the examination of the foreign trade régime of Guatemala and in the light of the explanations and assurances given by the Guatemalan representatives, the Working Party reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, Guatemala be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this report. It is proposed that these texts be approved by the Council when it adopts the report. When the tariff negotiations between Guatemala and contracting parties in connection with accession have been concluded, the resulting Schedule of Guatemala and any concessions granted by contracting parties as a result of negotiations with Guatemala would be annexed to the Protocol. The Decision would then be submitted to a vote by contracting parties in accordance with Article XXXIII. When the Decision is adopted, the Protocol of Accession would be open for acceptance and Guatemala would become a contracting party thirty days after it accepts the said Protocol.

APPENDIX

ACCESSION OF GUATEMALA

Draft Decision

The CONTRACTING PARTIES,

Having regard to the results of the negotiations directed towards the accession of the Government of Guatemala to the General Agreement on Tariffs and Trade and having prepared a Protocol for the accession of Guatemala,

Decide, in accordance with Article XXXIII of the General Agreement, that the Government of Guatemala may accede to the General Agreement on the terms set out in the said Protocol.

**DRAFT PROTOCOL FOR THE ACCESSION OF GUATEMALA
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE**

The governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "contracting parties" and the "General Agreement", respectively), the European Economic Community and the Government of Guatemala (hereinafter referred to as "Guatemala"),

Having regard to the results of the negotiations directed towards the accession of Guatemala to the General Agreement,

Have through their representatives agreed as follows:

PART I - GENERAL

1. Guatemala shall, upon entry into force of this Protocol pursuant to paragraph 6, become a contracting party to the General Agreement, as defined in Article XXXII thereof, and shall apply to contracting parties provisionally and subject to this Protocol:

- (a) Parts I, III and IV of the General Agreement, and
- (b) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2(b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.

2. (a) The provisions of the General Agreement to be applied to contracting parties by Guatemala shall, except as otherwise provided in this Protocol and in the commitments listed in paragraph 47 of document L/6770, be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which Guatemala becomes a contracting party.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII, and sub-paragraph 3(c) of Article X of the General Agreement refer to the date of that Agreement, the applicable date in respect of Guatemala shall be the date of this Protocol.

PART II - SCHEDULE

3. The schedule in the Annex shall, upon the entry into force of this Protocol, become a schedule to the General Agreement relating to Guatemala.

4. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of the Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the Schedule annexed to this Protocol shall be the date of this Protocol.

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

PART III - FINAL PROVISIONS

5. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES. It shall be open for acceptance by signature or otherwise, by Guatemala until 31 July 1991. It shall also be open for acceptance by contracting parties and by the European Economic Community.

6. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by Guatemala.

7. Guatemala, having become a contracting party to the General Agreement pursuant to paragraph 1 of this Protocol, may accede to the General Agreement upon the applicable terms of this Protocol by deposit of an instrument of accession with the Director-General. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the deposit of the instrument of accession, whichever is the later. Accession to the General Agreement pursuant to this paragraph shall, for the purposes of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 4 of Article XXVI thereof.

8. Guatemala may withdraw its provisional application of the General Agreement prior to its accession thereto pursuant to paragraph 7 and such withdrawal shall take effect on the sixtieth day following the day on which written notice thereof is received by the Director-General.

9. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of each acceptance thereto, pursuant to paragraph 5 to each contracting party, to the European Economic Community, to Guatemala and to each government which shall have acceded provisionally to the General Agreement.

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

Done at Geneva this [date to be inserted] day of [month to be inserted] one thousand nine hundred and ninety [one], in a single copy, in the English, French and Spanish languages, except as otherwise specified with respect to the Schedule annexed hereto, each text being authentic.

ANNEX

SCHEDULE LXXXVIII - GUATEMALA

[Text reproduced in L/6770/Add.1]