

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

Spec(89)24
22 May 1989

DRAFT REPORT OF THE WORKING PARTY ON THE ACCESSION OF BOLIVIA

1. At its meeting on 7 October 1987, the Council appointed a Working Party to examine the application of the Government of Bolivia to accede to the General Agreement, and to submit to the Council recommendations which might include a draft Protocol of Accession.

2. The Working Party met on 13-14 April and ... 1989 under the chairmanship of H.E. Mr. M. Huslid (Norway). The terms of reference and membership of the Working Party are set out in document L/6224/Rev.2¹.

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Régime of Bolivia (L/6369 and Corr.1), and the questions submitted by contracting parties on the Bolivian trade régime together with the replies of the Bolivian authorities thereto (L/6473 and Addendum 1 and Corr. 1). In addition, the representative of Bolivia made available to the Working Party the following material:

- Law No. 1001: General Budget Law 1988
- Budget Law of 8 February 1989
- Decree-Law No. 10170: General Law on Hydrocarbons
- Decree-Law No. 15629: National Health Code
- Law on Industrial Privileges
- Law Establishing Regulations Governing Trademarks
- Supreme Decrees 07783, 12640, 18886, 21060, 21660, 21910, 21979, 21987, 21991, 22022, 22102, 22103 and 22151

¹The list of representatives at the meetings of the Working Party has been circulated in Spec(89)21.

- Biministerial Decision 1020
- Interministerial Decision 23663-87
- Import Tariff of Bolivia
- List of tariff headings corresponding to capital goods to which the 10 per cent rate of duty is applied
- Balance-of-Payments statistics for 1987 and 1988
- Non-traditional exports, 1980-1987
- Circular 60/88 of the Directorate-General of Customs
- Statistical table of the official and parallel exchange rate and the exchange-rate differential
- LAIA Regional-Scope Agreement No. 4 and Protocol amending that instrument, concerning regional tariff preference
- Final Act of the Third Meeting of Ministers of LAIA
- LAIA Agreement on the Opening of Markets in favour of Bolivia
- LAIA: Concessions granted to non-member countries and extended to Bolivia
- Supreme Decree 21038 concerning Partial-Scope Agreements with Argentina, Brazil, Chile, Mexico and Paraguay
- LAIA Market-Opening List for Ecuador
- LAIA Market-Opening List for Paraguay
- LAIA Resolution 17 (VIII-E)
- Partial-Scope Agreements entered into by Bolivia in the framework of LAIA
- Cartagena Agreement and Protocol Amending that instrument Decisions Nos. 220, 222 and 227 of the Commission of the Cartagena Agreement
- Aide-Memoire on replacement of Decision No. 24 and related instruments, concerning treatment of foreign capital
- Decisions 230 and 231 of the Commission of the Cartagena Agreement
- Understanding on trade matters between Peru and Bolivia, of 25 August 1987
- Economic Complementarity Agreement between Bolivia and Venezuela, of 30 November 1986

4. In an introductory statement, the representative of Bolivia referred to the economic policy being implemented by Bolivia as of August 1985 and expressed the conviction that the economic system in general and the foreign trade policy in particular was fully compatible with the principles and rules of the General Agreement. The reform and re-organization of the Bolivian economy had been in and of itself a substantial contribution to the process of accession of Bolivia to GATT. Having regard to the principles of non-discrimination and transparency, Bolivia had established freedom of action for economic operators in the areas of prices, exchange rate system, labour market, investment, foreign trade and economic activity in general. Bolivia's status as a relatively less developed and landlocked

developing country should be duly considered both in the process of accession and in the tariff negotiations. Taking into account that Part II of the General Agreement would be applicable to Bolivia to the fullest extent not inconsistent with its existing legislation, particularly that relative to natural resources in the forms and modalities prescribed by the Bolivian Constitution, Bolivia expected that the Working Party would adopt a standard protocol of accession thus paving the way for the smooth and prompt completion of the accession process. To this effect, he urged contracting parties which had expressed the intention of holding tariff negotiations with Bolivia and had not yet submitted their request lists, to do so as soon as possible. Finally, the representative of Bolivia said that his Government was fully aware that it could not expect substantial nor immediate economic benefits from accession to the General Agreement. Therefore, the application for accession was primarily a matter of principle. Furthermore, Bolivia wanted to make a contribution to the ongoing process of integration of Latin America into GATT.

5. Recalling that tariff negotiations were required for accession to the General Agreement under Article XXXVIII, the Chairman noted that Bolivia had invited, as of 20 July 1987, contracting parties wishing to enter into tariff negotiations to contact the Bolivian authorities (GATT/AIR/2647 and 2726). Some members of the Working Party had already been in touch with the Bolivian delegation and negotiations with a view to the exchange of tariff concessions were currently taking place. Given the importance which Bolivia attached to an early completion of its negotiations on accession, the Working Party agreed to invite interested contracting parties to carry out the tariff negotiations without delay, and to invite contracting parties which had not yet submitted their request lists to do so as soon as possible, and no later than 30 April 1989 (GATT/AIR/2768).

I. General comments

6. Members of the Working Party welcomed the application of Bolivia for full accession to the General Agreement. Adherence to GATT principles and

rules and participation in the open multilateral trading system was an important step which would enhance economic growth and development. Bolivia's economic reforms which had simplified the tariff structure, streamlined the taxation system and liberalized the application of non-tariff measures were positive and laudable measures in line with the trade liberalization objectives of the General Agreement and the Uruguay Round. Hopefully, Bolivia would be promptly in a position to participate fully and actively in the Uruguay Round trade negotiations. Some members said that in determining the terms of accession of Bolivia their authorities would consider both the current situation as well as the need to ensure that the foreign trade policies and practices maintained in the future continued to be consistent with the provisions of the General Agreement. Noting that their authorities were well acquainted with Bolivia's economic and foreign debt problems, other members expressed their readiness to support Bolivia's request for accession which would lead to a strengthening of Latin America's participation in GATT.

7. The Working Party carried out an examination of the various aspects of the Bolivian trade régime and the possible terms and conditions of a protocol of accession. During this examination, the delegation of Bolivia provided additional information on, and clarification of, Bolivia's economic and commercial policy. The main points brought out in the discussion are set out below in paragraphs 8 to ..

II. Tariff system

8. A number of members referred to the tariff policy of Bolivia and requested additional information on the new tariff structure including the number of tariff lines and the percentage of import trade to which new rates of duty would apply, as well as the timetable proposed for its implementation, and the reasons for the decision not to pursue the phasing down of tariffs. The representative of Bolivia described certain facts of the economic situation of Bolivia prior to the implementation of the New Economic Policy: a 24,000 per cent rate of inflation, the value of the United States dollar had increased from 20 Bolivian pesos to 2 million

Bolivian pesos, cost distortions in practically all the productive sectors, scarcity of goods, unemployment, fiscal deficits notwithstanding a fiscal network consisting of over one hundred different taxes, etc. The structural adjustment programme known as the New Economic Policy had aimed at achieving economic stabilization and reactivation on the basis of the principles of allocation of resources through the market, fiscal reform, freedom of trade, a real exchange rate and transparency as well as effective social and labour policies. In order to align domestic output with market conditions and achieve greater competitiveness, the general principles and rules of the New Economic Policy had been applied to the foreign trade policy sector and, in particular, to the tariff structure of Bolivia. Having due regard to the important contribution which import duties made to the National Budget, the Bolivian Government had sought to apply to all imports without exception a relatively low uniform rate of duty. It was felt that a reasonable and uniform level of duty would facilitate administrative control and customs verification and help to dissuade illegal trade practices. Initially Bolivia had established a 20 per cent tariff rate applicable to all imports. Following technical studies carried out at the request of interested productive sectors and notwithstanding the fiscal costs involved, Bolivia had reduced to 10 per cent the rate of duty applicable to a long list of capital goods while maintaining the 20 per cent rate for other goods. In order to avoid disparities and distortions, the Bolivian Government had sought to apply gradually to all imports a 10 per cent rate of duty. Due to certain loopholes in the newly enacted system of internal taxation and emerging fiscal needs, in December 1988 the Bolivian Government had decided to discontinue the process of reduction of duties for goods other than capital goods, which had been in place for nine months. Thus, the duty rate for other goods has been fixed at the 17 per cent level, while the rate for capital goods has remained at 10 per cent. He stressed that this measure which would facilitate the evaluation of the economic and social effects of the tariff reduction process should be seen as a limited corrective action in a dynamic context and not as a policy change nor a systemic reform. Noting that this measure had been introduced quite recently, he said that the trade data currently available in Bolivia did not reflect the present tariff situation. Bolivia could not exclude the introduction of further

adjustments in the tariff structure, in the future. Nevertheless, having regard to the relevant GATT rules and in accordance with the principle of transparency, Bolivia would be ready to notify to the CONTRACTING PARTIES future changes in the country's tariff structure.

Tariff negotiations

9. Regarding Bolivia's position in the tariff negotiations with interested contracting parties, a member said that as an integral part of the terms of accession Bolivia should agree to bind its entire tariff schedule at an appropriate level. In this case, when making their requests, contracting parties negotiating with Bolivia would be expected to take into account Bolivia's willingness to enter into a comprehensive tariff binding. The representative of Bolivia said that, in his view, under GATT practice this issue should be addressed in the bilateral tariff negotiations which would lead to m.f.n. results and that he would not make any commitments regarding possible tariff bindings in the Working Party. It was to be expected, nevertheless, that in these negotiations contracting parties would give due consideration to Bolivia's status as a relatively less-developed country from the economic standpoint.

Harmonized System

10. With reference to the adoption by Bolivia of the Harmonized Commodity Description and Coding System, the representative of Bolivia recalled that Bolivia intended to adopt the Harmonized System by the year 1990 together with other countries, members of LAIA. For this purpose a technical support group had been set up within the framework of the Andean Group. In response to a further question, he said that without prejudging the possible outcome of the bilateral tariff negotiations with interested contracting parties, if technically possible and provided that this would not entail any delay in the accession negotiations, Bolivia would have no objections of principle to establishing a GATT schedule both in the tariff nomenclature applied at the time of accession as well as in the Harmonized System.

Special customs treatment

11. In response to the request for an estimate of the current level of imports subject to special customs treatment under Supreme Decree 21660, as a proportion of total imports, and the possible duration of such exemptions, the representative of Bolivia recalled that import statistics did not contain a breakdown for exceptions of this kind. Nevertheless, his authorities were ready to provide any available information. He reiterated that the exemptions listed in Article 127 of Supreme Decree 21660 and in the reply to Question 48 of document L/6473/Add.1 resulted exclusively from commitments assumed by the State prior to the approval of Supreme Decree 21060 of 29 August 1985 which had introduced the New Economic Policy. In general, the special customs treatments constituted partial or temporary duty exemptions. While carrying out existing international obligations and agreements, the Bolivian Government would be careful not to authorize new or additional exceptions. He pointed out, however, that the economic integration agreements to which Bolivia was a party were dynamic instruments with permanent status.

Temporary imports

12. In response to a question concerning the meaning of the expression temporary imports, the representative of Bolivia said that under current practices temporary imports were finished goods introduced into the country for a short period of time for activities such as fairs, tourism, samples, etc. Imported inputs which were exported after further processing were at present subject to the general import régime.

Autonomous Customs Warehouses Administration (AADAA)

13. Referring to the consistency with Article VIII of the General Agreement of the 0.5 per cent charge for services provided by the Autonomous Customs Warehouses Administration (AADAA), the

representative of Bolivia said that this charge represented the weighted average cost of the services rendered by the AADAA to imports and did not constitute an additional or complementary charge. Bolivia did not have the administrative infrastructure nor the financial resources to assess the costs of the services rendered by the AADAA to each individual import. Moreover, the current system prevented administrative discretion in the determination of these costs thus ensuring fairness and equality of treatment.

Tax policy

14. A member requested information on the revenues of Bolivia collected from the application of internal taxes to imports, i.e. the value added tax and consumption taxes.

15. In response to a number of questions concerning the tax on certain consumer goods including the equality of effect of the tax on domestic and imported goods, the representative of Bolivia said that the items subject to this tax and the relevant rates were listed in Law No. 843, the Tax Reform Law which had been circulated as Annex 5 to the Memorandum on the Foreign Trade Régime of Bolivia (L/6369/Add.1). The items and rates listed in Article 79 of the Law were as follows: corn liquor 30 per cent, beer 30 per cent, aguardientes and liquors 30 per cent, singanis 30 per cent, wine 30 per cent, drinkable alcohol 30 per cent, cigarettes 50 per cent, cigars and pipe tobacco 50 per cent, perfumery and cosmetics 30 per cent, jewellery and precious stones 50 per cent. Due to serious budgetary constraints and financial hardship, the 1988 Budget Law (Annex 19 of L/6473/Add.1) and the regulations thereof set in Supreme Decree 21991 (Annex 20 of L/6473/Add.1) as well as the 1989 Budget Law (L/6473) had amended the list of items subject to the consumption tax and modified certain tax rates. The additional items now subject to the consumption tax included: electric domestic appliances and equipment 10 per cent; radios, sound equipment and certain television sets 10 per cent; porcelain tableware and fixtures 10 per cent; automotive vehicles 10 per cent; domestic and commercial electric

energy 20 per cent; bottled drinks based on artificial flavours 20 per cent. The domestically produced share of some items subject to the consumption tax were approximately as follows: corn liquor and electric energy 100 per cent, beer 80 per cent, singanis 98 per cent, cigarettes over 60 per cent, automotive vehicles nil as all of them were imported, etc. For domestic and imported jewellery and precious stones the current rate was also 10 per cent. The majority of the products subject to this tax were considered to be luxury items or deemed to have negative effects on human health whose consumption had to be discouraged. The consumption tax was applied in a uniform manner to domestic and imported products without discrimination as to the origin of products. For domestic products, the tax was levied at the time of sale or withdrawal from factory and had to be paid to the Internal Revenue Directorate of the place of production and/or transportation of the raw materials. For imported products, the tax was levied at the time of customs clearance by the Customs authorities. In conclusion, the representative of Bolivia said that the revenue derived from the consumption tax was shared by the Central Government, the provinces, the municipalities and the universities. Notwithstanding the serious financial hardship faced by these institutions, the Government of Bolivia would continue to apply the consumption tax equally to imported and domestic products.

III. System of surveillance

16. With a view to ascertaining the compatibility of the activities of the foreign trade surveillance enterprises with the provisions of the General Agreement, some members requested a detailed listing of the principles and standards used to assess the value of imported and exported goods and the basis to determine price anomalies. Additional questions related to non-discrimination, the maintenance of a list of official indicative prices, the use of price paid or payable, transparency in the valuation methods to determine the dutiable value of imported goods, place, timeliness and cost of the surveillance, compensation paid to the foreign trade surveillance enterprises, fees

assessed on imports and exports, appeal mechanisms against the decisions of the foreign trade surveillance enterprises, etc.

17. The representative of Bolivia confirmed that the activities of the foreign trade surveillance enterprises were carried out on the basis of the principle of non-discrimination. He described the activities of the foreign trade surveillance enterprises which intervened in the case of imports and exports of a value exceeding US\$1,000. For values lower than this customs clearance, valuation and surveillance were carried out by the Directorate General of Customs. The foreign trade surveillance enterprises selected under a public tender procedure were responsible for the surveillance, verification and certification of foreign trade. These enterprises carried out the physical inspection prior to shipment, in the place of origin, of all imported and exported goods with a few exceptions, verified prices, packaging, freight, insurance, commissions, etc., and carried out a sampling check for imported goods upon arrival at the point of destination and for exported goods at the production plant or port of embarkation. In determining the customs value of goods, the surveillance enterprises considered the paid or payable price, insurance, freight and documentation costs, packaging, etc. as well as the level of international prices. The foreign trade surveillance enterprises issued a certificate of conformity or non-conformity which stated the price effectively paid as well as any price distortions detected with an indication of the methods used. Nevertheless, ultimate responsibility with regard to the physical verification of goods, tariff headings and calculation of import duties rested with the Bolivian customs authorities. If importers or exporters disagreed with the determinations made by the foreign trade surveillance enterprises, or if traders were damaged by their activities, the ensuing dispute or claim could be brought before the Ministry of Finance and, ultimately to the Bolivian courts of justice.

18. Some members said that their authorities would review the consistency of the principles laid down in the Circular 60/88 of the

Directorate General of Customs (Annex 17 of document L/6473/Add.1) with the provisions of Article VII of the General Agreement. These members were of the view that the Government of Bolivia should make a commitment to ensure that customs valuation procedures would be applied in conformity with Articles VII and X of the General Agreement and that Bolivia should assume responsibility for the activities of the foreign trade surveillance enterprises. Moreover, Bolivia should notify its intention to adhere to the Customs Valuation Agreement at the time of accession to GATT, or at least to become an observer in the respective Committee.

19. Concerning the ad valorem fee assessed on imports to cover the cost of the customs services provided by the foreign trade surveillance enterprises, a member recalled that the recommendations of the panel which had examined the customs user fee applied by the United States had ruled that the cost of services paid by importers must be specifically related to the cost of services rendered, and that an ad valorem fee did not meet this standard. Even though this member agreed that there were benefits, such as simplicity, which recommended an ad valorem system, the panel's report and recommendations, adopted in February 1987, had not recognized GATT compatibility based on such practical considerations. In her opinion, these recommendations were equally relevant to Bolivia's customs fee, which might be, as found by the above-mentioned panel, inconsistent with Article VIII of the General Agreement. Therefore, a transaction-based system was required to compensate the foreign trade surveillance enterprises. In the view of her Government, Bolivia should make a commitment to bring its practices in this area into GATT conformity based on the panel's ruling, within a reasonable period of time after accession to the General Agreement.

20. The representative of Bolivia stressed that the fees charged by the foreign trade surveillance enterprises were determined through the public tendering process of selection, corresponded entirely to the cost of the services rendered by these enterprises to importers and

exporters and did not generate any public revenue. He recalled that the fees were generally applicable to all goods. In the case of imports the fees were paid by the importers, and in the case of exports by the State. While acknowledging that these were profit-oriented enterprises, the representative of Bolivia was of the opinion that these fees could not be considered as a charge or tax of a fiscal character nor as providing indirect protection for domestic industry, since the amounts collected were paid to the foreign trade surveillance enterprises directly and did not accrue to the fiscal authorities. Noting that Bolivia did not have the administrative manpower nor the financial resources which would be needed to set the fees paid to the foreign trade surveillance enterprises on a transaction basis, the representative of Bolivia said that the fees were deemed by Bolivia to be consistent with Article VIII:1(a) of the General Agreement.

Import licensing

21. Reference was made to the existence of import measures in the form of licensing and import permits applicable to certain products. Noting that, in their view, the licensing régime for sugar appeared to be of a discretionary character and might have the effect of a quantitative restriction or be comparable even to an outright prohibition, some members asked whether Bolivia had a domestic programme for sugar production, if foreign suppliers were informed of the amounts available for imports and whether there had been sugar imports in recent years. The representative of Bolivia recalled that Bolivia was a sugar-producing country. The domestic production and market as well as export quotas for sugar were self-regulated by both private and public producers on a de facto and transparent basis. With regard to sugar demand and consumption, in the last three years Bolivia had been able to achieve self-sufficiency. Even though there was no outright prohibition to import sugar, exporters had not sought to export sugar to Bolivia. Having regard to the international market situation and international regulations for sugar, Bolivia would

authorize import licences if domestic production was not adequate to cover domestic needs. In his view, the prior licensing system for imports of sugar was consistent with Article XI of the General Agreement and the CONTRACTING PARTIES Decision on Safeguard Action for Development Purposes of 28 November 1979.

22. Noting that import licensing requirements might be applicable to some additional products, some members enquired about Bolivia's position concerning participation in the Licensing Code. The representative of Bolivia said that Supreme Decrees 21098 of 9 October 1985 and 21932 of 5 May 1988 did not authorize the application of prior import permits to products other than sugar and wheat flour and derivatives thereof, respectively. Decree 21932 had been repealed by Supreme Decree 21987 of 12 August 1988 as indicated in the reply to Question 37 in L/6473/Add.1. Nevertheless, prior licensing was applied to other products for reasons concerning the protection of human, animal or plant health, national security, illegal trade prevention, etc. which were justified by the exceptions listed in Articles XX and XXI of the General Agreement as indicated in the reply to Question 34 in L/6473/Add.1. He stressed that Article 41 of Supreme Decree 21060 had established the régime of free import of goods described in the reply to Question 38 in L/6473/Add.1. Therefore, Bolivia did not plan to extend the prior licensing system to other products. As of the time of accession to GATT, Bolivia would comply with the relevant provisions of the General Agreement and would submit the appropriate notifications and justification. Bolivia's position concerning the MTN Agreements is described in paragraph 36 below.

Standards

23. With reference to quality standards applied at the time of importation by means of import certificates, the representative of Bolivia said that due to administrative and fiscal constraints, at the present time, Bolivia did not have a centralized body to deal with

quality standards on a broad or general basis. For different productive sectors standards were established on a product-by-product basis. With respect to pharmaceutical products, the competent body, the Ministry of Social Welfare and Public Health took into account international standards in the elaboration of national standards. Bolivia was not a member of the International Standards Organization but would examine the question of participation therein as well as the possible assumption of observer status in the GATT Committee on Technical Barriers to Trade. Some time ago Bolivia had set up an office to deal with standards. Information concerning the activities of this office as well as that concerning standards and restrictions applicable to domestic and imported pesticides and fertilizers would be made available to interested contracting parties.

IV. Export promotion

Tariff refund certificates (CRA)

24. In response to a number of questions concerning the operation, justification and consistency with Article XVI of the General Agreement of the tariff refund certificates (CRA), the representative of Bolivia said that Supreme Decree 22013 of 16 September 1988 had established the regulations governing the issuance of these certificates. The purpose of the CRA was to encourage non-traditional exports through the refund of the import duties levied on inputs that have been incorporated in the exported products. Bolivia's traditional exports such as natural gas and minerals and wood in logs were not entitled to the CRA. For non-traditional exports, the amount of the refund was equal to 10% of the net value of the exported product. Even though the private sector felt that this amount was not sufficient, a linear refund had been applied due to the heavy burden and high cost which individual assessments would impose on the administrative apparatus of the country. The CRA was only valid for the payment of taxes and import duties and could not be redeemed for cash. In 1988, non-traditional exports had represented approximately 15 per cent of the value of total exports. However, as

the CRA had only been in operation for a short period of time, there was no information available concerning the value of exports benefiting from this refund. The Government of Bolivia considered that the CRA did not constitute a subsidy.

25. Recalling the provisions of Article XVI of the General Agreement, a member said that the CRA appeared to be incompatible with Article XVI. His Government was of the view that Bolivia should consider altering the CRA so as to eliminate the possibility of excess tariff refunds as soon as possible. In the interim, the CRA should be notified to GATT as an export subsidy.

Foreign trade surveillance fees

26. A member asked whether the payment by the State of the fee charged to exports by the foreign trade surveillance enterprises constituted a subsidy which would be notified to GATT. In response the representative of Bolivia recalled that in Bolivia the State still played a very important rôle in the export sector as the main exports of Bolivia continued to be natural gas and minerals. The asymmetry in treatment between exports and imports was explained by the fact that the State had a direct interest in the foreign exchange generated by exports which had to be surrendered to the Central Bank and in the fiscal implications of foreign trade transactions.

Industrial free zones

27. The representative of Bolivia confirmed that when the industrial free zones were established, the products produced in the industrial free zones entering Bolivia's customs territory would be subject to the regular tariffs, taxes and charges.

National Institute for Export Promotion (INPEX)

28. In response to a question concerning a description of the functions of the National Institute for Export Promotion, the representative of Bolivia said that INPEX's objectives were to facilitate export promotion and market diversification. This institution which was in the process of organization would provide exporters with market information, advice on marketing techniques, quality control, etc. INPEX would not provide financial assistance to Bolivian exporters.

V. Safeguards and unfair competition

29. In response to a question concerning the applicability to safeguards, dumping and subsidies of Article 29 of the Customs Tariff which gave the Executive the power to determine customs duties and to prohibit, limit and regulate imports in exceptional circumstances, and Bolivia's intention to apply the provisions of Articles VI, XVIII and XIX of the General Agreement, the representative of Bolivia said that in Bolivia at present there were no specific provisions to deal with dumping or subsidization. He recalled that Article VI of the General Agreement dealt with unfair trade practices and added that his authorities were confident that the accession to GATT would help to fill this vacuum in the Bolivian legislation. While Bolivia was not ready to discuss at this stage the question of accession to the MTN Agreements, in the area of safeguards, dumping and subsidies he could confirm that, having regard to its status as a developing country, after accession to GATT, Bolivia would comply with the relevant provisions of the General Agreement. A member stated that if Bolivia intended to apply countervailing charges for anti-dumping or for subsidy reasons, it should develop specific legislation to address these issues in conformity with the provisions of Article VI of the General Agreement which include an injury test. In the interim, Bolivia should make a commitment to apply all such measures, whether authorized under current law or by regulations adopted in the future, in conformity with the provisions of Articles VI, XVIII and XIX.

VI. Government procurement and State-trading

30. Reference was made to the scope and rôle of public enterprises in the Bolivian economy. A member said that Bolivian State entities and mixed economy undertakings where the State owned more than 50 per cent of the capital of an enterprise and which were subject to advisory assistance on government procurement as well as a 10 per cent price preference for domestic purchases, should be considered as falling within the definition of a maintained State enterprise under paragraph 1 of Article XVII of the General Agreement. This member requested a list of the enterprises totally or partially owned by the Government of Bolivia that engage in international trade with an indication of their respective shares in Bolivia's imports and exports. With regard to exports by State-owned enterprises, information was requested on the criteria used to determine quantities to be exported, and export prices and their position vis-à-vis domestic prices. With regard to imports, information was requested on the existence and publication of government regulations for the importation and distribution of foreign goods by State-owned enterprises and whether these goods were distributed in the same way as domestically produced goods.

31. The representative of Bolivia said that the private sector had recently carried out a study which had concluded that the private sector was responsible for approximately 40 per cent of Bolivia's GDP. In practical terms the rôle of the State in the economy was circumscribed to one productive sector, namely hydrocarbons and minerals and to providing some services such as transportation, energy, communications, etc. In accordance with the New Economic Policy, the private sector had been given wide ranging opportunities to pursue the economic development of Bolivia. Recalling that Bolivia had indicated the readiness as a contracting party to comply with Article XVII of the General Agreement, the representative of Bolivia noted that the State Hydrocarbons Corporation - YPFB - was the only State-owned enterprise in Bolivia which enjoyed special privileges. In accordance with the Bolivian Constitution and the Hydrocarbons Law, YPFB had a trading monopoly for the marketing of hydrocarbons which operated through concessions to private enterprises for domestic distribution and,

where appropriate, exports. Other State-owned enterprises such as the Bolivian Mining Corporation - COMIBOL, the Mining Bank and the State-owned sugar producing company, had no special privileges and were subject to the same regulations applicable to privately-owned enterprises. Thus, in Bolivia minerals could be exported freely. State-owned enterprises carried out electricity production and rail transport without enjoying commercial privileges. The advisory assistance for the purchase of goods or contracting of services provided to public sectors entities, the public administration, State banks, mixed economy undertakings, etc., had been aimed at ensuring the observance of fair resource allocation and administrative practices and did not constitute a special privilege. The representative of Bolivia added that Article 72 of Supreme Decree 21060 had established unrestricted freedom of prices except in respect of hydrocarbons, urban passenger transport, electric power, railway tariffs, telephone tariffs and other tariffs. All other prices were freely determined by market conditions and there were no dual pricing systems in operation in Bolivia. Nevertheless, in the case of natural gas, as export prices were determined in the context of bilateral agreements with Argentina, there might be a difference between export prices and domestic consumption prices.

32. With reference to the advisory assistance for government procurement, a member enquired whether the advisory assistance system applied to all purchases carried out by State-owned entities and if their imports were subject to import duties. In her view, in the case of purchases for commercial resale or production, the 10 per cent preference for domestic products appeared to be inconsistent with Article III of the General Agreement. The representative of Bolivia recalled that in Bolivia the State continued to play a role in certain essential sectors. In accordance with Supreme Decree 21660, the advisory assistance for government procurement was a mechanism of qualification and selection of tenders for purchases of goods and contracting of services, of a value exceeding one hundred thousand bolivianos, by public sector entities, undertakings and institutions. Specialized non-profit foreign public agencies contracted by the Bolivian Government received bids, graded them, and submitted them

for consideration to the public entity concerned together with their advisory opinion and recommendations. Domestic goods/services received an additional 10 percentage point in the qualification but there was no price preference. Moreover, the purchasing decision was always made by the purchasing entity which was free to follow or not the agency's recommendation. He added that, in general, State entities were not involved in commercial resale.

33. In response to another question on what constituted a duly accredited legal representative in Bolivia for tendering purposes, the representative of Bolivia said that in order to safeguard the seriousness of bids, interested suppliers were required to appoint a duly-empowered legal representative in Bolivia for the tender in question. This requirement did not mean that bidders had to establish themselves in Bolivia formally.

34. In response to further questions, the representative of Bolivia said that State-owned enterprises were autonomous entities which made purchases or sales solely in accordance with commercial considerations and acted in a non-discriminatory manner. The advisory system applied to purchases by State entities including State-owned enterprises and enterprises owned by local governments had been designed to ensure adequate standards of quality and efficiency. This system was considered to be fully consistent with the provisions of Article XVII. He confirmed that when Bolivia became a contracting party, State trading enterprises in their purchases or sales involving imports or exports would act in conformity with the provisions of Article XVII of the General Agreement. In the belief that it would be a contribution to transparency in this sector, a member of the Working Party requested that Bolivia provide a list of the firms and enterprises which would be subject to the notification and other procedures prescribed in Article XVII of the General Agreement.

35. In response to the request to provide a description of the privatization plans in the context of the plans for economic rationalization, the representative of Bolivia said that a recently established commission was examining the feasibility of transferring some

additional activities to the private sector. As this matter did not fall within the purview of the General Agreement, it did not seem to require a more elaborate answer.

VII. MTN Agreements

36. In response to questions concerning Bolivia's intention to join the Agreement on Import Licensing Procedures and other MTN Agreements, such as the Customs Valuation Agreement and the Agreement on Technical Barriers to Trade, the representative of Bolivia said that his authorities would examine the possible acceptance of these Agreements. At present there was a degree of uncertainty concerning some of these Agreements as they might be amended in the context of the Uruguay Round trade negotiations. Recalling that Bolivia had only sought accession to the General Agreement, he said that, as a general rule, Bolivia would have no difficulties in undertaking to comply with the relevant provisions of the General Agreement on the understanding that this undertaking was without prejudice to the right to invoke other GATT provisions, including any relevant legal instruments and CONTRACTING PARTIES Decisions.

VIII. Balance of payments

37. Noting that Article 29 of the Customs Tariff of Bolivia gave to the Executive the power to prohibit, limit and regulate imports and with reference to the statement by Bolivia that at present balance of payments difficulties were not being tackled through trade restrictive measures, some members requested that Bolivia elaborate on the conditions which would justify resorting to certain provisions of the General Agreement such as Article XVIII and confirm that trade restrictive measures would be notified and justified in conformity with Articles XII and XVIII. A member asked also whether in the context of accession Bolivia would make a commitment to apply only price-based trade restrictions to defend the balance of payments. Since the implementation of the New Economic Policy in August 1985, the Bolivian authorities had decided not to apply trade restrictive measures to deal with structural problems such as the balance of payments

difficulties. With the co-operation of the international financial community and institutions, Bolivia had been able to and hoped to continue to be able to cope with the balance-of-payments disequilibrium in a context of economic growth and development. His authorities were convinced that current policies were the only viable approach to deal with balance-of-payments difficulties and did not intend to apply trade restrictive measures for balance-of-payments purposes. However, in exceptional circumstances, the Bolivian Government had the legal authority to resort to quantitative or other import control mechanisms and would therefore exercise the right which all developing contracting parties had to invoke Article XVIII and any other relevant provisions of the General Agreement, if and when the need arose. In such a case, after becoming a contracting party, Bolivia would comply with the procedures prescribed by the CONTRACTING PARTIES in the same manner as other contracting parties.

IX. Integration Agreements

38. With reference to the agreements by Bolivia in the framework of the Latin American Integration Association (LAIA), the representative of Bolivia recalled that the contracting parties members of LAIA had notified the 1980 Montevideo Treaty to the CONTRACTING PARTIES. The Regional Tariff Preference (RTP) established pursuant to the Treaty was not yet in force in Bolivia because Supreme Decree 22022 (Annex 21 of L/6473/Add.1) which authorized the implementation of the RTP had to be formalized with the LAIA Secretariat. As indicated in the reply to Question 90 of L/6473/Add.1, the definitive list of exceptions of Bolivia had not yet been established. This list which would consist of 2,400 items was being revised by the Ministries of Finance and Foreign Affairs. It was not possible to forecast the time which this exercise would demand. In due course, Bolivia would make available to the CONTRACTING PARTIES the list of exceptions. The Partial Scope Agreements (PSA) concluded by Bolivia with the LAIA member countries were in force. The margins of preference established therein related to the m.f.n. rates applied by the signatories. In response to a question, the representative of Bolivia said that the hypothetical application of a 100 per cent margin of preference would entail duty-free treatment. It was not possible to indicate at this time if Bolivia, in the

context of participation in LAIA and the partial scope agreements received relief from quantitative restrictions and other non-tariff measures applied by the other LAIA member countries.

39. Some members referred to the effect of Bolivia's participation in regional agreements on its ability to enter into tariff negotiations with interested contracting parties. These members noted that the provisions of the Enabling Clause did not support the assertion that trade concessions exchanged in the context of integration agreements could not be affected by tariff concessions negotiated with third countries. Pursuant to paragraph 3(c) of the Enabling Clause, any preferential treatment provided under the Clause did not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis. Any attempt to exclude concessional products from the tariff negotiations would be a reason for serious concern. In the view of these members, in the case of countries with wide-ranging preferential tariff commitments, the insistence on maintaining such a line of action might be tantamount to a refusal to enter into tariff negotiations with third countries which, without questioning Bolivia's sovereign right to make or not to make concessions, they would not be able to accept. A member requested that Bolivia provide a list of the items in Bolivia's tariff schedule which would be subject to the Common Minimum External Tariff of the Cartagena Agreement. This member added that in the view of her Government, Bolivia should be prepared to participate fully in tariff negotiations in connection with its accession proceedings without regard to instruments that were not in force at the present time.

40. The representative of Bolivia said that Bolivia's participation in integration agreements was not an impediment for entering into tariff negotiations with third countries, agreeing on a schedule of concessions and establishing a Protocol of Accession. He reiterated that Bolivia was ready to enter into tariff negotiations with interested contracting parties on the basis of relevant GATT principles and provisions. Noting that the Government of Bolivia had always been respectful of its international obligations, he added that following the completion of the tariff negotiations relating to the accession to GATT, in accordance with the

relevant provisions of the respective Agreements, Bolivia would consult with the competent bodies of LAIA and of the Cartagena Agreement as appropriate.

41. Referring to the preferential arrangements in the framework of LAIA and the Cartagena Agreement, some members expressed interest in the manner in which Bolivia would observe the provisions of the Enabling Clause after becoming a contracting party. The representative of Bolivia said that, in his view, the regional agreements to which Bolivia was a party were in conformity with the provisions of the Enabling Clause. With reference to paragraph 2(c) of the Enabling Clause, the representative of Bolivia said that without prejudging substantive issues and on the assumption that Bolivia would become a contracting party shortly, he could confirm that Bolivia would be bound by the provisions of the Enabling Clause in the same manner as any other contracting party. The representative of Bolivia recalled that the LAIA contracting parties had submitted reports to GATT periodically. As a contracting party, Bolivia would take part in these activities and would agree to consult with contracting parties in accordance with the provisions of the Enabling Clause.

[TO BE COMPLETED]

APPENDIX

ACCESSION OF BOLIVIA

Draft Decision

The CONTRACTING PARTIES,

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

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

DRAFT PROTOCOL FOR THE ACCESSION OF BOLIVIA
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 Bolivia (hereinafter referred to as "Bolivia").

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

Have through their representatives agreed as follows:

PART I - GENERAL

1. Bolivia 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 I 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 Bolivia shall, except as otherwise provided in this Protocol, 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 Bolivia 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 Bolivia 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 Bolivia.

4. (a) In each case in which paragraph I 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 signature by Bolivia until [date to be inserted]. It shall also be open for signature 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 signed by Bolivia.

7. Bolivia, having become a contracting party to the General Agreement pursuant to paragraph I 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. Bolivia 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 signature thereto, pursuant to paragraph 5 to each contracting party, to the European Economic Community, to Bolivia 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 day of one thousand nine hundred and eighty-nine 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 ... - Bolivia

[Text to be supplied later]