

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
Spec(94)14/Rev.2
6 December 1994

(94-2667)

**DRAFT REPORT OF THE WORKING PARTY ON THE
ACCESSION OF MONGOLIA**

Revision

1. At its meeting on 8 October 1991, the Council of Representatives appointed a Working Party to examine the application of the Government of Mongolia 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 3-4 June 1993, 1-2 February, and 24-25 May, 3-4 November 1994 and [] under the Chairmanship of H.E. Mr. W. Lang (Austria). The terms of reference and the membership of the Working Party are set out in document L/6919/Rev.3. In pursuance of the Ministerial Decision of 14 April 1994 on Acceptance of and Accession to the Agreement Establishing the World Trade Organization (WTO) and to the Decision of 31 May 1994 of the Preparatory Committee for the WTO, the Working Party examined the application of Mongolia for membership in the WTO.

3. The Working Party had before it, to serve as a basis for its discussions a Memorandum on the Foreign Trade Régime of Mongolia (L/6943 and Add.1 - 2), and the questions submitted by contracting parties on the Mongolian foreign trade régime together with the replies of the Mongolian authorities thereto (L/7043/Rev.1 and Spec(93)28). In addition the representative of Mongolia made available to the Working Party the following material:

- Law on Foreign Investment
- Law on Business Entities
- Banking Law
- Law on Privatization
- General Law of Taxation
- Personal Income Tax Law
- Economic Entity and Organization Income Tax Law
- Transport Facilities and Vehicle Tax Law
- Sales Tax Law
- Bankruptcy Law
- Law on the Protection of Consumers' Rights
- Customs Law
- Law on Prohibiting Unfair Competition.
- Copyright Law of Mongolia

- Basic statistical data on Mongolia's economy
- Basic statistics on Mongolia's foreign trade
- International intergovernmental and specialized organizations where Mongolia is a member
- Main international treaties, conventions and agreements related to trade and economic co-operation where Mongolia is a signatory
- List of countries with which Mongolia has bilateral trade agreements
- List of countries with which Mongolia has concluded agreements on avoidance of double taxation and mutual promotion and protection of investments
- Information on main service sectors

4. In an introductory statement, the representative of Mongolia said that the last three years had marked rapid and challenging changes in the political and economic life of Mongolia. Formerly a country closed to international relations and heavily dependent on the CMEA member countries, in 1990 Mongolia had initiated an in-depth reform process aimed at restructuring the country's economy. The programme had been relatively successful as the inflation rate had declined from 321 per cent in 1992 to 183 per cent in 1993 and the average monthly inflation rate had fallen further to 5 per cent. Moreover, the consumer rationing system had been abolished. The floating exchange rate was relatively stable at around 400 tugrik per US dollar. Since 1990 Mongolia had entered into trade agreements with Austria, Japan, Republic of Korea and United States, renewed its agreements with the Russian Federation, China and other traditional partners and concluded an economic cooperation agreement with the European Communities. Mongolia had signed agreements on mutual protection and the promotion of investments as well as arrangements on the avoidance of double taxation with Belgium, China, France, Germany, Italy, Republic of Korea, United Kingdom, and the United States OPIC. Mongolia also had joined international economic and financial institutions, such as the World Bank, IMF, ADB, CCC and signed the Conventions on MIGA, Harmonized System, Settlement of Investment Disputes. Mongolia had overhauled the existing legislation to make it responsive to the market economy system. The Privatization Law, the Law on Business Entities, the Banking Law, the Bankruptcy Law, the Law on Protection of Consumers' Rights had been enacted among others. The Parliament had recently enacted new Laws on Taxation and Foreign Investment and Amendments to the Customs Law. The policy of encouragement of the private sector had led to the privatization of more than 88 per cent of the former State owned enterprises to be privatized through investment coupons. Almost 90 per cent of the livestock and the network of small retail shops, outlets and enterprises in catering and service business had been transferred to private ownership. As far as prices were concerned, the Government only controlled the prices of heating, coal, electricity and public transport fares. The trade regime was being liberalised gradually. Any business entity was entitled to conduct foreign trade transactions without special authorization. Quantitative restrictions were not imposed on either exports or imports. Only a few items such as meat and wheat were subject to export licensing. Import licences were required only for items such as weapons, ammunition, explosives, etc. As a part of the foreign

exchange reforms, a floating exchange rate had been applied from the end of May 1993. The Harmonized Commodity Description and Coding System was being used as a model to collect statistical data on the exportation and importation of goods and Mongolia expected to apply it fully by 1996. The customs valuation rules were based on the GATT Customs Valuation Code. He stressed that his Government expected that the accession of Mongolia to the GATT would contribute to the further economic development and integration of Mongolia in the international trading system and would be mutually beneficial to all countries. He added that Mongolia was ready to enter into tariff negotiations with all interested contracting parties. ~~Having regard to the Ministerial Decision of 14 April 1994 on Acceptance of and Accession to the Agreement Establishing the World Trade Organization (WTO) and to the Decision of the Preparatory Committee dated 31 May 1994, the Mongolian Government intended to accept the Agreement Establishing~~ had applied for membership in the World Trade Organization and ~~intended to become an original member thereof as soon as possible.~~ For this purpose Mongolia ~~would~~ had established as ~~soon as possible~~ the appropriate market access schedules for agriculture and industrial non-agricultural goods and for services.

5. The Working Party warmly welcomed Mongolia's application for accession to the General Agreement ~~and the WTO~~. In expressing appreciation and understanding for Mongolia's ongoing political and economic reforms, the members of the Working Party noted that notwithstanding the small size of the internal market, a landlocked situation, a low level of infrastructure, the shortage of financial resources and the collapse of traditional financial and economic links, Mongolia had had the courage to maintain a steady course to bring about socially acceptable reforms. Members commended Mongolia's measures aimed at consolidating a democratic society and implementing a full market economy. Members noted that Mongolia had established a new legal and institutional framework for the economy and for foreign trade, had liberalized the foreign exchange régime, had freed most prices, had made substantial progress in the privatization of the productive sectors and had made a firm commitment to continue to pursue political, economic and social reforms. In their view, Mongolia's accession to GATT ~~and the WTO~~ would contribute to alleviating the current difficulties, would promote the country's economic development and the foreign investment and would also contribute to strengthen the multilateral trading system.

6. The Working Party carried out an examination of the various aspects of the Mongolian foreign trade régime and the possible terms and conditions of a protocol of accession. During this examination the delegation of Mongolia provided additional information on, and clarification of, Mongolia's economic and commercial policy. The main points brought out in the discussions are set out below in paragraphs 7 to ~~28~~ 31.

Economic reforms

7. In response to questions concerning reforms in the pricing system, the foreign exchange regime and the existence of monopolies, the representative of Mongolia reiterated that the Government had been moving decidedly towards a full market economy; therefore, most price controls had been eliminated and price controls remained only for the following items: coal, electricity, heating and public transport fares. All other prices were determined by market conditions exclusively. In addition, the representative of Mongolia recalled that the exchange rate had fluctuated widely in the period 1991-1994 going from 3 to 7 to 42 to 150 to 400 Tugriks (Tug) per United States dollar. The current exchange rate was 400 Tugriks per US dollar. Even though it had not yet been possible to establish the full convertibility of the Tugrik, in May 1993 the Government had established a floating exchange rate system. The Mongolbank (Central Bank) announced the exchange rate of the Tugrik to the United States dollar and other foreign currencies every two weeks on the basis of international market rates. All branches of the Mongolbank and the sixteen commercial banks were permitted to buy and sell foreign exchange at the market rate. The commercial banks were public limited companies similar to privatized enterprises. As a result of these measures, the parallel exchange rate had decreased and since June 1993, a single exchange rate had been in effect. Access to the foreign exchange market was on the basis of national treatment without any discrimination concerning ownership or national origin. Finally, the representative of Mongolia confirmed that monopolies were not permitted in Mongolia.

Tariff Régime

8. In response to questions concerning the tariff régime, the representative of Mongolia said that the multiple customs tariffs which had operated prior to June 1991 did not provide for m.f.n. rates. Within the framework of economic reforms and the liberalization of trade policy and in the process of integrating to the multilateral trading system, Mongolia had decided to overhaul the existing tariff system whose rates were 15 per cent for most items. As a temporary measure, lower rates were applied to a few items. The original uniform tariff rate of 15 per cent had been approved by the Parliament was in force. The Parliament had delegated to the Government the right to reduce the tariff rates on certain basic consumer goods by up to 100 per cent and on industrial and technical goods by up to 50 per cent. After accession to GATT and the WTO, any changes in bound tariff rates would comply with the relevant obligations. The multiple-rate tariff schedule under consideration would have differential rates on goods, would convert Mongolia's tariff system to the Harmonized System and would introduce general and m.f.n. tariff rates. Noting that revenue from customs duties accounted for approximately 14 per cent of Government revenue, the representative of Mongolia added that Mongolia was ready to enter into tariff negotiations with all interested contracting parties. Some members expressed the view that bindings should be established at commercially significant levels to

give some level of security of market access to fellow GATT/WTO members. The representative of Mongolia said that taking into account its own needs and the needs of the contracting parties and members concerned, his Government Mongolia would establish comprehensive bindings in its tariff schedule covering goods at an across the board rate not higher than 30 per cent with certain exceptions. Mongolia expected that the tariff bindings agreed in the context of accession to GATT would also apply in the area of market access in the framework of original membership in the World Trade Organization. The Working Party took note of these assurances and agreed that the market access schedule of Mongolia would serve for both purposes.

Import Surcharges

9. In response to members of the Working Party, the representative of Mongolia confirmed that there were no surcharges in Mongolia. The Working Party took note of this statement.

Taxation Régime

10. Some members of the Working Party referred to the excise tax, requested a list of the excise tax rates applied at the present time by individual product and asked whether the excise taxes on imported liquor and tobacco would be applied to like domestic products at an equivalent level as provided for in Article III of the General Agreement. They noted that the excise taxes applied to imported liquors, wines, tobacco, gasoline, and diesel oil exceeded those applied to domestic production. Specifically, domestic taxes on domestically produced alcoholic beverages and tobacco products were 80-85 per cent and on imports 100-150 per cent. In response the representative of Mongolia said that the excise tax was applied to all kinds of alcoholic beverages, tobacco products, gasoline and diesel oil. It covered both imported and like domestic goods. In certain instances imported goods were charged at higher rates than the like domestic products. The excise tax on imports was applied from the date of completion of the customs clearance. The like domestic products were subject to the excise tax from the date of invoice of the producer. The current rates of the excise tax were as follows: i) rectified spirits, domestic 85 per cent, imported 150 per cent; ii) alcoholic beverages, domestic 80 per cent, imported 100 per cent; iii) wines, domestic 30 per cent, imported 50 per cent; iv) tobacco products imported 100 per cent; v) gasoline, imported 15 per cent; and vi) diesel oil, imported 20 per cent. There was no domestic production of tobacco products, gasoline and diesel oil. Since the current rates of the excise tax applied to imports were higher than those applied to like domestic products, the tax was not consistent with Article III of the General Agreement. ~~[Upon accession to GATT, Mongolia would adhere to its principles and provisions, including the commitment not to apply the imported products internal taxes or charges in excess of those applied to like domestic products].~~ A proposal to equalize the internal taxes was currently before the Ministry of Finance and the Mongolian Parliament

~~for approval.~~ The Customs Law and the Taxation Law provided that in case of any discrepancy between the national legislation and the international treaties to which Mongolia was a signatory, the latter shall prevail. Thus, the international commitments of Mongolia would be unquestionably enforced. ~~The Working Party took note of these commitments.~~

11. In response to questions concerning the scope and the level of the sales tax, and its application to imported and domestically produced goods, the representative of Mongolia said that according to Articles 4, 6 and 8 of the Sales Tax Law, a sales tax of 10 per cent was applied to both imported and domestically produced goods and services. Imports were subject to sales tax from the moment of their importation into the territory of Mongolia. Domestically produced goods were subject to the sales tax upon the purchase or lease of the goods or from the date of the invoice submitted for the payment of services rendered. Domestically produced goods whose total production was valued at less than 5 million tugrik were exempted from the sales tax. He added that no taxes or charges of any kind were applied to exports and no charges were levied for the acquisition of export licenses.

~~12. Upon~~ The representative of Mongolia stated that from the date of accession to the GATT [1947] and the WTO [as a contracting party], Mongolia would ~~completely eliminate the discriminatory application of the excise tax and the sales tax on imported products and would henceforth apply its domestic taxes in conformity with the relevant GATT provisions of the General Agreement after accession, in particular Article III thereof [and would ensure their implementation with regard to all aspects of the country's tax regime].~~ The Working Party took note of these commitments.

Non-Tariff Measures

~~12.13~~ In response to questions concerning import and export controls, the representative of Mongolia said that according to the Government Decree N°86 of 24 May 1993, the following items were subject to prohibition with respect to their importation into and/or exportation from Mongolia: i) narcotics and appliances for their manufacture and use (import and export prohibited); ii) books, movies, video tapes, photos, films advocating pornography or violence (import and export prohibited); iii) animals listed in International and Mongolian Red Books and prohibited by the laws of Mongolia for hunting, trophies and products thereof (export prohibited); iv) goods received under loans and assistance from international organizations and donor countries (export prohibited); v) livestock, animals, birds, and raw materials of such origin, foetus, embryos thereof and microorganisms without veterinary certification or permission from appropriate organizations (import and export prohibited). The importation and/or exportation of the following items was subject to licensing: i) historical and cultural property, paleontological, archaeological discoveries, samples of soil, plants and animals (export and import);

ii) precious metals, precious and semi-precious stones (export); iii) ferrous and non-ferrous metals (export); iv) weapons, ammunition, their spare parts and explosives (export and import); v) velvet horn, plants listed in International and Mongolian Red Books (export); vi) radioactive elements, rare elements, chemical elements (export and import); vii) breed stock, ~~[meat, grains, fodder (export)]~~. Except for the items listed above, in Mongolia all other products and services were freely exported and/or imported by all entities. The Ministry of Trade and Industry was responsible for all matters concerning the export and import policy of Mongolia.

13.14 The representative of Mongolia confirmed that there were no quantitative restrictions on imports into Mongolia. In order to comply with international undertakings, the export of certain textiles to the European Communities market was subject to quantitative restrictions. ~~Licenses had been abolished for meat, grains and fodder.~~ For imports of livestock, animals, birds, and raw materials thereof, Mongolia accepted foreign issued veterinary certificates. Moreover, products such as live animals, meat, raw materials of animal origin and goods thereof, minerals, wood, etc. were not subject to import licensing and there was no intention of introducing such measures in the future. He confirmed, furthermore, that since 1992 there were no export incentives or subsidies in Mongolia and noted that ~~a draft schedule of agricultural commitments had been distributed to the members of the Working Party.~~

14.15 The representative of Mongolia said that, ~~from the date of accession, the authority of his Government to suspend imports and exports or to apply licensing requirements that could be used to suspend trade in the products subject to licence would be applied in conformity with the provisions of the General Agreement, in particular, Articles VI, XI, XVIII, XIX, XX and XXI. Moreover, Mongolia would apply the same controls and rules regarding technical regulations, standards, certification and labelling requirements to imported and domestic goods, and would not use such regulations to restrict imports. Mongolia would ensure that its technical regulations, standards, certification, and labelling requirements are not applied to imports in an arbitrary manner, in a way that discriminates between supplier countries where the same conditions apply, or as a disguised restriction on international trade. Mongolia would also ensure that certification requirements are administered in a transparent and expeditious manner and would be willing to consult [if requested] 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 commitments. Mongolia commits that, from the date of accession [to the GATT 1947], the authority of its Government to suspend imports and exports or to apply licensing requirements that can be used to suspend trade in the products under license will would be applied in conformity with the provisions of the General Agreement and the WTO, in particular GATT Articles VI, XI, XVIII, XIX, XX, and XXI, and the WTO Agreements on Agriculture, Sanitary and Phytosanitary~~

Measures, Import Licensing Procedures, and Technical Barriers to Trade. In particular, [Moreover], Mongolia will would apply the same controls and rules regarding technical regulations, standards certification, and labelling requirements to imported and domestic goods, and will would not use such regulations to restrict imports. Mongolia will would ensure that its technical regulations, standards, certification, and labelling requirements are not applied to imports in an arbitrary manner, in a way that discriminates between supplier countries where the same conditions apply or as a disguised restriction on international trade. Mongolia will would also ensure that certification requirements are administered in a transparent and expeditious manner, and would be willing to consult [if requested] with the contracting parties and the WTO members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments.

State Trading Enterprises

16. A member of the Working Party referred to the broader level of government involvement in State firms and noted that chapter 5 of Mongolia's Entity Law, i.e., the chapter applying to State enterprises, states that the enterprises established by financing from the State centralized funds are accountable to the Government of Mongolia and the central agencies authorized by it; the enterprises established by financing from the local budget resources are accountable to the appropriate local supreme body and its executive branches (Article 39); "the enterprise is established by the decision of the Government of Mongolia and/or the authorized State agency. The Director manages the business of the enterprise and is accountable to the organization (Article 42); and the Government of Mongolia and the authorized State agencies will decide the questions of the reorganization and liquidation of the enterprise. He added that these provisions clearly indicated that Mongolian State enterprises were granted exclusive and special rights or privileges in that they were subject to provisions of Mongolian law that place their management, funding and economic fate in the hands of the Government, a situation distinct and more favourable than that applying to privately held companies at the mercy of the market. In his view, Mongolia should notify such enterprises under Article XVII until such time as they are no longer subject to these provisions of the Entity Law.

15-17. In response to a request for information on the State trading enterprises, the representative of Mongolia said that the following enterprises were involved in State trading activities: 1. "Petroleumimport" (import of petroleum products); 2. Consumer Goods Import-Export Corporation; 3. Wholesale Company (supply of consumer goods and others); 4. Wholesale Company of Food Products (supply of food products); 5. "Mongolemimpex" Corporation (import and export of medicine); 6. "Energyimpex" Company (import of energy equipment, parts for energy sector); 7. "Coal" Company (export of coal and import of equipment, spare-parts, raw materials for coal mining); 8. "Erdenet"

Corporation (export of copper and molybdenum concentrates and import of goods for "Erdenet" plant); 9. "Mongolrosvetmet" (export of fluor-spar and import of goods for its own plant); 10. "Gobi" Company (export of cashmere and other products thereof and imports for its own factory).

16.18. The representative of Mongolia said that his Government would apply its laws and regulations governing the trading activities of the State trading enterprises listed in the preceding paragraph 14 above in conformity with the provisions of Article XVII of the General Agreement, including He also said that Mongolia would abide by the provisions for notification [and periodic reporting], non-discrimination, and the application of commercial criteria considerations for trade transactions. Mongolia did not consider purchases by these enterprises for the manufacturing process or for resale to be government procurement under the General Agreement. The Working Party took note of these commitments.

17.19. The representative of Mongolia said that the other State enterprises had no exclusive or special privileges, acted in a manner consistent with the principle of non-discrimination and were treated on the same basis as private entities without interference from the Government of Mongolia. The State enterprises were free to purchase and sell goods on the international markets and to acquire imports from any origin. He reiterated that these enterprises operated solely on the basis of commercial considerations, were subject to competition with private enterprises, and would continue to operate on these bases in the future. He added that the State enterprises assessed commissions on the firms that sold or bought goods through them. In 1993, the foreign trade turnover had been as follows: State enterprises 63 per cent and private enterprises 37 per cent. As of now these enterprises do not receive financial support nor directions from the Mongolian authorities.

Privatization Programme

18.20. Noting that Mongolia had been pursuing a far reaching privatization programme which had already covered and that more than 88 per cent of State owned property had been privatized through investment coupons, some members of the Working Party requested information on the procedures being followed to carry out this programme in the industrial and agricultural sector, the banking sector, etc. as well as on the legal structure and administration of the enterprises privatized. In response the representative of Mongolia said that as provided for by the Privatization Law, all small enterprises engaged in trading and services as well as independent units of large enterprises were subject to privatization under the "Small Privatization" programme. The "Small Privatization" as well as the privatization of agricultural cooperatives, State and fodder farms through the "Large Privatization" programme had been completed to a large extent by the end of 1993. Under the "Large Privatization"

95 per cent of State assets had already been privatized. Approximately 65 per cent of the small enterprises and units qualified for the "Small Privatization" programme had been privatized and it was expected that this process would be completed by the end of 1994. Almost all small enterprises and units qualified for the "Small Privatization" scheme had been privatized by means of investment coupons.

As provided for in the Privatization Law, the first stage of the privatization programme had been the distribution to the citizens of Mongolia of investment coupons which had enabled them to purchase shares. Each person had been entitled to one pink coupon for the "Small Privatization" and to one blue coupon for the "Large Privatization". The pink coupons could be transferred, sold or purchased through brokers' agencies or traded directly between the holders and buyers. The blue coupons were not transferable. The pink coupons could be used as an investment instrument only once. Thereafter they were no longer marketable. These coupons were valid for two years, ~~until the end of 1993~~. The coupons did not earn interest. The secondary market did not deal in coupons. If the coupons had not been used within this period they could be returned to the Government and the charges levied for their acquisition would be refunded. The enterprises privatized through the distribution of investment coupons had been converted mainly to shareholder companies, whose operations were governed by the Law on Business Entities. The management and control of such companies were carried out through the General Assembly, the Board of Directors, the Supervisory Board and the Executive Director. The powers and the functions of these bodies were stipulated in the Law on Business Entities and more detailed authority and objectives could be included in the Articles of Incorporation of the company. According to the Law, the General Assembly elected and removed the directors and the members of the Supervisory Board. The shareholders were entitled to dividends and had one vote per share in the General Assembly. The managerial structure of the companies varied depending on the type and size of the company. In small and private companies, the directors and the shareholders were usually the same. The companies did not make any special payment to State authorities, except those related to their operations as a business entity such as taxes, duties and charges for services received, as provided in the respective laws and regulations. A person holding coupons could become a shareholder either of a small private company under the "Small Privatization" scheme, or of a public company under the "Large Privatization" scheme by purchasing shares of the company using those coupons. Such person acquired all the rights conferred by law on a shareholder, including managerial powers. The shares of these companies were traded in the stock markets run by the Stock Exchange and could be purchased by using national or foreign currencies or other assets. The representative of Mongolia added that more than 90 per cent of the livestock had been transferred to private ownership. The agricultural cooperatives, State and fodder farms were operating now as stock companies in which the former members of such cooperatives and farms held shares acquired with their investment coupons. Until the end of 1990, the State Bank of Mongolia had been the single banking institution and had exercised

all the banking functions. With the adoption of the Banking Law in 1991, a two-tier banking system which permitted the establishment of commercial banks ~~had been introduced. Currently there were sixteen commercial banks~~ operating as public companies ~~had been introduced~~. Shareholders of those banks were both State enterprises and business entities of the private sector. ~~In some banks~~ The share of the private sector in the capital of ~~some~~ the banks was predominant. There was no fixed time period for the privatization of commercial banks. However, the further privatization of State enterprises would simultaneously lead to the gradual privatization of commercial banks. In summary, at the present time the State controlled sector encompassed some 4% of agriculture, 60% of industry, 14% of services and about 90 ~~63~~% of foreign trade. Currently there were sixteen commercial banks out of which one was joint bank, one was State owned and the shareholders of others were both State enterprises and business entities from the private sector. The structure of the privatized entities by the end of 1993 was as follows:

	<u>Big privatization</u>					<u>Small privatization</u>				Grand Total
	1	2	3	4	T	5	6	7	T	
Industry	40	13	112	27	192	16	84	30	130	322
Construction	18	6	49	54	127	48	103	19	170	297
Transport	20	8	29	22	79	39	38	56	133	212
Telecom	-	1	-	1	2	-	1	-	1	3
Trade and service	24	8	14	4	50	183	1115	509	1807	1857
Housing	-	-	-	-	-	-	-	-	-	-
Agriculture, State and fodder farms	23	31	83	188	297	4	37	80	121	418
Others	1	-	13	8	22	-	9	69	78	100
Total	126	67	300	304	797	290	1387	763	2440	3237

* Note: 1. Majority State owned; 2. Partly State owned; 3. Shareholding company; 4. Limited liability company; 5. Limited liability company; 6. Partnerships; 7. Proprietorships; T-total

49.21: ~~At the request of a member of the Working Party who believed that it was important in order to ensure full transparency and to keep GATT contracting parties and WTO members informed of its progress in the reform of its transforming economic and trade régime, the representative of Mongolia stated that his Government would report periodically to the CONTRACTING PARTIES, and later~~

to the appropriate standing body of the World Trade Organization, on developments in its transformation from a State-controlled to a market-based economic and trade system and its programme of privatization. The Working Party took note of this [commitment.] [statement] [undertaking].

Foreign Investment

22. A member said that the United States and Mongolia had recently concluded a bilateral investment treaty that when ratified would enhance Mongolia's attractiveness to foreign investment. However, he noted that in the banking sector and concerning the ownership of land, national treatment was not guaranteed, and that the ban on investment in the production of drugs and other controlled substances may not be applied selectively only to foreign investment. This may be a case where private investment was completely prohibited for both foreign and domestic private interests, or a situation where all investment applicants require prior government approval which may or may not be given.

20-23. In response to questions concerning the Foreign Investment Law, the representative of Mongolia said that the restrictions established by the Government Decree 207 had been eliminated. The new Foreign Investment Law which had entered into force on 1 July 1993 was very liberal: foreign investment was permitted in all sectors with the exclusion of activities related to the production of drugs and other similar controlled substances. There had been established a set of incentives for foreign investment in sectors such as mining, industry and infrastructure which granted tax relief during a 5 to 10 year period taking into account the share of their production which would be exported. Thus, Mongolia accorded to foreign investors both m.f.n. and national treatment.

21-24. In response to further questions, the representative of Mongolia added that the Foreign Investment Law provided for non-discriminatory national treatment of foreign invested enterprises and set no conditions under which it could be withdrawn. The Foreign Investment Law did not limit the shares of foreign investors, i.e. the enterprise could be wholly foreign owned and thus all the provisions of the Law applied to this type of foreign invested entities. Foreign firms were also able to invest in private enterprises on the same basis as domestic investors, there was no discriminatory regulation in this respect. To constitute an enterprise with foreign investment the foreign investor should contribute not less than 20 percent of the registered capital. A smaller participation did not entitle to the benefits and privileges provided for by the Foreign Investment Law, but as investor the foreign person (whether natural or legal) was treated equally with domestic investors. Under the existing legislation, foreign investors could invest in any area of the economy, there was no prohibition or restriction indicating specific industries or enterprises, except the production of narcotics which was prohibited within the

territory of Mongolia for any person regardless of nationality. Under the Law on Government and the Foreign Investment Law, the Ministry of Trade and Industry was the Government body responsible for the execution of foreign investment policy, and in particular established and handled the approval procedure for establishing foreign invested enterprises. In pursuance of the Foreign Investment Law, the Minister of Trade and Industry had enacted the rules governing the approval procedure. Applications for setting up foreign invested enterprises were considered by the Ministry of Trade and Industry which reviewed the applicant's file in terms of its compliance with legislation, impact of the enterprise on the natural environment, meeting of health and sanitary requirements and the level of technology. All these assessments were sought from the appropriate organizations. The Ministry of Trade and Industry gave its ruling within 60 days from the date of receipt of the application. If the application was approved, the Ministry of Trade and Industry granted a certificate allowing the establishment of the foreign invested enterprise. Upon such authorization, the General Department of State Taxation which acted as the Register of business entities performed the automatic registration of the foreign invested companies and made the registration public. Actually the approval procedures for foreign investments and domestic investments were the same and there was no discriminatory treatment of foreign investment. Both the approval procedures and the registration of national companies and enterprises were performed by the General Department of State Taxation, whereas the foreign invested enterprises were subject to approval by the Ministry of Trade and Industry. Exemptions from customs duties and sales tax granted to foreign invested firms under the Foreign Investment Law were not conditional and in no way were dependant on export performance. The tax preferences described in article 30 of the Foreign Investment Law were income tax preferences and they did not apply to sales, excise or other kind of taxes. As indicated above, there was no restricted area for foreign investment. Foreign insurance firms could operate within the territory of Mongolia if set up to function in accordance with the Foreign Investment Law. The Foreign Investment Law did not completely cover all issues related to foreign investments. Some of them were embodied in other laws such as the Law on Business Entities, Tax Law, Banking Law, Customs Law and Labour Law. The Parliament had recently enacted a Law on the status of Foreign Nationals and the Law on International Treaties of Mongolia. The drafts of the Land Law and Foreign Exchange Law had been tabled before Parliament. Thus other specific matters related to foreign investment issues would be reflected in follow-up statutes. In the context of economic and foreign trade policy reforms the existing legislation was being totally overhauled. The Income Tax Law of Business Entities defined the foreign invested firms (both wholly and partially owned by foreign investors) as taxpayers and in this sense extended the exemptions listed in Article 7 to all taxpayers (whether foreign investors or domestically owned entities) who met the requirements for eligibility to such exemptions. The right of establishment of business entities in Mongolia was open to all national and foreign persons who wish to set up a business and have the necessary initial

capital required by the law. Foreigners could establish companies in the services area, for example accounting firms and they could be hired as "independent auditors" if they were professionally qualified for this kind of service. Definitely with the accession to the GATT and WTO, Mongolia would adjust all its laws and regulations to the obligations established within the framework of the international trading system. The Working Party took note of these assurances.

Customs Procedures and Transparency

22-25. A member said that Mongolia should make a commitment in the protocol of accession to the effect that all trade related laws, regulations or decrees of whatever character will be published for public review and be fully accessible prior to implementation, and that no laws, regulations or decrees related to international trade will become effective prior to such publication. In response to questions concerning the publication of laws and regulations prior to their entry into force, the representative of Mongolia said that the customs procedures would comply with the provisions of the General Agreement, in particular Articles VII, VIII and X thereof. All Mongolian laws and regulations were published in the official newspapers of the Parliament and the Government, namely: 1. "Ardin Erh", the official newspaper of the Parliament and the Government published all laws enacted by the Parliament; 2. "Zasgiin Gazriin Medee", the official newspaper of the Government published all the Decrees, regulations, orders, etc. adopted by the Government, Ministries and government agencies and bodies; 3. "Turiin Medeelel", a quarterly collection of the laws and regulations adopted by the Parliament and the President; and 4. "Zasgiin Gazriin Shiidveriin Emhtgel", a monthly collection of all Decrees and regulations of the Government. Moreover, decisions and regulations issued by the General Customs Administration, and other State bodies were also made available to the public. [He added that all trade laws, regulations or decrees of whatever character will be published [for public review] and be fully accessible prior to implementation and that no law, rule, etc. related to international trade would become effective prior to such publication]. The Working Party took note of these assurances.

23-26. With reference to customs practices and procedures, the representative of Mongolia said that his Government would apply customs practices and procedures, including customs fees and customs valuation in accordance with the provisions of Articles VII, VIII and X of the General Agreement and the WTO Agreement on the Implementation of Article VII of the GATT from the date of accession. Mongolia undertook to give first priority in determining the customs value to the actual value of imports as provided for in Article VII paragraph 2 of the General Agreement and would avoid the use of administratively determined or constructive basis for customs valuation purposes. Mongolia would

amend any provision of law or administrative regulation that provided for practices inconsistent with the above mentioned Articles. The Working Party took note of these commitments.

Trade Agreements

24-27. Noting that since the collapse of the trade with the former CMEA countries Mongolia had received substantial loans and financial assistance from a number of countries and international organizations, the representative of Mongolia said that his country was ready to trade with all countries on the basis of equality and mutual benefit. Currently Mongolia had signed GATT consistent agreements on the basis of the m.f.n. principle with some twenty-one countries including Austria, Belarus, Canada, China, Kazakhstan, Republic of Korea, Russian Federation, Ukraine, United States etc. as well as with the European Communities. Mongolia would in this respect comply with the provisions of the General Agreement. The Working Party took note of this commitment.

MTN Agreements and Arrangements

25-28. In response to questions concerning Mongolia's intentions regarding the acceptance of the MTN Agreements and Arrangements and the suggestion that Mongolia might join the Agreements on Customs Valuation, Import Licensing Procedures, Technical Barriers to Trade, Anti-Dumping and Subsidies at the time of accession to the General Agreement/WTO, the representative of Mongolia confirmed that his Government will would apply the provisions of the Uruguay Round non-tariff measures Agreements on Customs Valuation, Licensing, Standards, Anti-Dumping and Subsidies from the time of its accession to the GATT/WTO, and will would minimize to the extent possible recourse to the derogations from those Agreements provided for countries in development. was ready to accept the Agreement on Import Licensing Procedures at the time of accession, and the Agreement on Customs Valuation in accordance with the time limits provided for developing countries. However, with a view to becoming a member of World Trade Organization, Mongolia was looking forward to accepting all the results of the Uruguay Round Multilateral Trade Negotiations. The Working Party took note of this commitment.

Free Zones

26-29. With reference to the free zones, a member said that Mongolia should ensure that the goods produced in any such zones do not benefit from subsidies, e.g. income tax exemptions, are not subject to export performance or trade balancing requirements; and are subject to the normal tax and tariff regime when sold into other parts of Mongolia where the normal customs regime is in effect. In this connection Mongolia should make a commitment in the protocol of accession. The representative of Mongolia said that a special law concerning free zones was under consideration for the promotion of

the development of certain backward areas of the country. Mongolia would in due course provide to the contracting parties relevant information in this respect. He added that upon accession to the General Agreement/WTO, Mongolia would comply with all the obligations applicable to the free zones. The Working Party took note of this commitment.

TRIPS

27-30 In response to questions concerning Mongolia's legislation on trade related aspects of intellectual property rights, the representative of Mongolia said that the Civil Code of Mongolia recognised both tangible and intangible property rights, including intellectual property rights. In 1993 the Parliament had enacted Copyright and Patent Laws. Under the Copyright Law works were subject to registration with a non-governmental agency called the "Copyright Office". Trade marks and patents were registered and licensed by the Patent Bureau. These entities were not directly authorized to enforce the legislation and any claims or infringement cases were subject to the judicial process. He added that Mongolia had the intention of acceding in the near future to the relevant intellectual property conventions and in order to become a member of the World Trade Organization Mongolia would accept the Uruguay Round Agreement on Trade Related Aspects of Intellectual Property Rights.

Services

28-31 The representative of Mongolia noted that the Banking Law of Mongolia had been enacted in 1991. For the purpose of membership in accession to the World Trade Organization, his Government would develop had provided information on the main service sectors and had established a schedule of specific commitments in the area of services.

Conclusions

29-32 The Working Party took note of the explanations and statements of Mongolia concerning its foreign trade régime, as reflected in this report. The Working Party took note of the statements made and assurances given by Mongolia in relation to certain specific matters which are reproduced in paragraphs 8, 9, [21], 24 and 25 of this report. The Working Party took note of the commitments given by Mongolia in relation to certain specific matters which are reproduced in paragraphs 10, 11, 14, 16, 19, 23, 24, 25, 12, 15, 18, [21], 26, 27, 28 and 29 of this report and noted that these commitments had been incorporated in paragraph 2(a) of the Protocol of Accession.

30-33 Having carried out the examination of the foreign trade régime of Mongolia and in the light of the explanations and assurances given by the representatives of Mongolia, the Working Party reached

the conclusion that, subject to the satisfactory conclusion of the relevant [tariff] negotiations for market access for goods including an agriculture country schedule and for services, Mongolia 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 Mongolia and contracting parties in connection with accession have been concluded, the resulting Schedule of Mongolia and any concessions granted by contracting parties as a result of negotiations with Mongolia 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 Mongolia would become a contracting party [thirty days] after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Mongolia to the GATT 1947.

34. Having regard to the Ministerial Decision of 14 April 1994 on Acceptance of and Accession to the Agreement Establishing the World Trade Organization (WTO), the Government of Mongolia indicated the wish to follow the procedures for membership in the WTO set out by the Preparatory Committee on 31 May 1994. In pursuance of the Preparatory Committee mandate, the Working Party examined on its behalf the application of Mongolia and agreed to pursue the negotiations for market access for goods including an agricultural country schedule and for services expeditiously. The Working Party took note of the statement by the representative of Mongolia concerning his Government's desire to obtain original member status in the WTO.

APPENDIX

ACCESSION OF MONGOLIA

Draft Decision

The CONTRACTING PARTIES,

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

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

DRAFT PROTOCOL FOR THE ACCESSION OF MONGOLIA
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 Mongolia (hereinafter referred to as "Mongolia),

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

Have through their representatives agreed as follows:

PART I - GENERAL

1. Mongolia shall, upon entry into force of this Protocol pursuant to paragraph 6, become a contracting party to the General Agreement, as defined in Article XXXIII 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 Mongolia shall, except as otherwise provided in this Protocol, ~~and in including~~ the commitments listed in paragraph .. of the Report of the Working Party on the Accession of Mongolia (document L/... dated 1994[5]), 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 Mongolia 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 Mongolia 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 Mongolia.

4. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of that 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 Mongolia until [date to be inserted] 1994[5]. 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 Mongolia.

7. Mongolia, 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. Mongolia 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 thereof pursuant to paragraph 5 to each contracting party, to the European Economic Community, to Mongolia 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 ninety-four [five], 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 CXXXIV - MONGOLIA

[To be completed]